

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4391 of 2000

Date of Decision: 07.12.2016

B.C. Choudhary and others

... Petitioners

Versus

Union of India and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. B.S. Patwalia, Advocate,
for the petitioners.

Mr. I.S. Sidhu, Advocate,
for respondent No.2.

RAJIV NARAIN RAINA, J.(Oral)

1. A direct recruit to the post of Lecturer in the Technical Teachers Training Institute, Chandigarh was given an incentive of three/two advance increments if he held the degree of Ph.D. or M.Phil in Humanities respectively or Ph.D. and M.E. degrees in Science appointed to the Technical Faculty, as the case may be. At the time of recruitment the petitioners (excluding petitioners No.3 and 5 whose names have been deleted from the array of parties on the request made by them vide order dated January 28, 2010) hold the degrees of Ph.D. or M.E. In the Technical/Science stream and were granted two advance increments on appointment in accordance with instructions which brought them more salary than the direct recruits of their own batch who did not possess higher degrees/qualifications. There was no dispute till the pay revision came into force w.e.f. January 01, 1996 when the recommendations of the 5th Central

Pay Commission were accepted by the Government and made applicable to institutes like the respondent. With the revision of pay scales, the two advance increments at the time of direct recruitment were withdrawn and the petitioners were placed in the original pay scale as revised scale to scale bringing their salary shorn off the benefit of advance increments they enjoyed from the inception of service. The result was that a direct recruit after pay revision would enjoy salary higher than the petitioners and this was an anomaly apparent on the face of the scheme in the pay revision which required rectification and restoration of the two/three advance increments added to the revised pay scale. For this restoration the petitioners are before the court in this joint petition, the cause being common claiming directions to the respondents to up their pay and emoluments with the advance increments by setting aside the impugned letter dated March 04, 1999 -Annex P-15.

2. Mr. Sidhu appearing for the respondent-Institute draws the attention of the Court to Annex R-2 which is the memorandum dated January 14, 1999 (Annex R-2) issued by the Government of India, Ministry of Human Resource Development, Department of Education, Technical Section II on the subject of revision of pay scales of teachers in Centrally funded degree level technical institutions following the revision of pay scales of Central Government employees on the recommendations of the Fifth Central Pay Commission. This memorandum modified the existing scheme. The relevant part according to Mr. Sidhu which according to him is against the petitioners is contained in sub-para.(iii) of paragraph 1 of the OM dealing with pay scales. The modified provision reads as follows:-

“(iii) The fixation of pay of Lecturers (Selection Grade)/ Assistant Professors in the pre-revised pay scale of Rs.3700-125-4950-150-5700 who were selected strictly in accordance with the instructions contained in this Ministry's letter No.6-1/88-T.5 dated 28th February 1989 and who were in position as Lecturers (Selection Grade)/ Assistant Professor as on 01.01.96 will be made in a manner that they get their pay fixed at the minimum of Rs.14940/- in the revised scale of Rs.12,000-420-18300 as and when they complete 5 years service in the grade.”

3. By virtue of this provision the pay of the petitioners was fixed in the minimum of the revised pay scales which left them denuded of the benefit of two increments accrued to them since their appointment on different dates ranging from 1994 to 1997.

4. Annex R-5 which is an office memorandum wherein the Government of India in the Ministry of Finance prescribed in the matter of fixation of pay of employees who are appointed as fresh recruits on or after January 01, 1996 with advance increments in the pre-revised scales informed the stakeholders through OM dated November 30, 1998 as follows:-

“Accordingly the President has now been pleased to decide that wherever a Government servant has initially been appointed with advance increment(s) in the pre-revised scale of pay, he shall be fixed at the minimum of the revised scale of pay without any advance increment(s). However, if the existing emoluments (viz.pay with advance increments in the pre-revised scale plus, dearness allowance appropriate to that pay at Index Level 1510 plus amount of 1st and 2nd instalments of Interim Relief) is in excess of the pay fixed in the revised scale, the difference shall be allowed as personal pay to be absorbed in future increments in pay.”

5. Mr. Sidhu submits that there is no direct challenge to OM dated

November 30, 1998 in the petition and, therefore, the prayers in the petition are inadequate and cannot be answered in their present form.

6. Per contra, Mr. B.S.Patwalia points out to Annex P-15 to which challenge is laid. Annex P-15 is the impugned letter dated March 04, 1999 issued as a result of OM dated November 30, 1998 and a part and parcel of the same scheme in implementation of the mother OM making it one transaction and, therefore, it would be far too technical an argument as raised by Mr. Sidhu that the corpus of OM dated November 30, 1998 does not form the core “lis” in this case. If the impugned letter dated March 04, 1999 is quashed then *a priori* OM dated November 30, 1999 must fall.

7. Citing this provision of the modified policy the impugned order has been passed on March 04, 1999 issued by the Senior Administrative Officer of the respondent TTTI, Chandigarh informing the petitioners that as per orders of the Government of India, the two advance increments allowed in the pre-revised scale are not to be allowed in the new scale as per GOI letter dated November 30, 1998 (R-5).

8. The question that falls for consideration is as to the correctness of the view taken in the impugned letter dated March 04, 1999 in the wake of adverse view created by sub-para.(iii) of para.1 of Memorandum dated January 14, 1999 (R-2) and the still greater manifestation is the obfuscation caused to the settled rights of the petitioners in OM dated November 30, 1998 (Annex R-5) which both eclipse an accrued right to continue receipt of advance increments lawfully available on the date of entry into service as an incentive to attract higher qualified candidates to teach in the TTTI. The emoluments given to an employee at the time of recruitment based on

concession of advance increments for good and sufficient reason is a vested right which stands preserved for all times till retirement and the threat coming from pay revision has to be blunted otherwise it will amount to reduction in pay prior to revision on the happening of a future imponderable event i.e. pay revision and the old policy would rule pay and emoluments. Salary cannot be left to the vagaries of changing climates and must never be reduced in such a manner which might result in a person directly recruited after the petitioners and after the subsequent pay revision come to enjoy salary higher than their seniors. Nothing would be more abhorrent to service jurisprudence than to accept and apply the offensive Office Memorandum which results in bringing more pay to a junior.

9. Mr. Patwalia refers to a decision of the learned Single Judge in CWP No.18514 of 2012 and connected cases in lead case *Dr. Anil Kumar and others v. State of Punjab and others* in which a similar issue was dealt with and decided with reference to annual increments/additional increments paid with usual salary for possessing higher qualification increasing their pay as against others recruited with them with the minimum educational qualifications. In *Dr Anil Kumar* case I had relied on an earlier ruling of this Court rendered in CWP No.6954 of 2009 decided on January 24, 2011 in *Priya Sood vs. State of Punjab and others*. The petitioner therein was a member of the Punjab Civil Services (Judicial Branch) and was serving as Chief Judicial Magistrate in the State of Punjab. The Judicial Officer approached this Court against the action of the State Government in restricting the grant of three increments to mean “not additional or special but only as advance” increments. The learned Single Judge of this Court

relied on the Shetty Commission report where both the phrases “additional” and “advance” were used in para.8.46 of the recommendations as interchangeable and since the solitary object of these recommendations was to grant extra benefits to those officers who joined Judicial services with higher qualification the word “advance” shall connote the same meaning as the word “additional” as understood in common parlance. The learned Single Judge observed in *Priya Sood* that the Commission, under no circumstance, can be said to have recommended a short term gain only by construing the word “advance” as “premature” for such a restrictive meaning to be ascribed which would lead to discriminatory results and would unwittingly bring equality amongst unequals. This would violate the equality clause in Article 14 of the Constitution. The *Priya Sood* judgment is final being upheld in appeal etc. (LPA No.970 of 2011). The Appellate Bench relied on a large number of judgments of the Supreme Court to hold that educational qualifications can always form reasonable basis for grant of higher pay scales. *Priya Sood's* case dealt with Judicial Officers who possessed the degree of LL.M., then the higher qualification would certainly bring efficiency in the discharge of duties of Judicial Officers in comparison to those who did not possess such a degree. Where there is reasonable classification there is no discrimination as within same group. There can be two unequals one with higher qualification while the other with the minimum essential qualification required for the post.

10. Mr. Patwalia would also point out in *Dr. Anil Kumar's* case paras.7 and 8. In Para.8 this Court held as follows:-

*“In the process of implementing the revised pay scale w.e.f.
January 01, 2006 and the 14 years ACP Scheme benefits*

following due thereafter, the State Government interpretation in fitment of the pay of the petitioners has wantonly taken away accrued, vested and crystallized rights to preservation of accelerated pay and allowances earned by grant of six advance increments over and above their annual increments earned in the post. The withdrawal of the policy of higher pay for higher qualifications may have been disbanded but the arbitrary action of the respondent-State has dissolved the recurring benefit of the six additional increments and the effect of this renders possession of the Post Graduate qualification as meaningless. If this was permitted it would amount to reverse discrimination.

11. Dr. Anil Kumar and connected cases were allowed and the impugned order was set aside. The pay of the petitioners therein was ordered to be re-fixed and the petitioners were held entitled to benefit of six additional increments in addition to their annual increments at both stages, that is, on the coming into force of the Punjab Civil Services (Revised Pay) Rules, 2009 after re-fixation of their pay and allowances and in the event of completion of 14 year service qualifying for ACP pay scales under the scheme.

12. For the foregoing reasons, I am left with no doubt that the view canvassed by Mr. Patwalia is the correct position in law and the defence of the respondents is an erroneous one and, therefore, for the variety of reasons recorded above, the impugned letter dated March 04, 1999 (P-15) is not legally sustainable and is, therefore, quashed. The petition is allowed with all consequential benefits. The respondents are directed to re-determine the pay of the petitioners by adding the advance increments and the amounts found due be paid to them as arrears of salary and emoluments with interest

Government but not the respondent-Institute which only faithfully implemented the offensive OM since it was the Central Government which by an erroneous and arbitrary decision wrongly withdrew the benefit of 2/3 advance increments following 5th Pay Revision without just cause or legal justification and without thinking of all the steps the decision might lead to disastrous results. The result of the impugned letter presents an apparent anomaly whereby seniors got less pay than their juniors on pay revision, which is a violation of the fundamental law in service jurisprudence that a junior cannot get more pay than his junior in normal circumstances. The exercise is directed to be completed before March 31, 2017 and payments accordingly made to the beneficiaries.

(RAJIV NARAIN RAINA)
JUDGE

07.12.2016
manju

Whether speaking/reasoned	Yes
Whether reportable	Yes