

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.6790 of 1997

Date of Decision: 10.05.2016

Ujjagar Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

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

Present: Mr. Pawan Kumar, Sr. Advocate,  
with Mr. Rozer Kumar Aggarwal, Advocate,  
for the petitioner.

Mr. Harkesh Manuja, Addl. AG, Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

**RAJIV NARAIN RAINA, J.**

1. Heard.
2. It was not permissible to the District Education Officer (Schools) Sangrur to take a stand in defence of this writ petition contrary to the what it took in CWP No.16883 of 1991 decided by the Division Bench of this Court on April 02, 1992 allowing the petition in favour of 16 petitioning teachers of which the 11<sup>th</sup> was the petitioner. The Division Bench passed the following order:

*“The only contention raised by the learned counsel for the respondents is that they have granted selection grade for 15% of the posts on the basis of the total strength of the cadre including the permanent as well as the temporary posts which have been in existence for more than three years. The distinction pointed out by the learned counsel for the respondents for non inclusion of the posts which were in existence for less than 3 years appears to be an artificial*

*one. We find no force in the submission made by the learned counsel for the respondents. The total i.e. permanent as well as all the temporary posts have to be taken into consideration while granting selection grade irrespective of the period of existence of the temporary posts. It has been specifically observed in LPA No.135 decided on 15.1.1990 that the selection grade is to be given on the total number of posts irrespective of the fact whether these are temporary or permanent. Further S.L.P. filed against the judgment in the said LPA was dismissed by the Hon'ble Supreme Court of India.*

*Consequently, the writ petition is allowed. The respondents are directed to grant selection grade to the petitioners, subject to the condition that they shall not be entitled to arrears for the period more than 3 years and two months preceding the filing of the petition. We hope that the necessary relief will be granted to the petitioners expeditiously.”*

3. In turn, the Division Bench relied upon LPA No.135 of 1986 decided on January 15, 1990 holding that selection grade is to be given against the total number of posts irrespective of the fact whether the posts are temporary or permanent. SLP against that judgment was dismissed by the Supreme Court. In implementation of the order passed by the Division Bench, the petitioner was granted proficiency step up within 15% cadre of the post of Physical Training Instructor vide order dated September 18, 1992 issued by the District Education Officer (S) Sangrur. The only condition laid down for review of the order was contained in condition 4 that in the event of change of seniority, the benefit of the proficiency step up and the date mentioned therein can be changed by the office of the DEO (S), Sangrur alone. The Headmaster, Government High School, Sanghera passed the impugned order on March 22, 1997 after five years of grant of benefit

and on the premise that the award of selection grade was fixed wrongly thereby the selection grade was withdrawn and accordingly the pay of the petitioner was reduced and fixed at basic pay as Rs.2700+50 from October 01, 1996. Apart from the order being illegal and contrary to the judgment of this Court the same was also passed in violation of the principles of the natural justice. The petitioner was not heard when the order was passed. Neither was the Headmaster, Government High School, Sanghera competent to pass the order which could have been passed by the District Education Officer (S), Sangrur alone as per the terms of the grant of selection grade. The petitioner retired in April 1998.

4. The defence in para.2 of the written statement reads as follows:-

*“That para No.2 of the Petition is admitted as a matter of record, however the P.T.I. is not considered as Master because P.T.I. does not in Master Cadre hence it is wrong to say that the petitioner is working as a P.T.I. Master hence denied.”*

5. The defence is not only improper and incorrect but also suffers from bad reasoning and bad grammar which together makes for an illegal order. If this is the heart of the defence of the State it displays lack of application of mind. In all probability, the Headmaster did not consult the record when he made the order otherwise he would know that the benefit of selection grade was granted to the petitioner as PTI and that benefit continued to flow five years till the impugned order was passed protected by the judgment dated April 02, 1992 (supra).

6. I find neither reason nor logic to support the order even without going into the question of violation of principles of *audi alteram partem*.

When violation of the principles of natural justice are added on, the impugned order must fall to the ground unable to sustain judicial review.

7. For the foregoing reasons, the writ petition is allowed. The impugned order dated March 22, 1997 (P-6) is quashed. The selection grade granted vide order P-2 is restored. The petitioner is held entitled to difference of arrears of salary on restoration of the selection grade and all consequential benefits flowing therefrom.

8. Mr. Pawan Kumar, learned Senior counsel on instructions from the assisting counsel Mr. R.K. Aggarwal informs the Court that pursuant to the impugned order, the petitioner has already suffered recovery of a sum of Rs.21,514/- from his salary. The amount which has been illegally deducted is directed to be refunded to the petitioner. The amount of deduction will earn interest at 12% per annum from the date of reduction till payment. Pension and pensionary benefits be re-calculated and the pension of the petitioner be enhanced accordingly. Let the entire exercise be done within three months from the date of receipt of certified copy of this order.

9. Order dasti.

(RAJIV NARAIN RAINA)  
JUDGE

10.05.2016  
manju