

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7405 of 1999(O&M)

Date of decision: 9.9.2016

Mrs. Naresh Chaudhary

... Petitioner

Versus

The State of Haryana & ors.

... Respondents

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

Present: Mr. Aayush Arora, Advocate,
for the petitioners.

Ms. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J.(Oral)

The claim of the petitioner is for quashing the impugned order (Annex P-9) at pag.34 to 35 of the paper-book passed by the Manager, Government Girls Senior Secondary School, Kurukshetra (a Government aided institution). The claim of the petitioner for grant of master scale of ₹585-1050 and pay revision thereof with effect from the date of joining the school on July 17, 1985 and the pay scale attached to the post of Lecturer i.e. ₹ 2000-3500 and further revision thereof to ₹ 6500-10500 w.e.f July 1, 1991 has been rejected on the ground that the petitioner had acquired higher qualification before joining service of the department. The circular dated July 23, 1957 was planned to encourage continuing in-service education to improve the quality of teaching services in an era when teachers were not easily available at entry points possessed of higher academic qualifications. The policy circular issued on July 23, 1957 in joint Punjab had granted the pay scale to the Masters/Mistress working in the grade ₹ 110-250 only and not to other teachers when the admitted position is that the petitioner

applied and obtained job on the strength of higher qualifications possessed, then her pay has to be restricted to the pay scale prescribed at that time of appointment.

Ms. Shruti Jain Goyal refers to the Division Bench judgment in Vinod Bhagat & ors. v. State of Haryana & anr., 2004(3) SCT 526, which dealt with the provisions of the Haryana Aided Schools (Security of Services) Act, 1971 and the Punjab Privately Managed Recognized Schools Employees (Security of Service) Act, 1979 and the Punjab Government Education Department instructions dated July 23, 1957 (*supra*). The Division Bench considered the further instructions as well of the Punjab Government dated September 1, 1960 in the context of the Punjab Government instructions dated July 23, 1957. The Division Bench applied the dicta of law of the earlier Division Bench judgment of this Court rendered in Smt. Pushpa Devi v. State of Haryana, 2001(2) SCT 643. In the same line of reasoning in *Pushpa Devi* case, this Court in *Vinod Bhagat* categorically held that when pay scale of teachers is linked with qualifications as in the Punjab Government instructions dated July 23, 1957 then the Punjab Circular dated July 23, 1957 was in existence when the Legislature of Haryana enacted the 1971 Act and the State Government framed the rules in 1974. If the Legislature and its delegate wanted to confer the benefit of higher pay scale to the teachers of Private Aided Schools, who possessed qualifications higher than those prescribed for the post at the time of recruitment or acquired after joining service, they would have been incorporated the circular, or in the Act or the rules itself. But that was not done. Since the rules governing the service conditions have been framed, no

earlier instructions or orders can add to the rules or to the cadre what is not provided in the rules. In *Pushpa Devi's* case (supra) it was held that those recruited, posted and working as JBT teachers cannot claim or be granted the pay scale of B.Ed., Lecturers or Head Teachers, merely because one acquires the B.Ed. qualification and nor would they become automatically entitled to higher scale of pay. The Division Bench of this Court noticed the law laid down by the Supreme Court in Wazir Singh v. State of Haryana, 1996(1) SCT 431 to return its findings in the decision in *Vinod Bhagat's* case. It was pointed out in the judgment authored by S.S. Saron, J. that the law as has been succinctly enunciated in paras 11 and 12 of the judgment and which deserves to be quoted in extenso since such type of cases come up regularly for decision and therefore a revisit of the law stated is re-invigorated to be present for everyday application. The written word endures better when brought back from legal memory by repetition. It is best then to reiterate the law of the Division Bench as a ready reference to re-declare the law in determination of the same relief as sought in this case filed in 1999. It may be noted that the Division Bench inter alia applied the law laid down by the Supreme Court in State of Punjab v. Om Parkash, Kaushal, 1996(4) SCT 302 (SC) and also State of Punjab v. Narain Dass, 1999 SCC (L&S) 932 apart from authority in *Pushpa Devi* case. Para 11 & 12 are reproduced as hereunder:-

“11. In the case in hand also, as already noticed above, the Haryana State has framed the 1971 Haryana Act. Section 4 thereof provides for uniform Code of service for employees. Section 4 (c) of the 1971 Haryana Act reads as under:-

“4. Uniform Code of service for employees:-

Subject to the provisions of this Act, the State Government may prescribe:-

- (a) xxx xxx xxx
- (b) xxx xxx xxx
- (c) Uniform, scales of pay for various classes of employees:

Provided that the State Government may exempt any aided school or class of aided school from the operation of the provision of this section for such a period as it may think fit on ground of economic capacity thereof.”

Section 8(1) of the 1971 Haryana Act confers power on the State Government by issuing a notification to make rules for carrying out of the purposes of the said 1971 Haryana Act. It is in exercise of the said powers conferred by Section 8 (1) of the 1971 Haryana Act, that the Haryana Government has framed the 1974 Haryana Rules. Part III thereof relates to Pay, Allowances and Service Record. Rule 10 relates to scale of pay, dearness allowance and payment of salary and the same reads as under:-

“10. Scale of pay, dearness allowance and payment of salary. [Section 4]

- (1) The scales of pay of the employees shall be as specified in column 4 of Appendix A to these rules.
- (2) The rates of dearness allowance payable to the employees shall be the same as are admissible from time to time to Government employees.”

Rule 11 relates to 'leave'. Rule 12 relates to

'Traveling Allowance and Daily Allowance' and Rule 13 to 'Service Record'. The said statutory 1974 Haryana Rules, therefore, provided the scale of pay of the employees which are specified in column 4 of Appendix A to the Rules. Besides, the rates of dearness allowance payable to the employees are to be the same as are admissible to the Government employees from time to time. Therefore, the scales of pay are statutorily fixed by the 1974 Haryana Rules. The effect of the 1971 Haryana Act and the 1974 Haryana Rules was considered by a Division Bench of this Court in the case of *Pushpa Devi v. State of Haryana* (supra). In Pushpa Devi's case an earlier decision of this Court in the case of *Kanwaljit Kaur v. State of Punjab, 1996(1) RSJ 325*, was reiterated. It was held in Pushpa Devi's case that the circular dated 23.7.1957 was in existence when the 1971 Haryana Act was enacted and the 1974 Haryana rules framed and if the Legislature and its delegatee wanted to confer the benefit of higher pay scale/grade to the teachers of the private aided schools who possessed qualifications higher than those prescribed for the post at the time of recruitment or who acquired such qualification after joining the service then they would have incorporated, the circular dated 23.7.1957 either in the 1971 Haryana Act or in the 1974 Haryana Rules. However, this was not done. Therefore, the contention of the private teachers claiming higher pay scales on acquiring higher qualifications was rejected. The Division Bench in Pushpa Devi's case also noticed the decisions of

the Hon'ble Supreme Court in the cases of *Chaman Lal v. State of Haryana*, AIR 1987 SC 1621, *Punjab Higher Qualified Teachers Union and others v. State of Punjab and others*, 1988(1) SLR 768, *State of Haryana v. Rai Chand Jain*, 1997(3) SCT 27 (SC) : 1997(1) Judicial Reports (L&S) 1, *State of Haryana v. Ravi Bala*, 1997(2) SCT 300 (SC) : (1997) 1 SCC 267, *Wazir Singh v. State of Haryana*, 1996(1) SCT 431 (P&H) : 1995 Suppl. (3) SCC 697 and *State of Punjab v. Narain Dass* (supra). Besides, the decisions of this Court in *Nasib Kaur and others v. State of Punjab and others*, 1988(4) SLR 301, *Rattan Singh v. State of Haryana*, 1995(1) SCT 711 (P&H) : 1995(1)SLR 401, *Gurjeet Kaur v. State of Haryana*, 1996 (1) SCT 727 (P&H) : 1996 (1) RSJ 503 and *Champa Devi v. State of Haryana*, 1998 (3) SCT 449 (P&H) : 1998(1) RSJ 675, as also some other decisions. The instructions dated 23.7.1957 on the basis of which the claim of the present petitioners is based as also the subsequent circular dated 9.3.1990 whereby the Government of Haryana issued revised instructions in the matter of grant of higher pay scale were considered and noticed in extenso. In terms of the instructions dated 23.7.1957 insofar as the teachers in the Education Department were concerned it was decided that all the teachers according to their qualifications should be placed in the following two head categories:

CATEGORY 'A'

B.A./B.Sc./B.Com./B.Sc. (Agriculture) and
B.T./Diploma in Physical Education/Diploma

in Senior Basic Training.

CATEGORY 'B'

Group I: Matric with Basic Training
(including JTs)

Group II: J.Ts. (including Assistant Mistress
with B.A./Inter/Matric Plus J.A.V. Training).

Group III: (i) Shastries, (ii) Gianies,
Prabhakars, Drawing Masters and Craftsmen
Certificate Holders, (iii) Munshi Fasil, (iv)
S.Ts. Including S.Vs with training in physical
education or Agriculture.

Group IV: Untrained teachers with
qualifications like B.Com., B.Sc.(Agriculture)
etc.

In addition, there are smaller categories of
special posts, such as Head
Master/Headmistresses/ District Inspectors of
Schools, with qualifications of Category 'A'
above. Teachers in these categories,
regardless of men and women cadres, should
carry the following scales of pay:

CATEGORY 'A'

Rs.110-3-190-10-250 with a higher start from
M.A. or M.Sc. as at present, the existing
percentage of posts fixed by Government for
the scales of Rs.110-8-190-10-250 and
Rs.250-10-300 should remain unchanged at 85
per cent and 15 per cent respectively.

CATEOGRY 'B'

Lower: Rs.60-80/5-100-5-130

Middle: Rs.120-5-175

Upper: Rs.140-10-220.

12. The Haryana Government on 5.9.1979 issued the following order:-

“Sanction of the Governor of Haryana is hereby accorded w.e.f. 5.9.1979 of the grant of Master grade to unadjusted J.B.T. teachers who have passed B.A., B.Ed., subject to the following conditions:

- i. That the expenditure involved would be met from the savings of the current year revised sanctioned estimates.
- ii. That these teachers will not be allowed any seniority in the cadre of masters.
- iii. That it will no form a precedent for future.
- iv. That the award of Master's grade to the concerned teachers would be personal to them.”

The Government of Haryana thereafter issued revised instructions dated 9.3.1990 in the matter with regard to grant of higher pay scale. The relevant extract of the said instructions is as follows:-

“I am directed to refer to composite Punjab Govt. Finance Department circular No.5056-FIR-11/57 dated the 23rd July, 1957 on the subject noted above, which contains the details regarding the revision of the pay scales of various categories of subordinate services (including teachers) done on the recommendation made by the Pay Revisions Committee, then appointed to examine this matter. While evolving revised pay scales in

respect of different categories of teachers in the Education Department, in para 3 of above mentioned circular, two broad categories namely, category 'A' and category 'B' of teachers were mentioned, *inter alia*, laying down the requirements of academic qualifications in their cases. *It would not have been intended by the Government that on their acquisition of High academic qualification, various categories of teachers in the lower grades shall automatically be placed in the different higher grade commensurate with their academic qualification.* Normally, pay scales of various category of posts in any Department are sanctioned keeping in view the minimum qualification required for each category of posts, besides the duties prescribed for them. Similarly, *the teaching posts are sanctioned for various educational institutions keeping in view the subjects and classes, the incumbents of these posts are required to teach and for that specific qualifications are prescribed in the service rule as well at the time of recruitment. For example, if a B.A. B.Ed. pass candidate with the qualifications of Matric J.B.T. also applied for the post of Matric J.B.T and is taken into service on the basis of higher qualification, he/she cannot claim the grade of Master/Mistress but will get the sanctioned scale of pay of teacher meant for Matric J.B.T. Similarly, if a Matric J.B.T. Teacher improves his qualification*

during the course of service and acquires degree of B.A. B.Ed. or of language teacher i.e. O.T. Giani or Prabhakar, he cannot claim the scale of Master i.e. B.A. B.Ed. or of language teacher unless he is appointed as Master against the post of Master and language teacher for which the minimum qualifications are B.A. B.Ed. and O.T. (Giani or Prabhakar) respectively.

2. As the instructions contained in paragraph 3 of the above-mentioned letter dated 23rd July, 1957 did not bring out the above-mentioned intentions of the Government in unambiguous terms, it has resulted in different interpretations i.e. automatic grant of high scales of pay on the basis of qualifications irrespective of number of posts available in the Department in that category..... it was never the intention of the State Government to undertake the continuing heavy financial burden that has developed on it because of the faulty framing of the above-mentioned instructions.

3 to 5. (Omitted)

6. In order to remove the confusion being created by misconstruing the intention of the Government the whole matter has been reconsidered by the State Government. As a result of the reconsideration, the Governor of Haryana is pleased to *clarify that the teachers of the Education Department are not entitled to be placed in the higher scales of pay in terms of para 2 of the Punjab Government*

letter No.5056-FR-11/57/6600 dated 23rd July, 1957 or any subsequent letters/ notifications issued by the Haryana Government referred to in the preceding paras, which letters already become inoperative on their improving/acquiring higher qualifications during the course of their service automatically. The masters/teachers in the Education Department will be placed in the scales of pay of their respective categories to which they are appointed against the sanctioned posts and mere possession/acquiring of higher qualification will not entitle them automatically to claim higher pay scales.” (emphasis added).

The instructions dated 9.3.1990, therefore, clarify the instructions dated 23.7.1957 on which the claim of the petitioners is based and in terms of the later instructions dated 9.3.1990 it is evident that the masters/teachers in the Education Department will be placed in the scales of pay of their respective categories to which they are appointed against the sanctioned posts and mere possession/acquiring of higher qualification does not entitle them automatically to claim higher pay scales.”

The position in law was reaffirmed by the subsequent Division Bench in Rambir Sharma vs. State of Haryana & ors., CWP No.9220 of 2005, decided on February 21, 2006. The opinion of the Court in *Vinod Bhagat's* case and in *Rambir Sharma* was expressed by S.S. Saron, J

speaking for the Division Bench and this Court and nothing more requires to be done in this case being covered by rule of stare decisis.

And wherefrom; for the foregoing reasons, this Court finds no merit in this petition warranting interference against the sound and proper exercise of jurisdiction in passing the impugned order rejecting the claim for higher pay scale, the further revision for acquiring higher qualifications while serving in the department of education. Accordingly, the petition is hereby ordered to stand dismissed but without costs which will be borne by the parties.

(RAJIV NARAIN RAINA)
JUDGE

9.09.2016
monika

Whether speaking/reasoned *Yes*

Whether reportable *Yes*