

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Writ Petition No.22726 of 2010

Date of decision: 18.5.2016

Sunil Kumar

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. R.K.Arora, Advocate for the petitioner.

Mr. L.S.Virk, Addl. Advocate General, Punjab.

Mr. Ajay Pal Singh Madaan, Advocate for respondent no.4.

G.S.SANDHAWALIA, J. (Oral)

Short reply by way of affidavit of respondent no.4 has been filed in which details have been given as to payments which had been made to the petitioner which were pertaining to the arrears of his salary.

The same is taken on record.

Office to tag the same at appropriate place in the file.

Counsel for the petitioner submits that only issue which now remains for consideration is regarding the order dated 19.10.2007 (Annexure P/7) whereby the petitioner's appointment with respondent no.4-school was treated as fresh appointment in the grade of ₹ 7000-10980/- and his pay was not protected at ₹ 7440/-

It is case of the petitioner that he was working as Science Master in L.R.Doaba Senior Secondary School, Jalandhar which was a Government aided institution and approval had been granted to his appointment on 20.2.1987 (Annexure P/1). In pursuance of advertisement dated 21.9.2002, his candidature to the post of Headmaster was considered

by the Selection Committee of respondent no.4-school and appointment order was issued on 8.10.2002. Resultantly, he was relieved on 6.11.2002 on account of being appointed through proper channel and joined on 7.11.2002 (Annexure P/3). His pay on the substantive post was fixed as ₹ 7440/- and the entry was made in the service book and thereafter his services were confirmed vide resolution dated 15.5.2003. His case was forwarded for approval to respondent no.2-the Director Public Instructions (SE), Punjab. In the meantime, the Managing Committee of respondent no.4-school was changed and his services were dispensed with on 5.5.2004 which he challenged before the State School Education Tribunal. On account of the fact that there was an interim order in his favour during the pendency of appeal, the petitioner's appointment was approved on 13.12.2005 (Annexure P/4). The Tribunal set aside the termination on the ground that mere change in the management should not result in termination of services of an employee if he was performing his duty diligently on 11.7.2006 (Annexure P/5). However, vide impugned order dated 19.10.2007 (Annexure P/7), his pay was fixed in grade of ₹ 7000-10980/- in-spite of the fact that the appointment had already been approved. The remarks column would go on to show that it was only on account of appointment being treated as fresh as it was made by the new management, the respondent no.2 ordered so.

Counsel for the State has sought to justify the said action on account of the fact that the appointment was with the new management and places reliance upon communications dated 4.4.2007 and 16.5.2007 (Annexures R/1/T and R/2/T respectively) regarding this aspect. The specific averments made in paragraphs no. 5 and 6 pertaining to pay

protection granted in the service book have not been denied by the State in any manner or that the same was not to be done. Once the petitioner had been put back in service by the Tribunal, the subsequent condition put by the State in the impugned order dated 19.10.2007(Annexure P/7) cannot be held to be justified. Accordingly, the said condition is quashed and the petitioner is held to be entitled for the benefit of his pay protection at ₹ 7440/-.

Accordingly, the present writ petition is allowed. The arrears which are due be paid to the petitioner within a period of three months from the date of receipt of certified copy of this order.

May 18, 2016
Pka

(G.S.SANDHAWALIA)
Judge