

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

Date of decision: 15.03.2016

CWP No.20717 of 2012

Dr. Bhupinder Kaur

...Petitioner

Vs.

State of Punjab & others

...Respondents

CWP No.21515 of 2012

Vandana Sharma

...Petitioner

Vs.

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Dr. B.M.Singh, Advocate, for the petitioner.

Mr. Inqulab Nagpal, AAG, Punjab for respondent No.1.

Mr. K.S.Rekhi, Advocate, for respondent No.2.

Mr. Ravi Singh, Advocate, for

Mr. C.S.Bakshi, Advocate, for respondents No.3 & 4.

RAJIV NARAIN RAINA, J. (ORAL)

This order will dispose of above cases bearing CWP No.20717 of 2012 & CWP No.21515 of 2012, as common questions of law and fact are involved in them, which can conveniently be decided by a common order.

2. There are two conflicting decisions of the learned Education Tribunal, Punjab (for short 'the Tribunal') on the same issue; whether Teachers working on unaided posts in a Private College affiliated to the Guru Nanak Dev University, Amritsar (for short 'the University') are entitled to the revised pay scales under the Pay Revision Rules and notifications issued by the State of Punjab.

3. In Petition No.12/2011 titled 'Sushma Sharma & another Vs. State of Punjab & others' announced on 17th November, 2011 (Annex P-8), the Tribunal while dealing with the Teachers working in R.R.M.K. Arya Mahila Mahavidyalaya near Teachers Colony at Pathankot, District Gurdaspur held that salaries of Teachers working against unaided posts the College receives no grant-in-aid are liable to pay University Grants Commission's approved scales of pay, but the burden has been put by the Tribunal on the private management to defray the differential costs of employment equivalent to UGC pay scales. The Tribunal has equated Teachers working on 'aided posts' and 'non-aided posts' for the reason that their mode of recruitment is same; the nature of duties are the same, and their appointments have been approved by the University and DPI(C). The result has been achieved by introducing the principle of unreasonable discrimination between both types of Teachers who comprise a homogeneous class and any discrimination between two would be hostile and invidious. Though the Tribunal has not expressed the position in as many words, but the principle of discrimination has been applied to prevent continued breach of the equality protection clause in Article 14 of the Constitution.

4. That order was passed on 17th November, 2011 by the Tribunal headed by the Hon'ble Presiding Chairman of the Bench that has decided the case of the petitioner in which contractual principles have been applied to deny

the claim for parity of pay by referring to para.5 of the notification dated 2nd September, 2009 issued by the Government of Punjab in the Department of Higher Education. The notification has been issued having regard to the decision of the Government of India taken in pursuance of the recommendations of the University Grants Commission, whereby the Governor of Punjab was pleased to revise the scales of pay of Teachers and equivalent cadres in Universities and Colleges in the State with effect from 1st January, 2006 as per details tabulated in the notification. Para.5 of the notification reads as under:

“5. The revised pay scales are applicable to the teachers and equivalent cadres of Universities (including Panjab University, Chandigarh), Government Colleges, Government Aided Private Colleges, and the Directorate of Colleges only.”

5. From the language of Para.5, it is evident that Private Unaided Colleges have not been brought within the purview of the notification. On such reading, the Tribunal has taken a converse decision in the case of the petitioner (Petition No.25/2011 titled ‘Dr. Bhupinder Kaur Vs. Guru Nanak Dev University, Amritsar’ announced on 4th May, 2012) on which the respondents rely. The Tribunal has held that not an iota of evidence was placed before it suggesting that at any point of time, State Government had extended the benefit of the notification to non-aided institutes. In this manner, the prayer of the petitioner(s) for UGC approved grades of pay was declined. The Tribunal also referred to Para.14 of the notification, which enables the State Government to make a change in any of the above conditions on its own or on the recommendations of the UGC/Government of India.

6. The only difference between the two cases is that the institutions/colleges are different, but both affiliated to the Guru Nanak Dev

University, Amritsar. The work of the Tribunal has apparently resulted in a serious conflict of decisions, which both orders are not capable of being reconciled and therefore, it would be just and meet in the first instance that the matter deserves to be remanded to the Tribunal for reconsideration of the issue to remove the conflict and take an appropriate decision, which is uniform on the disputed question of grant of revised scales under the notification of the State Government. In the earlier case the cost of salaries is to be shouldered by the Government in the ratio of 95%:5% in terms of the Grant-in-Aid Scheme whilst in the other the Management bears the brunt of payment of salaries according to UGC scales of pay one hundred percent even when the College is a self financed educational institution and teachers not appointed against aided posts.

7. The nature of the challenge in an anomalous situation demands that this Court should, instead of setting aside the impugned order; remit the case to the Tribunal to take a fresh decision uninfluenced by either of the orders passed by the predecessor Tribunal so that the decision taken is in accordance with law. It goes without saying the Tribunal would decide which of the two is the preferred view and which one of them should hold the field. Removing discrimination in one case has resulted in discrimination in the other. This confusion created in the Tribunal dispensations needs to be creased out.

8. Consequently, both the writ petitions are disposed of as above.

9. Parties are directed to appear before the learned Tribunal on 30th March, 2016.

15.03.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE