

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 17358 of 2015
Date of Decision: 09.09.2016

JAGJIT SINGH AND ORS **... Petitioner**

VS.

STATE OF PUNJAB AND ORS **..Respondents**

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Harinder Sharma, Advocate,
for the petitioner.

Ms. Vandana Malhotra, Addl. A.G., Punjab.

KULDIP SINGH, J. (Oral)

Brief facts of the present case are that the petitioners were working as Lecturers/Headmasters/ Headmistresses in various Schools in the Education Department of the Government of Punjab. In the absence of regular Principal/Head Master/Head Mistress in their respective Senior Secondary and High Schools, the petitioners were assigned the duties of higher posts of School Principal/Head Master/Head Mistress and were retired as such. However, in the meanwhile, petitioner Nos. 5, 6 and 16 were regularly promoted as Principal/Head Master/Head Mistress before their retirement.

The following chart would show the details of the period in which they were on the said higher posts alongwith their date or retirement: -

“Sr. No	Name	Father’s Name	Period of Officiating Principal/Head Master/Head Mistress	Date of retirement
1.	Jagjit Singh (Officiating Principal) (Retd.)	Maghar Singh	11.08.2004 to 30.09.2009	30.09.2009
2.	Baj Singh (Officiating Principal) (Retd.)	Fauza Singh	07.11.2002 to 31.03.2005	31.03.2005

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3.	<i>Harbhajan Kaur (Officiating Principal) (Retd.)</i>	<i>Santa Singh</i>	<i>09.08.2002 to 31.12.2008</i>	<i>31.12.2008</i>
4.	<i>Sham Sunder Kalra (Officiating Principal) (Retd.)</i>	<i>Mohan Lal</i>	<i>21.11.2001 to 30.11.2008</i>	<i>30.11.2004</i>
5.	<i>Gurmit Kaur, Principal (Retd.)</i>	<i>Lal Singh</i>	<i>16.02.2010 to 07.05.2012 (Appointed Regular Principal on 8.5.2012)</i>	<i>31.08.2014</i>
6.	<i>Neena Kaura, Principal (Retd.)</i>	<i>Manmohan Nath</i>	<i>15.02.2010 to 07.05.2012 (Appointed Regular Principal on 8.5.2012)</i>	<i>31.10.2014</i>
7.	<i>Joginder Singh Grover, (Officiating Principal) (Retd.)</i>	<i>Raunak Singh</i>	<i>25.10.2010 to 31.01.2011</i>	<i>31.01.2011</i>
8.	<i>Labh Singh (Officiating Principal) (Retd.)</i>	<i>Karnail Singh</i>	<i>12.08.2005 to 31.12.2007</i>	<i>31.12.2007</i>
9.	<i>Jagdish Chander (Officiating Principal) (Retd.)</i>	<i>Prem Sagar</i>	<i>03.05.2003 to 31.10.2009</i>	<i>31.10.2009</i>
10.	<i>Kharaiti Lal, (Officiating Principal) (Retd.)</i>	<i>Nand Lal</i>	<i>19.02.2008 to 31.05.2009</i>	<i>31.05.2009</i>
11.	<i>Darshan Lal (Officiating Headmaster) (Retd.)</i>	<i>Niranjan Singh</i>	<i>08.05.2009 to 31.05.2010</i>	<i>31.05.2010</i>
12.	<i>Gurmail Singh (Officiating Headmaster) (Retd.)</i>	<i>Jit Singh</i>	<i>07.04.2008 to 31.07.2011</i>	<i>31.07.2001</i>
13.	<i>Gurnam Singh Gill (Officiating Headmaster) (Retd.)</i>	<i>Kartan Singh</i>	<i>19.09.2002 to 28.02.2007</i>	<i>28.02.2007</i>
14.	<i>Surinder Paul (Officiating Headmaster) (Retd.)</i>	<i>Sadhu Ram</i>	<i>01.09.2004 to 30.09.2010</i>	<i>30.09.2010</i>
15.	<i>Ramesh Arora (Officiating Headmaster) (Retd.)</i>	<i>Nathu Ram</i>	<i>02.02.2010 to 31.08.2011</i>	<i>31.08.2011</i>
16.	<i>Sushil Kumari (Headmistress) (Retd.)</i>	<i>Babu Ramn</i>	<i>01.04.2010 to 10.10.2011 (Appointed Regular Principal on 10.10.2011)</i>	<i>31.05.2013</i>
17.	<i>Bhajan Singh Gill (Officiating Headmaster) (Retd.)</i>	<i>Saudagar Singh</i>	<i>01.08.2000 to 31.10.2010</i>	<i>31.10.2010”</i>

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The petitioners were refused the salary of the higher posts on which they are working in officiating capacity. The petitioners then approached this Court by way of writ petition bearing CWP No. 18974 of 2012 and in compliance of the order of this Court passed in the aforesaid writ petition, the respondents have passed the order No. 14/287-2013 Estb. 1(2) dated 20.10.2014 (*Annexure P-2*) wherein though, the petitioner had been allowed higher pay on the officiating higher posts but they have denied the pension for the said high posts and in which they worked in officiating capacity.

By way of this writ petition, the petitioners claim the pension and other retiral benefits on the basis of last pay drawn by them while working on higher posts of Principal/Headmaster/Headmistress in officiating capacity.

The State in the reply has not denied that the petitioner had worked in officiating capacity as Principal/Headmaster/Headmistresses. They also admit that the petitioner Nos. 5, 6 and 16 were promoted during their appointment in officiating capacity as regular Principal/Headmaster/Headmistresses. Therefore, their claim is not disputed. It is also not disputed that other petitioners are retired as such working in the officiating capacity of Principal/Headmaster/Headmistresses.

The respondents claimed that as per Rule 3.12 and 2.4 of Punjab Civil Services Rules Volume-II, they were granted pension on the substantive post of Lecturers, Masters, Mistress as the pension is to be paid on the substantive post held by them.

I have learned counsel for both the parties.

The relevant extract of the impugned order is reproduced as under: -

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“ XXXXX

Hence, the claim of petitioners to grant them the benefit of high pay on the basis of their higher responsibility is accepted. However, it is clarified that the pay so refixed should not be less than the minimum of the pay scale of the higher post that was/is admissible for high post during the period relevant. It is further clarified that the benefit of higher pay scale shall be restricted only for the period, the petitioners have performed their duties attached to the higher post of Head Master/Principal. However, before granting the benefit District Education Officer shall ascertain the eligibility of the official concerned in each case and certify to the effect that the official has performed duties attached to the post of Headmaster/Principal, as the case may be, for a particular period. It is only on the basis of such certification that pay of the concerned shall be refixed in terms of these orders and monetary benefit shall be released. The respective DEOs (SE) shall also ensure that facts of the petitioners are identical with that of CWP 9023 of 2012.

Before parting with the order it is further clarified that the petitioners shall not be entitled for the retiral benefits on the basis of such re-fixed pay in the high scale. For the purpose of retiral benefits, the last pay drawn shall be the pay last drawn by the petitioners, in the pay scale of the post of masters/lecturers which were substantially held by them at the time of their retirement. In this regard, reference is made to the provisions of Rule 3.12 and 2.4 of Punjab Civil Services Rules Volume-II. The said provisions are as under: -

“3.12 The service of a Government employee does not qualify for pension unless it conforms to the following three conditions:-

First, the service must be under Government.

Second-the employment must be substantive and permanent.

Third-the service must be paid by the Government.”

From the above provisions, it is clear that for the purpose of pensionary benefits it is the substantive appointment of an employee which is to be considered. In the present case, the petitioners who were substantively appointed as Masters/Lecturers, thus, are entitled for the pensionary benefits on the basis of pay scales prescribed for the posts of Masters/Lecturers which were substantively held by them.

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The another significant provision is Rule 2.4 of Punjab Civil Services Rules Volume-II which reads as under: -

2.4 In the following cases no claim to pension is admitted:

(a) When a Government employee is appointed for a limited time only, or for a specified duty, on the completion of which he is to be discharged.

In the present cases, the petitioner being senior most in the respective schools where they were posted, were also permitted to exercise the powers of Drawing and Disbursing Officers attached to the post of Head Masters/Principals, for a limited period only i.e. only during the period for which no regular Head Master/Principal was appointed in the concerned schools.

For the aforesaid reasons, the claim of the petitioners to the extent that the petitioner be also released pensionary benefits on the basis of higher pay scale corresponding to the higher posts of Head Masters/Principals is not sustainable in view of the various provisions of Punjab Civil Service Rules, Volume-II discussed above. The petitioners claim is sustainable only to the extent that they are entitled for higher pay scale only for the period they have discharged the duties of drawing and disbursing officers attached to the higher posts of Head Masters/Principals. Thus, the petitioners who were otherwise substantively posted as Masters/Lecturers and have also retired as such, are entitled for the pensionary benefits on the basis of pay scales of the posts of Masters/Lecturers against which they were substantively appointed. Hence, the petitioners are not entitled for revised pensionary benefits on the basis of pay scale meant for the higher post of Head Masters/Principals.”

The position emerging from the said order is that the petitioners were allowed higher pay for which they have worked in officiating capacity as Principal/Headmaster/Headmistresses and were retired as such from the said posts except petitioner Nos. 5, 6 and 16, who were regularly promoted and whose claim is not being disputed by the State. However, for the purpose of pension, the Government of Punjab has decided that the pension be fixed as per

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the pay drawn by them on the substantive post as per Rule 2.4 and 3.12 of the PCS Volume II.

Rule 2.4 of Punjab Civil Services Rules Volume-II is reproduced below: -

“2.4 In the following cases no claim to pension is admitted:

(a) When a Government employee is appointed for a limited time only, or for a specified duty, on the completion of which he is to be discharged.”

Rule 3.12 of Punjab Civil Services Rules Volume-II is reproduced below: -

“3.12 The service of a Government employee does not qualify for pension unless it conforms to the following three conditions:-

First, the service must be under Government.

Second-the employment must be substantive and permanent.

Third-the service must be paid by the Government.”

Rule 2.4 talks about the appointment for a limited period. Here in the appointment, no time limit was prescribed. Most of the petitioners have continued to work for indefinite period. Moreover, they were not reverted to their original posts before their retirement and they continued working as officiating Principal/Headmaster/Headmistresses and drew the pay of the same as such. Their employment was not otherwise substantive though but they were working in an officiating capacity. The pay has been defined in Rule 2.44 of Punjab Civil Services Rules, Volume-I which is reproduced as under :-

2.44 (a) Pay means the amount drawn monthly by a Government employee in the scale of pay of the post held by him or to which he is entitled by reason of his position in a cadre and includes any other emoluments which may be classed as part of pay by the authority

i) the pay other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post

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- held by him substantively or in an officiating capacity or to which he is entitled by reason of his position in a cadre; and*
- ii) overseas pay, technical pay, special pay and personal pay and*
 - iii) any other emoluments which may be classed as pay by the competent authority.*

The emoluments have been defined as Rule 6.19 (c) of Punjab Civil Services Rules, Volume-I which is reproduced as under: -

“Rule 6.19-C: The terms “emoluments” when used for this purpose shall mean ‘pay’ as defined in rule 2.44 of the Punjab Civil Services Rules, Vol-I Part-I including dearness pay as determined by the orders of the Government issued from time to time, which the employee was receiving immediately before his retirement or the date of his death.”

The combined reading of the aforesaid Rules will make it clear that for the purpose of grant of pension, the State cannot fix two pays; one for the purpose of retirement and one for working in officiating capacity. The pension is fixed as per the last drawn pay and emoluments. The petitioner never drew their pay in their substantive post as Lecturers/Masters/ Mistresses while working as officiating Principal/Headmaster/Headmistresses. Therefore, the pay drawn by them as officiating Principal/Headmaster/ Headmistresses is to be taken into consideration while fixing their pension being the last pay drawn.

It being so, the impugned order dated 20.10.2014 (*Annexure P-2*) is not sustainable in the eyes of law and is hereby quashed. The writ petition is allowed and writ of mandamus is issued directing the respondents to fix the pension and other retiral benefits of the petitioners on the basis of last pay drawn by them in their officiating capacity as Principal/

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Headmaster/Headmistresses except petitioner Nos. 5, 6 and 16 in whose case the State is not opposing their claim. Needless to say that their pension shall accordingly be re-fixed.

The petitioner shall also be paid interest @ 9% per annum on the late payment of the retiral benefits and arrears. All the arrears alongwith interest be paid within three months from the receipt of certified copy of this order.

In view of the aforesaid observations, the petition is allowed.

September 9, 2016
Suresh Kumar

[KULDIP SINGH]
JUDGE

	✓	
<i>Whether speaking / reasoned</i>	<i>Yes</i>	<i>No</i>
	✓	
<i>Whether Reportable</i>	<i>Yes</i>	<i>No</i>