

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

CWP No.4351 of 2011

Date of decision: 5.5.2016

Anu H. Gupta & anr.

... Petitioners

Versus

State of Punjab & ors.

... Respondents

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

Present: Mr. DS Patwalia, Sr. Advocate, with
Mr. Kannan Malik, Advocate,
for the petitioners.

Mr. PC Goyal, Advocate,
for respondents No.2 & 3 .

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

RAJIV NARAIN RAINA, J.(Oral)

1. The process which was started in the year 2008 in the noting sheets produced at Annex P-13 with the petition has not culminated in a final decision so far. The proceedings of the meeting were held under the Chairmanship of Sh. S.S. Channy, IAS, then Chairman of the Governing Council of NIIFT Mohali. Since the view of NIIFT, Mohali, on the prayer made in the petition for a direction to the respondents to grant the pay scale of Rs.8000-13500 along with arrears to the first petitioner w.e.f. November 10, 1998 and to the second petitioner w.e.f. April 5, 1999 both up to December 22, 2009 along with interest etc. is not known it is not possible to be judicially reviewed in jurisdiction under Article 226 of the Constitution of India. As the matter involves financial implications and placement in pay scales prayed for, the same in the first instance is best

left to the respondent-NIIFT to take a final decision on the representation.

It may be noted that both the petitioners resigned from service in the year 2009 to join the newly set up department of NIIFT, Panjab University, Chandigarh.

2. It is the submission of Mr. Patwalia, learned Senior counsel arguing for the petitioners that their claim really is for a declaration that they were entitled to the pay scales claimed while they were in service with NIIFT till 2009 so that their last pay drawn is reviewed and set at rest as on the date of resignation so that they are able to claim onward pay protection from the Panjab University, Chandigarh, as was granted by the Panjab University in various cases of employees appointed from other organizations. It is the further contention of Mr. Patwalia that his clients are prepared to give up pecuniary benefits as may arise in case they succeed before the competent authority in NIIFT [in the worst scenario] in which case there will be no financial implications on NIIFT at all if the case is considered favourably.

3. On the other hand, Mr. PC Goyal appearing for the respondent-NIIFT submits that a decision taken in case of the petitioners would impact the teachers in NIIFT who may claim enhancement of pay and therefore, it cannot be said that there are no financial implications involved. Even in case the petitioners are able to demonstrate that they have pre-existing right to the pay scales claimed by them from the due dates.

4. In the circumstances, the proper course to be adopted in this case, in the considered view of the Court, is to relegate the petitioners to

their administrative remedies before the competent authority in respondent-NIIFT to take a final decision on the Papers under Consideration as have been obtained through requests under the Right to Information Act, 2005 and placed on record of this case. The objection raised by the respondent-NIIFT that the writ is not maintainable against a society is left open to be decided in case orders adverse to the petitioners are passed or in some other case in the future involving NIIFT. The respondent-NIIFT would decide the subject matter in the context of the grounds set up in this petition and take a final view by passing a speaking order after hearing the petitioners in case they make a request for personal hearing which shall be granted. Let the exercise be completed within three months from the date of receipt of a certified copy of this order.

5. With the above observations and directions, the petition stands disposed of without expressing any opinion on the merits of the case.

(RAJIV NARAIN RAINA)
JUDGE

5.5.2016
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