

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.220

EA No.19 of 2014 in
CWP No.9253 of 1997

Jiwan Dass and others

Versus

The State of Haryana and others

Present: Mr.C. M. Chopra, Advocate
for the applicants/petitioners.

Mr. Harish Rathee, Sr. DAG, Haryana
for the respondent-State.

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Through the present application, the applicants seek execution of order dated 06.08.1998 passed by a Division Bench of this Court in CWP No.9253 of 1997.

A few relevant facts may be noticed.

The applicants who served the State of Haryana as J.B.T. Teachers being aggrieved by the action of the State in preparing separate seniority lists of male and female J.B.T. Teachers for the purpose of grant of selection grade approached this Court through CWP No.9253 of 1997 -"Jiwan Dass and others Vs. State of Haryana and others". Their primary grievance was that for the purpose of grant of selection grade, separate seniority lists were not permissible under the Punjab Educational Service Class-III (School Cadre) Rules, 1955 and thus the same could have not been done. It was urged that for placement in the selection grade, a joint seniority list of all JBT teachers, male and female, should be made and as per the percentage of incumbents fixed from time to time, they should be placed in the selection grade. After considering the issue raised by them,

a Division Bench of this Court disposed of the writ petition vide order dated 06.08.1998 by holding as under :-

"What the petitioners are claiming in this writ petition is that there should be a joint seniority list of the male and female J. B. T. Teachers and on the basis of that seniority list, as much percentage of incumbents as was fixed from time to time should be granted the selection grade as per their seniority. In other words, if there are 100 male JBT teachers and 100 female JBT teachers, then a joint seniority list of theirs be prepared and if 20% are the posts meant for selection grade, then out of this joint seniority list, first 40 incumbents should be placed in the selection grade.

There is a requirement of joint seniority of male and female Lecturers was held to be so in CWP No.12107 of 1995 (Jiwan Dass and others Vs. State of Haryana) decided on August 14, 1995. The respondents are required to maintain a seniority list (even though notional now) showing the position of all the petitioners and similarly situated persons in the joint seniority list as and when they were appointed. As and when their turn came as per their seniority in accordance with the percentage fixed from time to time regarding the selection grade posts, they will be entitled to be placed in the selection grade.

Let the respondents carry out the aforesaid directions within a period of six months and after fixation of pay accordingly the arrears be calculated and paid to the petitioners. However, the arrears would be paid only for a period of three years and two months prior to the filing of the present writ petition, which was filed on March 17, 1997.

Writ petition stands disposed of in the above terms.

Copy of this order, attested by the Special Secretary, be given to Mr. Rathee."

When the afore-quoted order was not complied with, the applicants filed a Contempt Petition during the pendency whereof the State filed an application for clarification of the afore-quoted order which at the time of hearing before the Division Bench, was ordered to be treated as a review application. Such action was challenged by the applicants before the Apex Court through ***SLP (Civil) No.15069 of 2001*** titled as "***Jiwan Dass and others Vs. The State of Haryana and others***", which was disposed of by directing this Court to take a final decision upon the application filed by the State for clarification of the afore-quoted order dated 06.08.1998.

As per the afore-referred directions of the Apex Court, on 30.11.2010 a Division Bench of this Court heard and decided the clarificatory application filed by the State seeking clarification of afore-quoted order dated 06.08.1998 by holding as under:-

"We do not find any merit in the argument raised by the learned counsel for the applicant-respondents.

Rule 9 of the 1955 Rules deals with the inter-se seniority of members of service. The said Rule contemplates that the inter-se seniority of the members of the service holding the same class of posts and in the same or identical grades of pay shall be determined by the dates of their confirmations on such posts. Appendix-A defines the different posts. Clause (a) of the said Appendix deals with the men's branch and Clause (b) with the women's branch. Such provisions contain the posts of Head Masters, Science Masters, Agriculture Masters, Clerical and

Commercial Masters and Assistant District Inspector of Schools. Clause (c) is for men and women i.e. in respect of the Basic Trained Teachers i.e. J. B. T. Teachers, such as the petitioners. Therefore, though there is separate cadre for men and women in respect of other categories of the posts in the school cadre, but in respect of the JBT Teachers, there is a joint seniority list even as per the 1955 Rules. Such is the position in the 1994 Rules as well. Therefore, the direction issued by this Court on 06.06.1998 does not require any clarification. The apprehension expressed by the State Government that it will lead to anomolous result, is misconceived. If the Rules contemplate joint seniority list, the benefit of selection grade has to be granted on the basis of such joint seniority list. Since the benefit of grant of selection grade has not been continued after 01.01.1986, the benefit of selection grade shall be restricted only to those members of cadre, who fall within the permissible limits upto 01.01.1986.

*The apprehension expressed by the State that the recoveries are to be effected from those employees, who have received the benefit wrongly, is misconceived. A Full Bench of this Court in **Budh Ram and others Vs. State of Haryana and others**, 2009(3)SCT 333, has held that the financial benefits disbursed to an employee without there being any mistake or misrepresentation on the part of such employee, cannot be recovered.*

In view of the said fact, no further orders are called for. Hence, the present application is dismissed.

It need not be said that in terms of the order dated 06.08.1998, the arrears payable to the petitioners would be restricted to only 38 months i.e. from 17.03.1997."

A joint reading of the afore-quoted orders dated 06.08.1998 and 30.11.2010 show that this Court had directed the State of Haryana to frame a joint seniority list of all J.B.T. Teachers whether male and female and then grant selection grade as per the percentage fixed from time to time which in the case in hand is 20%. Accordingly, the State of Haryana made a joint seniority list of both male and female J.B.T. Teachers and granted selection grade to the first 20% incumbents. That being so according to me, the order dated 06.08.1998 read with the order dated 30.11.2010 stood fully complied with.

In view of the above, no further orders need to be passed in the present execution application.

Dismissed.

(DEEPAK SIBAL)
JUDGE

May 20, 2016
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