

Sr. No.213

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

CWP No.18122 of 2014 (O&M)

Date of Decision:26.10.2017

Parminder Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. J.S.Dadwal, Advocate,
for the petitioner.

Mr. Prateek Pandit, Advocate,
for respondent No.3-College.

Mr. Avinit Avasthi, AAG, Punjab.

TEJINDER SINGH DHINDSA, J.(ORAL)

The uncontroverted factual position is that the petitioner was appointed as a Tabla Player/Instructor on 09.03.1989. His initial engagement was on probation for a period of one year. Appointment of the petitioner as Tabla Player/Instructor was confirmed w.e.f. 09.03.1990.

The instant writ petition has been filed seeking a writ in the nature of mandamus restraining respondent No.3-Institute i.e. Lyallpur Khalsa College for Women, Jalandhar from deleting the name of the petitioner from 95% grant-in-aid scheme admissible to the teaching faculty.

The entire case set up on behalf of the petitioner is that from the date of initial appointment, the petitioner has been permitted to mark his attendance in the register pertaining to teaching faculty and it is in the year 2014 that he has been called upon to mark his attendance in a register meant for

non-teaching staff.

Having heard counsel for the parties at length and having perused the pleadings on record, this Court is of the considered view that no basis for interference is warranted.

There is no dispute as regards the factual position of the petitioner having been appointed as Tabla Player/Instructor in the year 1989 on probation and subsequently confirmed in March, 1990. Such appointment was with respondent No.3-Institute which is a 95% State aided College.

In the written statement filed on behalf of the State/respondent Nos.1 and 2, a categorical stand has been taken that Tabla Player/Instructor is a non-teaching post and the pay of the petitioner was fixed in the non-teaching staff vide letter dated 06.09.1991 (appended as Annexure R-1 along with the reply). Subsequently, vide letter dated 15.05.2002 pay of the petitioner was fixed at the stage of granting benefit under the Assured Career Progression Scheme by taking him as a member of non-teaching staff. Copy of the letter dated 15.05.2002 stands appended as Annexure R-2 along with the written statement.

Respondent No.3-College has filed a separate written statement and the stand taken is that the petitioner while serving as a Tabla Player/Instructor has to aid and assist the regular teachers taking classes relating to music subjects. Appended along with the reply filed on behalf of respondent No.3-College is copy of memo dated 24.04.1984 (Annexure R3/2) issued by the Government of Punjab /Department of Education (Education Cell) on the subject of revision of scales of pay of non-teaching employees working in affiliated private colleges w.e.f. 01.04.1984 and in such memo a post of Tabla

player/Instructor finds a mention at Sr. No.10 and amongst the non-teaching employees.

That apart at Annexure R-3/3 is a copy of the letter dated 25.07.1991/07.09.1992 issued by the Department of Education (CP) Government of Punjab on the subject of grant of pay parity to the non-teaching staff working in private colleges with their counterparts working in Government Colleges. Even in such letter at Annexure R-3/3 the post of Tabla Player/Instructor has been shown as a non-teaching post.

Undoubtedly, the petitioner through years has been permitted to mark his attendance in a register meant for teaching staff. In the considered view of this Court this in itself would not be the determining factor as regards classification between teaching or non-teaching post. Such view is further fortified from a document at Annexure P-7 placed on record by the petitioner himself which is an extract of the attendance register pertaining to teaching staff in which the petitioner earlier in point of time had been permitted to mark his attendance and in this very register even other employees of respondent No.3-College holding Class-IV posts (Group 'D') Sweepers have been allowed to mark their attendance.

Counsel appearing for the petitioner has not been able to advert to any instructions/notification wherefrom this Court may infer that the post of Tabla Player/Instructor is to be construed as a teaching post under the grant-in-aid scheme notified and operative from the year 1978.

That apart counsel appearing for the petitioner would himself concede that even if the prayer of the petitioner was to be accepted and he was to be permitted to mark his attendance in the register meant for the teaching

staff he would not derive any financial advantage.

The contents of the documents appended along with the written statement filed on behalf of the State and referred to hereinabove have not been disputed by the counsel representing the petitioner.

In view of the reasons recorded above, this Court does not find any basis that would warrant interference in the matter. Petition is, accordingly, dismissed.

Needless to mention that the petitioner only by virtue of his attendance being marked in the register for non-teaching staff would not be deprived of any benefit that is otherwise admissible in relation to the post of Tabla Player/Instructor.

Disposed of.

26.10.2017

vandana

**(TEJINDER SINGH DHINDSA)
JUDGE**

Whether speaking/reasoned

Yes

Whether Reportable

No