

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

**CWP No. 19992 of 2017
DECIDED ON: SEPTEMBER 05, 2017**

R.B. BHARDWAJ

.....PETITIONER

VERSUS

**THE DIRECTOR GENERAL, HIGHER EDUCATION DEPTT.
HARYANA AND ANOTHER.**

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Balraj Singh Rathee, Advocate
for the petitioner.

JASPAL SINGH, J (ORAL)

By virtue of instant petition preferred under Articles 226/227 of the Constitution of India, petitioner has sought for the issuance of a writ in the nature of certiorari for setting aside the order dated 18.11.2017/01.05.2017 {P-11 (colly)} and impugned reply dated 19.06.2017 (P-13) to the legal notice whereby, respondents have declined the prayer for granting him pay scale of ₹1400-2600/- w.e.f. 01.04.1991 i.e. the date when he was promoted to the post of Senior Xeroxist WITH FURTHER prayer for issuance of a writ in the nature of mandamus directing the respondents to grant him pay scale of ₹1400-2600/-

w.e.f. 01.04.1991 along-with all consequential benefits.

2. The contentions put forth by learned counsel for the petitioner are that petitioner was appointed on the post of Xeroxist vide order dated 23.04.1980 on ad-hoc basis in the pay scale of ₹120-300/- per month with the respondent-University. His services were regularised by the respondent-University vide order dated 13.10.1980 on the post of Xeroxist in the same pay scale. Subsequent thereto, vide order dated 01.04.1991, he was promoted to the post of Senior Xeroxist-cum-Mechanic having pay scale of ₹1200-2040/- and he is superannuated as such on 30.11.2014. Petitioner made several requests seeking grant of pay scale of ₹1400-2600/- w.e.f. 01.04.1991 i.e. the date when he was promoted to the post of Senior Xeroxist-cum-Mechanic as the similar post of Reprographic Library Assistant in Haryana Agricultural University, Hisar having pay scale of ₹1400-2600/- and the post of Senior Mechanic (Photocopying) having pay scale of ₹1800-3200/- in Punjab University, Chandigarh were having higher pay scale whereas the qualification required for the post held by the petitioner were higher to the qualification prescribed in the afore-said Universities.

3. Though the case of the petitioner was considered for higher scale by the respondent-University who recommended the grant of pay scale of ₹1400-2600/- with further recommendation that in the alternative the post of Senior Xeroxist-cum-Mechanic be converted to the post of Reprographic Assistant. The matter was also referred to the Departmental Promotion Committee but despite the recommendation, nothing has been done. Learned counsel for the petitioner further contends that since the higher pay scales are

being given by the other Universities having equivalent qualification, petitioner also deserves the pay scale of ₹1400-2600/- w.e.f 01.04.1991 i.e. the date of his promotion as Senior Xeroxist-cum-Mechanic.

4. This Court has given a deep thought to the afore-said submissions made by learned counsel for the petitioner but does not find any legal nor factual force therein. Rather, this Court is of the considered view that instant petition is itself not maintainable and is devoid of merits. There are no specific rules and regulations of the respondent-University for the grant of pay scale of ₹1400-2600/- to the post of Senior Xeroxist-cum-Mechanic and petitioner only seeks the said pay scale as is being granted in the other Universities i.e. Haryana Agricultural University, Hisar and Panjab University, Chandigarh.

5. Here, it would be pertinent to mention that the same relief was earlier claimed by the petitioner by way of filing of Civil Suit No. 703/93/96 in Civil Court at Rohtak but that suit was dismissed vide judgment and decree dated 08.08.1997. A glance at the afore-said judgment dated 08.08.1997 makes it crystal clear that petitioner has filed a suit for declaration against the defendant to the effect that he is entitled to pay scale of ₹1400-2600/- as Senior Xeroxist-cum-Mechanic w.e.f 01.04.1991. The said suit remained pending for a number of years and ultimately dismissed vide judgment and decree dated 08.08.1997 on merits after having discussed all the contentions put forth by learned counsel for the parties as well as scanning the various documents adduced by the parties and statements of the witnesses recorded during the course of evidence.

6.

For the reasons best known to the petitioner, he did not opt to

challenge the said judgment of dismissal by way of an appeal. The said judgment dated 08.08.1997 (P-5) has attained finality. Since the matter has already been considered and decided by the Civil Court, the same cannot be allowed to be re-agitated by filing of Civil Writ Petition or any representation before the respondents. Though, during the course of arguments, learned counsel for the petitioner has tried to project that the judgment dated 08.08.1997 cannot be allowed to operate as *res-judicata*, it being nullity having been obtained by playing fraud by the respondents. But it was the petitioner who had approached the Civil Court and if he was aggrieved against the dismissal of suit preferred by him vide judgment dated 08.08.1997, he had full opportunity to challenge the same by way of an appeal. The said judgment being on merits cannot be challenged, now by way of filing civil writ petition.

7. Considering all the afore-said aspects this Court is of the considered view that instant petition is not legally maintainable. As such, it stands dismissed but no order as costs.

SEPTEMBER 05, 2017
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(JASPAL SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>