

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

CWP No. 17574 of 2007 (O&M)

Date of Decision: 25.09.2018

Suman Bala Sharma

...Petitioner

Vs.

State of Haryana and others

...Respondents

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

Present: Mr. Pankaj Jain, Senior Advocate with
Ms. Divya Suri, Advocate &
Mr. Sachin Bhardwaj, Advocate
for the petitioners.

Ms. Shruti Jain Goyal, DAG, Haryana.

RAJIV NARAIN RAINA, J. (Oral)

1. The initial appointment of the petitioner on 25.10.1972 as a JBT teacher was as a temporary employee in the grade of Rs. 125-250 on six months basis or until permanent Government employee or the one selected by the Public Service Commission (Lok Seva Ajog) joins on the said post or the work and conduct is found unsatisfactory. However, by ignoring the condition of appointment, the petitioner was relieved after six months from 25.04.1973 to 02.05.1973. Vide order dated 06.07.1973, the petitioner along with other teachers were reappointed on the same terms. This was a concession to teachers who continued working during the strike period before the summer vacations in 1973. The extension was for 6 months. This position continued till the petitioner was offered an appointment as JBT teacher vide order dated

26.12.1978 (P-6) and her services were regularized as JBT teacher in officiating capacity in the Haryana Education Service, Class III, School Cadre, (Women's Branch) Rules vide office order dated 24.09.1980 (P-7). The regularization was made under the policy circular contained in memo dated 01.07.1980. For the first time, the petitioner became a member of the service on 24.09.1980. The period between 23.10.1972 to 24.09.1980 would thus be treated as *ad hoc* service which period would be treated as qualifying service for the purpose of pension and for grant of annual increments.

2. This petition has been filed with the multiple prayers which read as follows:

"It is further prayed that a writ in the nature of certiorari/mandamus be issued and order dated 29.08.2003 and 19.09.2005 (Ann-P/12 & Ann-P/13) may please be quashed and respondents directed;

- I. To re-affix the salary of the petitioner in the (JST) Scale with effect from 25.10.1972 & Post Graduate (PGT) Scale with effect from 19.07.1978.*
- II. To revise/grant leave kind due and grant all the increments granted by the Government from time to time to regular Govt. employee including annual increments that were stopped from 2001 onward.*
- III. To grant her 1st/ 2nd higher standard also 1st/2nd ACP: pay scale on completion of 10/20 years of her service.*
- IV. To pay the arrears of salary with interest @ 18% for 36 month proceeding the date of issue of Govt. letter dated 26.10.1995. Also pay the cost for*

causing harassment and mental agony to the petitioner.”

3. As far as prayer No.I is concerned, it was submitted by the State that pay scales of teachers were revised on the recommendations of Kothari Commission w.e.f. 01.12.1967. Before revision, as per composite Punjab Government Notification dated 30.05.1957, the pay scales of JBT and JST teachers were Rs.70-3-80/4-120 and Rs.80-5-110/8-190/10-250 respectively but the same were merged in the scale of Rs.125-5-150/5-250 under the Haryana Government notification dated 05.01.1968. Prayer of the petitioner for fixation of her pay in the JST grade w.e.f. the date of her acquiring higher qualification cannot be accepted. In view of the Government instructions dated 07.04.1999 and 21.04.1999 the petitioner was awarded JST Grade w.e.f. 24.09.1980, the date from which the services of the petitioner were regularized. The petitioner had acquired higher qualification during the period she was working as ad hoc employee i.e. she did not acquire higher qualifications after she became member of the service, her service being regularized on 24.09.1980, she is not at all entitled to JST grade in view of the law laid down in **State of Haryana vs. Sumitra Devi**, (2004) 12 SCC 322, in which it was held as under:-

“6. Thus, in this view of the matter that any teacher who was granted this pay scale was only those JBT teachers were entitled to have a higher pay scale if they acquired qualification during the period of their

service not prior to joining of the service.”

4. Therefore, the order dated 29.08.2003 of the Joint Director (Schools) holding the petitioner entitled to the benefit of JST grade w.e.f. 24.09.1980 and not from 12.12.1973 is correct. Accordingly, prayer No.1 is declined.

5. As far as prayer No.2 is concerned, the State has responded in paragraph No.2 of the written statement refuting the claim, stating as under :-

“So far as the non-grant of the annual increment w.e.f. 2001 is concerned, the petitioner was already getting more pay as on 01.06.2001 whereas she was entitled for her basic pay of Rs.7075/- as on 01.09.2000 and next annual increment was due as on 01.09.2001 and her pay was fixed by SO Rs.7250/- on 01.09.2001 and accordingly Rs.7425/- as on 01.09.2002, Rs.7600/- 01.09.2003, Rs.7725/- 01.09.2004, Rs.7950/- 01.09.2005, Rs.8125/- 01.09.2006 and Rs.8300/- as on 01.09.2007 and now her next annual increment is due on 01.09.2008. Hence the petitioner is already drawing the more salary than her pay. In view of the above recovery become due against her, which is to be recovered from the petitioner by the Head of the Institution.”

6. In view of this uncontroverted position, this prayer is also declined.

7. As far as prayer No.III is concerned, it has to be turned down because higher standard pay scale and ACP pay scale also require regular satisfactory service and, therefore, the petitioner cannot take undue advantage of her temporary service (on six monthly basis) from 1972 to 1980 towards this benefit.

8. No material has been produced to substantiate prayer No.IV for this Court to return any positive findings on arrears of salary. As far as costs for harassment, mental agony is concerned; the petitioner is relegated to the Civil Court.

9. In view of above, I find no warrant to interfere in the matter and would decline the petition. It may be noticed that JST grade was granted to the petitioner and then withdrawn in the year 1999 retrospectively. When the writ petition was filed in the year 2007, the 2nd impugned order was passed on 10.07.2008 reducing salary retrospectively from the year 2003 which subsequent event led to an amendment of the petition. As far as recovery is concerned, the petitioner would have benefit of the decision of the Supreme Court in State of Punjab and others Vs. Rafiq Masih (White Washer) and others, 2014 (8) SCC 883 and no recoveries can be made from her. In case recoveries have been made, then the amount be refunded. Since the petitioner has retired on 31.03.2010, no recoveries should be made, but

if any undertaking has been given by the petitioner, then her case will
be dealt with in accordance with her undertaking.

25.09.2018
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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*