

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

(1) **CWP No.4629 of 2012.**
Date of Decision: 19.02.2018.

Sunil Kumar Sharma and others
... Petitioners
Versus
State of Punjab and others
... Respondents

(2) **CWP No.7518 of 2012.**
Santokh Singh and others
... Petitioners
Versus
State of Punjab and others
... Respondents

(3) **CWP No.10442 of 2012.**
Narinder Singh and others
... Petitioners
Versus
State of Punjab and others
... Respondents

(4) **CWP No.19266 of 2012.**
Santokh Singh and others
... Petitioners
Versus
State of Punjab and others
... Respondents

(5) **CWP No.24778 of 2012.**
Hardeep Kumar and others
... Petitioners
Versus
State of Punjab and others
... Respondents

(6) **CWP No.11933 of 2013.**
Mohinder Singh Randhawa and others
... Petitioners
Versus
State of Punjab and others
... Respondents

(7) **CWP No.15774 of 2013.**
Anil Kumar and others
... Petitioners
Versus
State of Punjab and others
... Respondents

(8)

CWP No.25274 of 2015.

Ved Parkash and others

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. R.K. Arora, Advocate for the petitioner(s)
(in CWP No.4629, 7518, 10442 of 2012 and
11933 of 2013).

Ms. Alka Chatrath, Advocate for the petitioner(s)
(in CWP No.19266 of 2012 & 15774 of 2013)

Mr. R.S. Dadwal, Advocate, for the petitioner(s)
(in CWP No. 24778 of 2012).

Mr. S.K. Rattan, Advocate for the petitioner(s)
(in CWP No.25274 of 2015).

Ms. Sudeepti Sharma, Addl. AG, Punjab.

JITENDRA CHAUHAN.J.

This judgment shall dispose of afore-mentioned eight writ petitions as common questions of law and facts are involved in the same.

Through the instant eight writ petitions, the petitioners have sought direction for grant of benefit of previous service rendered by them in the Govt. Aided Schools towards fixation of their pay on their joining in the Govt. schools in terms of provisions of Rule 4.4 of Punjab Civil Service Rules (for short "the PCS Rules") and as per Govt. Instructions dated 15.11.2000 (Annexure P-2) read with rule 69 of Grant-In-Aid Rules.

It is contended that the petitioners initially joined on

various teaching posts in the Govt. Aided Schools on regular basis. They performed their duties with due diligence and devotion against regular sanctioned and aided posts. They had been drawing their pay fixations in terms of Punjab civil Services Rules in terms of Rule 69 of Grant-in-aid Rule. While working in the Aided Schools, the petitioners also earned annual increments from time to time. In pursuant to the selection of the petitioners in the Govt. Schools, the petitioners were given appointments in Govt. Schools through proper channel. Accordingly, the petitioners joined Govt. service without any break in their service. The particulars of service rendered by the petitioners are mentioned in Annexure P-1.

It is submitted that the grievance of the petitioners is that while fixing their pay in the Govt. schools, increments earned by them while working in the Govt. aided Schools have not been taken into consideration and their pay has been fixed at the initial of the pay scale without protecting their pay which they had already drawn. In this regard, the learned counsel relies upon Rule 4.4. of the PCS Rules and rule 69 of the Grant-in-aid rules.

It is further submitted that the claim of the petitioners for fixation of their pay is also covered by Govt. instructions dated 15.11.2000. (Annexure P-2). The previous service rendered by the petitioners has already been counted for the purpose of qualifying service for pension. The said claim of the petitioners has been considered in light of the judgment of this Court rendered in **CWP**

No.14238 of 1991 decided on 10.3.2010 titled as “Sukhdev Singh vs. State of Punjab”.

On the other hand, the stand of the respondents is that the pay fixation of the employees working under the Govt. aided schools is not fixed in terms of Punjab Civil Service Rules and the instruction dated 15.11.2000 (Annexure P-2) are not applicable in their case because those are applicable in respect of employees of the Govt. Department or a body whether incorporated or not which is wholly or substantially owned by the Government. The pay of the petitioners was fixed as per Rule 7 of the Punjab Privately Managed Recognized School Employees (Security of Service) Act, 1979.

Heard.

The learned counsels have placed reliance on rule 4.4 of the PCS Rules. The same are reproduced as under:-

“4.4 The initial substantive pay of a Government employee who is appointed substantively to a post on a time -scale of pay is regulated as follows:-

(a) If he holds a lien on a permanent post, other than a tenure post, or would hold a lien on such a post, had his lien not be suspended-

(i) When appointment to the new post involves the assumption of duties or responsibilities of greater importance (as interpreted for the purpose of rule 4.13) than those attaching to such permanent post, he will draw as initial pay the stage of time scale next above his substantive pay in respect of old post;

(c) (i) Notwithstanding anything contained in these rules, where a Government employee holding a post in a temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in

the time scale of the higher post shall be fixed at the stage next above his pay drawn by him in the lower post provided it is certified by the Head of the Department in which the Government employee was holding the lower post that he would have continued to officiate in the lower post but for his promotion/appointment to the higher post.”

As per the afore-quoted rule, when appointment of an employee is made to a new post which involves the assumption of duties or responsibilities of greater importance than those attaching to such permanent post, pay of such appointees is to be fixed at the next stage in a time scale.

Instructions (Annexure P-2) issued by the Government of Punjab clarify that if an employee has held a post in the same or identical time scale in some other department or a body whether incorporated or not which is wholly or substantially owned by the Government, his pay on appointment in the Government service is to be fixed at the same level.

Further Rule 69 of the Grant-in-aid rules provides as under:-

“69 Staff Grants (i) Staff grants shall be at the rate of 95% of the pay paid and shall be admissible on account of teachers holding certificates/diploma/degrees awarded by the Punjab Education Department or University in the state or any other diploma/certificate awarded by another department of the Punjab State or of any other State or University providing the certificate/diploma/degree is recognized by Punjab Govt.”

Pay Fixation of Staff:- *The pay of teaching staff*

working in privately managed aided schools shall be fixed in accordance with Civil Services Rules and

other instructions issued by the Govt. from time to time.

It is to be noticed that all the petitioners were working on the aided posts and were being paid 95% by the State with overall control upon their services. The appointments against the aided posts are made with the approval of the Director. As per Section 4 of the Punjab Privately Managed Recognized School (Security of Service) Act, 1979 (for short "the Act"), no employee shall be dismissed, removed, terminated or reduced either in rank or within a time scale except with the prior approval of the Director. Thus, the posts held by the petitioners were substantially controlled by the Government and therefore, as per Rule 4.4 of the of the PCS Rules, their pay which the petitioners had been already drawing is liable to be protected. Further, as per Section 7 of the Act, while working in the aided schools they were entitled to the scale of pay and dearness allowances equivalent to the employees of the state Government holding corresponding posts. Their claim in this regard is covered by Govt. instructions dated 15.11.2000 (Annexure P-2). The Punjab Civil Service Rules are applicable upon them in respect of their pay fixation as per Rule 69 of the Grant in Aid Rules reproduced above. Hence, as per Rule 4.4 of the PCS Rules and Govt. Instructions dated 15.11.2000 (Annexure P-2), they are entitled to benefits of their previous service rendered by them in the Govt. aided schools towards fixation of their pay in the Govt. Schools with all consequential benefits.

Consequently, all the writ petitions are allowed. The

respondents are directed to fix the pay of the petitioners in terms of rule 4.4 of the PCS Rules and grant them the necessary consequential benefits as well.

A photocopy of this order be placed in the file of other connected case(s).

19.02.2018.
SN

(JITENDRA CHAUHAN)
JUDGE

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