

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

CWP-9125 of 2014 (O&M)
Date of decision: 09.01.2018

Sukhraj Singh and others

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Sunny Singla, Advocate for the petitioner(s).

Ms. Sudeepti Sharma, Addl. A.G., Punjab.

Jitendra Chauhan, J. (Oral)

By way of the instant writ petition, under Article 226 of the Constitution of India, the petitioners have sought quashing of the order dated 20.03.2014 (Annexure P-10), passed by respondent No.2, whereby the claim of the petitioners for grant of higher pay scale was rejected.

It is contended that the petitioners were working as teacher/head teacher(s) and being the senior most in the cadre, were given the additional charge of Head Teacher and they had performed the duty in the given charge as such, however, the petitioners were paid pay scale of lower Class officer. Learned counsel for the petitioners has argued that some of the petitioners are still working on higher posts and performing the duties of higher posts in the lower pay scale. As per

Rule 4.4 of the Punjab Civil Services Rules, an employee is entitled for the minimum of the pay scale or additional increment to the assumption of duties or responsibilities of greater importance. The petitioners were to be given placement in the higher pay scale as they had been performing duties as Head Teacher/Central Head Teacher. The petitioners had approached the competent authority for grant of higher pay scale but their claim was rejected. Learned counsel for the petitioners contends that the action of the respondent/Department is illegal, arbitrary and against Articles 14 and 16 of the Constitution of India. In support of his contentions, learned counsel has referred to the decision rendered in CWP No.4552 of 2003, titled as **Darshan Singh and another** Vs. **State of Punjab and others**, to contend that the case of the petitioners is at par with Darshan Singh's case.

On the other hand, learned State counsel submits that the petitioners had earlier filed CWP No.11845 of 2013 before this Court for the same benefit and this Court was pleased to dispose of the said petition with directions to respondent No.2 to consider and decide the legal notice served by the petitioners and in compliance of the said directions, respondent No.2 has decided the legal notice and rejected their claim by passing the impugned speaking order. She further states that post of Head Teacher/Centre Head Teacher does not carry any higher responsibility and they had never worked/given the Drawing and Disbursing powers. The petitioners were never issued any orders to

perform duty of higher post by the competent authority and being senior in cadre, they are working as head teacher as the posts of regular head teacher are vacant.

I have heard learned counsel for the parties and have gone through the record carefully.

The prayer in the present petition is for higher pay scale/remuneration against the duties performed as Head Teachers/Central Head Teachers which was declined to them, vide order dated 20.03.2014 (Annexure P-10). The petitioners had worked as teachers and head teachers in terms of decision of this Court in RSA No.1539 of 1999 titled as Commissioner and Secretary to Govt. of Haryana, Industrial Training and Vocational Education Department, Haryana Vs. S.K. Bagga and in terms of decision rendered in CWP-4552-2003 titled as Darshan Singh and others Vs. State of Punjab and others. Further, the prayer has been made in terms of Rule 4.4 of Punjab Civil Services Rules which stipulates that an employee is entitled for the minimum of the pay scale or additional increment for the assumption of duties or responsibilities of greater importance.

The question involved in the present petition is whether the petitioners had been performing the superior or higher function in addition to their own duties. Though in the written statement, the respondents have denied that neither the petitioners were ever given the charge of Head Teachers/Central Head Teachers nor were given the

Drawing and Disbursing Powers by the competent authority. However, from the impugned order dated 20.03.2014 (Annexure P-10), the assertion of the petitioners to the extent that they were appointed as ETT Teachers and being senior they have been working as Head Teachers as the post of Head Teachers were vacant. It is further clarified that these petitioners were neither given the Drawing and Disbursing Powers nor they have worked as Block Primary Education Officer. The relevant extract of the order dated 20.03.2014 (Annexure P-10) is being reproduced as under:-

“According to the decision given above Sh. Darshan Singh had been working Centre Head Teacher and he was given Drawing and Disbursing Powers of Block Primary Education Officer Ropar-2, for which he demand of higher grade was made by him. In the instant petition the petitioners are appointed as ETT Teacher and being seniority they are working as head teacher as the post of regular head teacher are vacant. But these petitioners have neither been given Drawing and Disbursing Powers, they have not worked as Block Primary Officer.”

In **Selva Raj Vs. Lt. Governor of Island, Port Blair,**

1998(4) SCC 291, Hon'ble the Supreme Court in para Nos. 3 and 4 has observed as under:-

“3. It is not in dispute that the appellant looked after the duties of Secretary (Scouts) from the date of the order and his salary was to be drawn against the post of Secretary (Scouts) under GFR 77. Still he was not paid the said salary for the work done by him as Secretary (Scouts). It is of course true that the appellant was not regularly promoted to

the said post. It is also true as stated in the counter-affidavit of Deputy Resident Commissioner, Andaman & Nicobar Administration that the appellant was regularly posted in the pay scale of Rs 1200-2040 and he was asked to look after the duties of Secretary (Scouts) as per the order aforesaid. It is also true that had this arrangement not been done, he would have to be transferred to the interior islands where the post of PST was available, but the appellant was keen to stay in Port Blair as averred in the said counter. However, in our view, these averments in the counter will not change the real position. Fact remains that the appellant has worked on the higher post though temporarily and in an officiating capacity pursuant to the aforesaid order and his salary was to be drawn during that time against the post of Secretary (Scouts). It is also not in dispute that the salary attached to the post of Secretary (Scouts) was in the pay scale of 1640-2900. Consequently, on the principle of quantum meruit the respondents authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee. This limited relief is required to be given to the appellant only on this ground.

4. The decision of the Central Administrative Tribunal rejecting iliac claim of the appellant to the aforesaid limited extent is therefore required to be set aside. The appeals are allowed to the limited extent that the respondents will be called upon to make available to the appellant the difference of salary in the time scale of 1640-2900 during the period from 29-1-1992 to 19-9-1995 during which time the appellant actually worked. It is made clear that the payment of the aforesaid difference amount of

salary shall not be treated to amount to any promotion given to the appellant on the said post. It is only on the ground that he had actually worked, as such this relief is being given to him. The difference of salary as aforesaid shall be paid over to the appellant within eight weeks from today. No costs.”

Further, in **Subhash Chander** Vs. **State of Haryana**, 2012

(1) SCT, 603, the Full Bench of this Court has held as under:-

“In view of the above, the question posed in para no. 1 is answered in affirmative and it is held that if an employee is appointed to officiate on a post involving assumption of duties and responsibility of greater importance than those attaching to the substantive post then he would be entitled to the salary of his officiating post in higher grade. Accordingly, the petitioner is held entitled to the higher pay scale from the date he has assumed the charge of the post of Secretary with all consequential benefits including promotion. His pay may be re-fixed and the arrears of his pay shall be calculated from the date when he has been officiating on the post of Secretary, Municipal Committee. The payment of arrears shall be made within three months from the date of receipt of a certified copy of his order with all consequential benefits.”

A bare perusal of Annexure P-10 goes to establish that the claim of the petitioners to the extent that they had been working as Head Teacher/Central Head Teachers. The assertion of respondents that they did not act as Drawing and Disbursing Authority or held the charge of Block Primary Education Officer is not relevant in the present controversy as the issue in question is whether the petitioners performed higher responsibilities or not.

Accordingly, as a sequel of the above fact and circumstances of the instant case, the present petition is allowed. The respondents are directed to pay the higher pay scale to the petitioners for the period, they performed the work on higher post, within one month from the receipt of certified copy of this order.

09.01.2018

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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No