

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-5475-2016 (O&M)

Date of Decision:-29.01.2018.

Beas Kaur (deceased) through her legal representatives

.....Appellant

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mrs. Jyoti Sareen, Advocate for the appellant.

P.B. BAJANTHRI, J. (Oral)

CM-14282-C-2016

Heard.

Delay of 550 days in re-filing the present appeal is condoned.

CM stands allowed subject to all just exceptions for the reasons stated in the application as well as affidavit.

CM-14283-C-2016

Heard.

Delay of 4 days in filing the present appeal is condoned.

CM stands allowed subject to all just exceptions for the reasons stated in the application as well as affidavit.

CM-14284-C-2016

CM for placing on record the document Annexures A-1 and A-

application as well as affidavit.

Annexures A-1 and A-2 are taken on record.

CM-14285-C-2016

Exemption is granted from filing the certified copy of grounds of appeal and Annexures A-1 and A-2.

CM stands allowed subject to all just exceptions for the reasons stated in the application as well as affidavit.

RSA-5475-2016

Appellant has questioned concurrent findings of the Trial and Appellate Court dated 5.5.2012 and 30.05.2012. Grievance of the appellant is that she is entitled to stepping up of pay on par with one Smt. Surinder Kaur.

Learned counsel for the appellant relied on circular in respect of removal of anomaly by stepping up pay of the senior employee drawing pay less than the junior employee issued on 21.06.1990 vide Annexure A-2. It was submitted that both the Courts below have erred in not appreciating circular/order dated 21.06.1990 (Annexure A-2) insofar as promoted to another identical post after availing the benefit of the proficiency step up, the pay of the Government employee, who is senior shall be stepped up to an amount equal to the pay drawn by the government employee who is junior to him or the Government employee, who is junior to him in that higher post. Learned counsel for the appellant relied on a decision passed in **Ishwar Chand Walia Vs. State of Haryana and others** reported in **2001 (3) RSJ 241** to the extent that pay fixation is to be fixed with reference to the principle of equal pay for equal work are required to be followed. Thus, the

appellant is entitled to stepping up of pay on par with Smt. Surinder Kaur.

Heard learned counsel for the appellant.

Service particulars of the appellant and Smt. Surinder Kaur are that both of them joined as JBT Teachers in the Education Department on 22.9.1965 and 21.2.1967, respectively. Having regard to the seniority of the appellant, she was promoted to the post of Head Teacher in the year 1982 and further she was promoted to the post of Center Head Teacher on 15.10.1985 and she has attained age of superannuation and retired from service on 31.12.2003. Whereas, Smt. Surinder Kaur was promoted to the post of Head Teacher on 6.01.2001 and further as a Center Head Teacher on 15.10.2003. Smt. Surinder Kaur was not promoted during the period from the year 1982 to 06.01.2001 to the post of Head Teacher, was extended benefits like proficiency step up and other benefits having regard to the status that she was in the cadre of JBT Teacher only. In this background, whether appellant is entitled to stepping up of pay on par with Smt. Surinder Kaur w.e.f. 01.01.1986 or not. Stepping up of pay principle would be 2 employees' service particulars should be identical including that they should be in the same cadre. In the present case, it is evident that by virtue of seniority, appellant was promoted to 2 higher cadres like Head Teacher in the year 1982 and Center Head Teacher on 15.10.1985. Therefore, service particulars of the appellant read with Smt. Surinder Kaur's service particulars are not comparable. Consequently, appellant is not entitled to stepping up of pay on par with Smt. Surinder Kaur. Due to changed circumstances in service particulars of the appellant and Smt. Surinder Kaur, Smt. Surinder Kaur by chance may be getting higher pay as on 01.01.1986 due to availing the benefit of proficiency step up or time bound promotion due to not promoting her to the post of Head Teacher from JBT

Teacher. Whereas, appellant has already earned promotion to 2 cadres, namely, Head Teacher and Center Head Teacher in the year 1982 and 1985, respectively. Therefore, as on 1.1.1986 the date on which appellant is seeking for stepping up of pay, service particulars of the appellant and Smt. Surinder Kaur are not identical. As long as service particulars are not identical, question of senior and junior and extending stepping up of pay principal is not attracted. Therefore, there is no infirmity in the trial Court decree as well as Appellate Court order. Insofar as reliance on decision in the case of Ishwar Chand Walia's case cited supra is concerned, it is to be noted that principle of equal pay for equal work would arise if two employees are in the same cadre as noticed by this Court in the aforesaid case. Therefore, factual aspects are entirely different in the present appeal. Appellant and Smt. Surinder Kaur as on 1.1.1986 they were not in the same cadre for the reasons that appellant has entered the cadre of Center Head Teacher whereas Smt. Surinder Kaur was working in basic cadre of JBT Teacher, therefore, principle of equal pay for equal work is not attracted. Hence cited decision is not helpful to the appellant. Supreme Court in the case of **State of Andhra Pradesh and others Vs. G. Sreenivasa Rao and others 1989 (2) SCC 290** para 4 and 17 read as under:-

“4. In this batch of civil appeals Tirumala Tirupathi Devasthanam is the appellant and these appeals are directed against the High Court order. B.V. Krishnamurthy and 62 others working as Upper Division Clerks in the Devasthanam filed Writ Petition No. 12337 of 1984 before the High Court of Andhra Pradesh praying that the Devasthanam be directed to pay salary to them at par with one D. Gopaliah, Upper Division Clerk who was junior to them. Service particulars of

Gopaliah and one of the petitioners Krishnamurthy only need mention. Gopaliah joined as Lower Division Clerk in 1967 and was given Selection Grade in 1974. Family Planning Incentive Increment of Rs. 11 was added to his pay in 1977. He was promoted as Upper Division Clerk in 1979 but was reverted in 1981 as he could not pass the accounts test. He was given further increase in pay as a result of Government Order which provided higher pay to those Lower Division Clerks who completed 15 years service as such. In June, 1983 Gopaliah was drawing Rs.811 as his basic pay in the cadre of Lower Division Clerks. He was again promoted as Upper Division Clerk in pay scale 575-950 on 1.7. 1983 and in that cadre his basic pay was fixed at Rs.861. On the other hand, Krishnamurthy joined as Lower Division Clerk in 1970. He was promoted as Upper Division Clerk on 3rd of November, 1981 and Rs.615 was fixed as his basic pay in that cadre. On 1st of July, 1983 Krishnamurthy was drawing Rs.635 as his basic pay. It is under these circumstances that Gopaliah though junior to Krishnamurthy started drawing higher pay as Upper Division Clerk. The writ petition was allowed by the learned Single Judge by one line order following his decision in another writ petition concerning the employees of the Andhra Pradesh State Electricity Board. Neither the facts nor the distinctive features of the present case were noticed. Writ Appeal No. 504 of 1985 was dismissed in limine by the Division Bench of the Andhra Pradesh High Court. In three connected petitions pay parity was sought with the same junior Gopaliah. In the fourth petition one Gangiah was the named junior for claiming pay-hike. All these petitions were allowed following the earlier decision. Hence these appeals.”

17. *In State of U.P. & Ors. v. J.P. Chaurasia* the question for consideration was as to whether it is permissible to have two pay scales in the same cadre for persons having same duties and having same responsibilities. Jagannatha Shetty, J. speaking for this Court observed:

"It is against this background that the principle of 'equal pay for equal work' has to be construed in the first place. Second, this principle has no mechanical application in every case of similar work. It has to be read into Art. 14 of the Constitution. Article 14 permits reasonable classification rounded on different basis. It is now well established that the classification can be based on some qualities or characteristics of persons grouped together and not in others who are left out. Those qualities or characteristics must, of course, have a reasonable relation to the object sought to be achieved. In service matters, merit or experience could be the proper basis for classification to promote efficiency in administration. He or she learns also by experience as much as by other means. It cannot be denied that the quality of work performed by persons of longer experience is superior than the work of newcomers. Even in *Randhir Singh's* case, this principle has been recognised. *O. Chinnappa Reddy, J.* observed that the classification of officers into two grades with different scales of pay based either on academic qualifications or experience on length of service is sustainable. Apart from that, higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is very common in career service. There is selection grade for District Judges. There is senior time scale in Indian Administrative Service. There is super time scale in other like services. The entitlement to these higher pay

scales depends upon seniority-cum-merit or merit-cum-seniority. The differentiation so made in the same cadre will not amount to discrimination. The classification based on experience is a reasonable classification. It has a rationale nexus with the object thereof. To hold otherwise, it would be detrimental to the interest of the service itself."

It is to be noted that benefit of stepping up of pay would be permissible in the cases where the senior and junior employees stand on equal footing, where all the instructions and incidences are identical and anomaly in their pay is solely attributable to some situations like revision of pay, pay scale and promotion. In the present case, the anomaly has not occurred due to revision of pay, pay scale or promotions so as to extend principle of stepping up of pay. In view of the facts and circumstances, appellant has not made out a case so as to interfere with the trial Court as well as Appellate Court order.

Accordingly, appeal stands dismissed in *limini*.

(P.B. BAJANTHRI)
JUDGE

January 29, 2018.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.