

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

RSA-6055-2016 (O&M)

Date of Decision:28.02.2018

D.A.V. College Managing Director Committee and another

... Appellant

Vs.

Archana (Either)

... Respondent

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

Present : Mr. Aman Chaudhary, Advocate
for the appellants.

Mr. V.K. Sharma, Advocate
for the respondent.

P.B. BAJANTHRI J. (Oral)

In the instant appeal, appellants have questioned the validity of the trial as well as appellate court judgments dated 23.11.2015 and 4.7.2016.

2. Respondent was appointed as Account Assistant on 17.08.1992 on ad-hoc basis. He was extended the benefit of regular pay scale attached to the post of Account Assistant w.e.f 1.4.1995. Thereafter, with reference to 4th and 5th pay commission, she was extended the pay benefit. Pursuant to the up-gradation scale policy, an employee who has completed 7 years of service plus 6 years of service is entitled to up-gradation of pay scales. The respondent has been extended the benefit of up-gradation after completing 7 years plus 6 years on 1.4.2002 and 12.08.2011. The same is disputed by the respondents. Thereafter, he has filed a civil suit seeking number of reliefs relating to regular scale, up-gradation of scale. Appellants submitted that for

the purpose of up-gradation of scale, 7 years has been taken into consideration with reference to extend the benefit on regular pay scale to the respondent w.e.f. 1.4.1995 since 7 years is required to be taken into consideration with reference to the regular holder of the post. In the present appeal respondent was holding the post of Account Assistant with regular pay scale attached to the post w.e.f 1.4.1995. Thus, 1st up-gradation has been extended w.e.f 1.4.2002. Consequently, 2nd up-gradation has been extended w.e.f 21.04.2012, even though respondent completed 7 years + 6 years w.e.f. 1.4.2008 for the reasons that the appellants have prescribed the qualification of passing graduation which was introduced on 14.11.2007. Pursuant to the introduction of graduation qualification for the post, respondent has obtained graduation degree on 6.9.2011. Thus, the appellants have extended the benefit of 2nd upgradation on 12.8.2011. Therefore, both the courts below have erred in extending the relief relating to regular pay scale and up-gration of scale as prayed by the respondent is contrary to the factual aspects.

3. Per contra, learned counsel for the respondents submitted that similarly situated person like the respondent, their services have been confirmed and they have been extended the benefit of regular pay scale from the date of their initial appointment. Similar benefit has not been extended to the respondent. It was further submitted that for the purpose of extending the benefit of up-gradation of scale even the earlier service is required to be taken into consideration. The same has been appreciated by the courts below. Therefore, there is no infirmity in the order passed by the courts below.

4. Heard learned counsel for the parties.

5. Crux of the matter in the present appeal is whether respondent is entitled to regular pay scale w.e.f 1.4.1993 the date on which he was appointed or not and consequential benefits like up-gradation of pay scales.

6. It is to be noted that as long as the date 1.4.1995 by which respondent has been extended the benefit of regular pay scale is not challenged and it is intact, question of modification to 1.4.1993 do not arise. Consequently, entitlement of up-gradation scale after completing 7 years is concerned, it has to be calculated from the date of regular pay scale granted w.e.f 1.4.1995 and with reference to the same he is entitled for up-gradation w.e.f. 1.4.2002. Insofar as 2nd up-gradation scale of pay is concerned, policy requires that 7 years + 6 years. In the present appeal, respondent completed 7 years + 6 years on 1.4.2008. However, the appellants have postponed the benefit of extending 2nd up-gradation w.e.f. 12.8.2011 on 21.04.2012 is incorrect for the reasons that respondent was insisted for passing graduation qualification on 14.11.2007 while providing 3 years of time. Respondent has completed his course on 6.9.2009 i.e. within 3 years from the date of prescription of graduation qualification. Therefore, appellants cannot postpone the 2nd up-gradation merely because they have insisted for passing of graduation qualification. It is to be noted that 3 years time is granted for the purpose of acquisition of qualification. Consequently, respondent is entitled to 2nd up-gradation w.e.f. 1.4.2008 the date on which he has completed 7 years + 6 years for the purpose of 2nd up-gradation. To that extent, trial as well appellate court orders are modified. Appellants are hereby directed to extend the benefit of 2nd up-gradation w.e.f 1.4.2008 and further benefit of up-gradation scale in the post of Senior Assistant, if any. The same shall be calculated with reference to 2nd up-gradation w.e.f

1.4.2008. The above exercise shall be completed by the appellants within a period of 4 months from today.

7. With the above observation, appeal stands disposed of.

28.02.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**