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

117 **CWP-32274-2018**
Date of decision: 17.12.2018

Guru Teg Bahadur National Public Senior Secondary School
....Petitioner

Versus

State of Punjab & others ...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Sunil Chadha, Sr.Advocate
with Ms.Swati Verma, Advocate, for the petitioner.

G.S. SANDHAWALIA, J. (Oral)

Challenge in the present writ petition, filed under Articles 226/227 of the Constitution of India, is to the order dated 09.10.2018 (Annexure P-6) passed by the Educational Tribunal, Punjab whereby the order dated 16.05.2017 (Annexure P-3), passed by the Deputy Director, Public Instructions (PAS), Punjab, has been upheld.

Senior Counsel for the petitioner, while placing reliance upon the notification dated 09.12.2011 (Annexure P-4), has sought to argue that the revision of scales of Teaching Personnel was w.e.f. 01.10.2011 and 01.12.2011 and prospectively and therefore, the private-respondents were not liable to be paid the amount of revised pay-scales w.e.f. 01.01.2006 as they were no longer in service on the said dates.

The said argument is only to be noticed and rejected. A perusal of Annexure P-4 would go on to show that there is reference of the three revised pay-scales w.e.f. 01.01.2006, 01.10.2011 and 01.12.2011. Clause 2 of the said letter reads as under:

> "2. The pay in the above mentioned revised scales effective from the 1st December, 2011, shall be fixed prospectively and there shall be no element whatsoever, of retrospectively (sic) in this regard and there will be no question of payment of arrears or of fixation of pay on notional basis from any previous date."

A perusal of the above would go on to show that the reference of prospectivity on 01.12.2011 is in relation to the third revision of pay, which would be w.e.f. 01.12.2011 and the same cannot be read into for the revision of pay for the earlier periods, i.e., from 01.01.2006 and 01.10.2011. It is not disputed that the private-respondents were dismissed from service w.e.f. 25.06.2010 and they would be entitled for the benefits from 01.01.2006 till the date of dismissal.

On an earlier occasion, the matter had been remanded to the Educational Tribunal, wherein, vide order dated 28.08.2014 (Annexure P-2), the DPI was to examine whether any less/short payment was made to the petitioner and whether there is any violation of Regulation 7(iii) of the Punjab School Educational Board Regulations for Affiliation of Institutions, 1988 or not. Vide the impugned order dated 16.05.2017 (Annexure P-3), which was before the proceedings in the second round of litigation, after seeing the report of the enquiry, the Deputy DPI had held as under:

> "Now, the report of the enquiry held on 9-5-2017 has been received and according to it, the concerned employees are not paid salaries in accordance with the grades of 1-1-2006 and salary is not paid through cheque, whereas as per rule 7(iii) the minimum basic salary should be paid as per the revised pay scale of 1-1-2006. As such rule 7(iii) of the Punjab School Educational Board Regulations for Affiliation of Institutions, 1988 is violated.
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> Therefore, the salary should be paid in accordance with revised pay scales from 1-1-2006 to the concerned employees within 10 days failing which cancelation of the affiliation of the school will be recommended to the Deputy Director PAS, Punjab Education Board."

Resultantly, the said order was challenged in the second round of litigation before the Educational Tribunal, which came to the conclusion that the defence of the petitioner that it was not aware of Regulation 7(iii), i.e., the necessity of paying the basic of salary as per the revised pay-scales, on account of lack of knowledge, was liable to be rejected, particularly when the regulation has the force of law. Thus, the appeal was dismissed and directions were issued to pay the salary from the date of the appointment to the private-respondents, within a period of one month from the receipt of the copy of the order with 6% interest per annum, minus salary already paid.

The argument which has now been sought to be raised is that what was being paid by the Government qua the basic pay for the respective year was not known to the Institute and the same amount would be payable on obtaining information, as such, is liable to be rejected. Firstly, even the grounds of appeal before the Tribunal do not show that any such communication was addressed to the State as to whether the State had started paying the revised pay-scales from 01.01.2006. Once there is a revision w.e.f. 01.01.2006, it is the obligation of the petitioner-Institute, as such, to pay the Teaching Staff, at least the basic pay of the revised grades. Resultantly, this Court is of the opinion that petitioner-Institute is only attempting to delay the payment and deprive the private-respondents by litigating unnecessarily. The Tribunal has already found that the defence of the petitioner-Institute untenable that they did not have knowledge, as such, of the Regulation and therefore, they could not pay.

In view of the above discussion, finding no merit in the present writ petition, the same is hereby dismissed in limine.

17.12.2018 **(G.S. SANDHAWALIA)**
Sailesh **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No