

Sr. No. 349

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

CWP No.17233 of 1994 (O&M)

Date of Decision: 07.03.2019

Subhash Chander

... Petitioner

Versus

The D.A.V. College Managing Committee, New Delhi and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Dheeraj Jain, Advocate,
for the petitioner.

Mr. R.S.Dadwal, Advocate for
Mr. Aman Chaudhary, Advocate,
for respondents No.1 and 2.

ARUN MONGA, J.(ORAL)

Present petition has been filed, *inter alia*, for issuance of a writ in the nature of certiorari to quash the impugned order dated 22.09.1994 (Annexure P-14). Thereby, the claim of the petitioner for granting him grade pay of Rs.1500-2640/-, per Notification dated 15.06.1990, issued by Government of Punjab read with Resolution dated 14.09.1991 passed by respondent No.1-DAV College, Managing Committee, was rejected. The claim of the petitioner for grant of one accelerated increment on his having passed M.A. Examination in Hindi was also declined vide the same very impugned order.

2. The claim of the petitioner qua the grade pay is premised on the fact that as per Resolution dated 14.09.1991

(Annexure P-1), passed by respondent No.1-DAV College, Managing Committee, 40% of the Clerks, whose minimum service is of 10 years, were to be given the grade of Rs.1500-2640/-w.e.f. 01.01.1986. As regards his claim for one accelerated increment from the date of his passing of M.A.Examination (Hindi), the same is premised on the applicable Service and Conduct Rules for non-teaching staff of Non-Government Affiliated Colleges viz. Chapter IX of Punjab University Calendar, Volume III. Relevant part whereof is extracted hereinbelow:-

ii) "Accelerated increment(s)

The Governing Body shall grant accelerated increment(s) to non-teaching employees on a time scale of pay as under:

Ministerial Staff up to & including the Head Clerk/Accountant

a) for passing B.A. (Full), M.A., LL.B. Examination(s) one increment for each of these examinations up to a maximum of three increments, even if an employee passes more than three Examinations."

3. Feeling aggrieved, the petitioner submitted a representation which was not adverted and the same led to filing of an earlier writ petition before this Court which was disposed of with a direction to the respondents to pass a speaking order. Pursuant thereto impugned order dated 22.09.1994 has been passed declining the benefit of the claims as prayed by the petitioner.

4. In the written statement filed by respondents No.1 and 2, the impugned order has been justified qua the non-grant of higher grade pay on the ground that as per ratio of 40:40:20, the

petitioner though eligible for the service scale, but he is claiming selection pay scale on the ground that one Sh. Banta Singh is an Accountant. The said position has been controverted on the ground that post of accountant held by said Sh. Banta Singh was not approved by the Director Public Instructions (DPI) (Colleges) and pay scale of clerk was being released to him. As such said Banta Singh falls in the ratio of 40% of clerks. Accordingly, as per the criteria laid down by the D.P.I (Colleges), the scale being of clerk is being released in favour of the following as per their seniority:-

1. Shri Banta Singh
2. Shri Gurmail Singh
3. Shri. Subhash Chander
4. Mrs. Raj Rani
5. Shri Prem Dass Sharma
6. Mrs. Sushma Kumari"

5. It is stated by respondents that the petitioner does not fall within this ratio being 3rd in the list. As per 40%, only 2 Clerks out of total 6 can be given this scale. The post of Accountant has never been approved by the Director Public Instructions (Colleges), and accordingly, Shri Banta Singh is granted only the scale of the Clerk. The difference in the pay is being paid by the Managing Committee out of his own funds. Thus the petitioner being 3rd cannot be granted this scale as per the applicable Instructions.

6. As regards, the rejection of claim for accelerated increment, the stand taken by respondent No.1 is that since the DPI

does not give grant of any such advance increment, the petitioner is, therefore, not entitled to the same. In fact, in the impugned order, the petitioner has been advised to represent the matter to DPI (C) for necessary directions and if so agreed, by the DPI (C), then respondent No.1-DAV College, Managing Committee will accept his claim for accelerated increment.

7. I have gone through the pleadings and have heard the rival contentions of the learned counsels appearing for the respective parties.

8. Having given my thoughtful consideration, I am of the view that impugned order passed by respondent No.1 does not stand judicial scrutiny and is not tenable. The stand of the Managing Committee that there are only 5 Clerks and Banta Singh is an Accountant flies in the face of its own admitted stand reflected from a letter dated 14.07.1983 written by the Principal of Lajpat Rai Memorial D.A.V. College, Jagraon to D.A.V. College, Managing Committee-respondent No.1 whereby it has been stated as under:-

“Shri Banta Singh on promotion as Accountant by the previous Managing Committee is being paid salary in the Accountant's scale. Punjab Government however, is releasing only the Clerk's scale to him. The difference is being met from college funds as salary stated. The college prospectus and salary bills have to show him as Accountant. But this fact cannot bring Government grant in the Accountant's scale.”

9. The above stand is also further fortified as per the salary slips of the regular employees as reflected from Annexure P-12 and P-13 wherein Banta Singh has been shown as an

Accountant and not as a Clerk.

10. In view of the above conceded position, the logic of the respondents that petitioner does not fall in the 40:40:20 proportion is, therefore, completely misplaced. Since, there were only 5 Clerks, the petitioner is, accordingly, held entitled to the benefit of pay scale of Rs.1500-2640/-.

11. As regards the admissibility of the accelerated increment, it is not the case of the respondents that petitioner is not entitled to the same yet it has been declined to him on technical grounds that the petitioner should follow up the same with the DPI (Colleges).

12. I do not find any substance in such a stand taken by the Managing Committee. It is the Managing Committee who is supposed to take up the cause of its employees with the Government and an employee cannot directly overreach the Management and take up the matter with the Government. Accordingly, petitioner is held entitled to the said benefit and respondent No.1-DAV College, Managing Committee, is directed to disburse the same as per his entitlement and if necessary, take up the case with respondent No.3-Director Public Instructions (Colleges) Punjab, at its own level for reimbursement.

13. In view of discussion above and reasons stated therein, impugned order 22.09.1994 (Annexure P-14) is set aside. Respondents are directed to release the grade of Rs.1500-2640/- to the petitioner, w.e.f. 16.06.1986, as per Punjab Government notification dated 15.06.1990. Respondents are further directed to

grant one accelerated increment to the petitioner w.e.f. the date of having passed M.A. (Hindi) examination.

14. Let the needful be done within a period of 03 months along with 6% interest with effect from the date entitlement is found admissible to the petitioner, till the actual date of payment.

15. Petition is allowed in the aforesaid terms.

07.03.2019

vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No