

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 11219 of 2004 (O&M)

Date of Decision: 09.1.2019

Om Parkash and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. P.L.Verma, Advocate
for the petitioners.

Mr. Vivek Saini, DAG, Haryana.

A.B. CHAUDHARI, J

Heard learned counsel for the rival parties.

The State in its written statement has referred to the case of ***Secretary, Finance Department versus West Bengal, Registration Services Association, AIR 1992 SC 1203***. The determination of the equation of posts and determination of pay scales is an expert's job and the function of the executive. Even otherwise it is the Pay Commission which decides equivalence and the pay scales etc. As per that judgment of the Supreme Court, the judiciary does not possess such expertise in the matter of equation of posts or determination of pay scales and, therefore, the Court would not ordinarily tinker with the function of the executive. We think the aforesaid Supreme Court judgment is binding on this Court. Not only that,

there is a Division Bench Judgment of this Court in CWP No. 9631 of 2002

decided on 26.2.2004 (Annexure R-1) which accepted the said objection.

Learned counsel for the petitioners, however, has vehemently relied upon on the Single Bench judgment of this Court passed in CWP No. 4747 of 2002 decided on 15.3.2012 which according to him was upheld in LPA by the Division Bench of this Court.

In our opinion, the Division Bench judgment (Annexure R-1) clinches the issue. The said Division Bench judgment (Annexure R-1) is obviously based on the aforesaid Supreme Court's judgment (supra). We think, therefore, that the State is right in projecting the legal position in the matter. We have no reason to digress from the said view.

At any rate, in para 5 on merits in the written statement, the State has taken stand which reads thus:-

“5. That in reply to para 5 of the C.W.P., the petitioners are not entitled to the A.C.P. Grade of Rs. 6500-9900 after the completion of 10 years of service, since they have already availed two financial upgradations as clarified vide Haryana Govt. Finance Department letter No. 5/4/2001-5 PR (FD) dated 2.3.01. In the letter under reference it has been explained by way of illustration.

Illustration II. The case of JBT Teacher/Head Teacher:-

The functional pay scale prescribed for the post of a JBT teacher and Head teacher in the Primary Schools have been as under:-

Sr. No.	Post	Functional pay scale as on 1.1.1986	Ist Standard Higher scale as on 1.1.1994	2 nd Higher scale as on 1.1.94
1.	JBT teacher	1200-2040	1400-2600	1600-2660
2.	Head teacher	1400-2600 As on 1.1.96	- Ist ACP as on 1.1.96	- 2 nd ACP as on 1.1.96
3.	JBT teacher	4500-7000	5450-8000	5500-9000
4.	Head teacher	5500-9000	6500-9000	6500-10500

Assuming 'A' was appointed as a JBT teacher as on 1.4.1975, his pay was fixed in the functional scale of Rs. 1200-2040 as on 1.1.86. He was granted the Ist ACP of Rs. 1400-2600 as on 1.1.94 on completion of 10 years service as a JBT teacher. While placing him in this pay scale, even though he continued to remain a JBT teacher, his pay was fixed at the stage next above. He completed 20 years service as a JBT teacher as on 31.3.95 and thus became entitled to be placed in the 2nd Higher Standard Scale of Rs. 1600-2660 as on 1.4.1995. Here again, even though he continued to remain as a JBT teacher his pay was fixed at the stage next above in the 2nd Higher Standard scale of Rs. 1600-2660. His pay was fixed in the 2nd Higher Standard Scale of Rs. 1600-2660. His pay was fixed in the 2nd ACP of Rs. 5500-9000 as on 1.1.96 under the ACP Rules. Now, he was promoted as a Head Teacher of a Primary School on, say 1.10.98, the functional pay scale for the post of a Head Teacher of the Primary School is Rs. 5500-9000 in which he is already drawing his pay on the day of his promotion by way of his placement in the 2nd ACP. Thus on his promotion as Head Teacher in the scale of 5500-9000, his pay will not be refixed in terms of Note below Rule 15(2) of the ACP Rules, 1998.'

Again, the rationale is that he had already been granted this benefit twice earlier at the time of grant of Ist and 2nd ACP even though there was no change in his duties and responsibilities of higher nature and he cannot be granted triple benefit.'

In view of the above clarification, the petitioners are not entitled to the A.C.P. Grade of Rs. 6500-9900. As regards the grant of A.C.P. Scale of Rs. 6500-9900 to Smt. Bimla Verma Head Teacher, G.P.S. Mandhawal District Faridabad and Tr. Smt. Krishna Purthi working as Head teacher in Jind District, it is submitted that the petitioners have not attached the copies of pay fixation orders issued by the respective competent authorities. Moreover, if any one of the officers have given

them the ACP scale of Rs. 6500-9900 inadvertently that does not become a rule till such a notification is issued by the Finance Department Haryana. As already submitted that the petitioners are not entitled to the ACP Scale of Rs. 6500-9000 as per clarification issued by the Finance Department, Haryana vide letter dated 2.3.2001 reproduced above.”

The stand taken as above is correct. Consequently, we find that the petition is bereft of any merit.

CWP No. 11219 of 2004 is dismissed. No costs.

(A.B. CHAUDHARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

January 09, 2019

Gurpreet

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