

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

CWP-2816-1995

Date of decision: 22.07.2019

A.N.MITTAL AND ORS

..PETITIONERS

Vs.

STATE OF PUNJAB AND OTHERS

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Ms. Stuti Bamba, Advocate for
Mr. Ram Lal Gupta, Advocate
for the petitioners.

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

Mr. R.D.Dadwal, Advocate for
Mr. Aman Chaudhary, Advocate
for respondents No. 3 and 4.

ARUN MONGA, J.(ORAL)

Grievance of the petitioners, who were at the relevant time working as Lecturers in DAV College, Jalandhar, is that on grant of senior pay scales, their salary instead of being increased, in fact, was decreased due to the pay anomaly while re-fixing their salary in the selection grade.

2. Repeated representations submitted by petitioners did not yield any result. Finally, their case was referred by their college vide forwarding letter dated 24.11.1993 (Annexure P-3) to respondent No.2-for taking appropriate decision. Vide impugned order dated 11.01.1994 (Annexure P-4), respondent No.2-Director Public Instructions (College) rejected the representations of the petitioners without taking a decision on the same in

the following innocuous words:

“The cases of those lecturers who have been given the selection grade be not sent to this office because verification of the salary fixed by those colleges is first to be done who have not got done their cases of 1.1.1986 so far.

Secondly Sh. A.N.Mittal and Sh. B.B.Nayar Lecturers be told to read rule 4.4 of volume-I part-I of C.S.R. for their personal salary.”

3. Faced with the rejection, which is not only cryptic but also completely non-speaking and seems to be more of an advice to the petitioners to educate themselves with regard to the applicable Civil Services Rules, the petitioners were left with no choice but to approach this Court by filing the present writ petition.

4. In the return filed by the respondents before this Court, non-grant of benefit to the petitioners, as claimed by them vide their representation, is sought to be justified through the pleadings but as far as the impugned order is concerned, that shows complete non application of mind and no reasons have been assigned therein.

5. Reliance may be had on a judgment, titled as **Dr. P.K.Mittal vs. State of Punjab and others, 1982 (2) SLR 267**, rendered by this Court in CWP-1766 of 1974. The relevant whereof is extracted here-in-below:

*“The only contention raised by Mr. J. L. Gupta, learned counsel for the petitioner, in support of the petition is that order Annexure P-16 is not a speaking order and that no reasons have been assigned as to why the reply of the petitioner has been rejected. According to him, the order is cryptic and sketchy and could well have been passed without the application of any mind. Reliance has been placed by him on **Ram Dass Chaudhary v. State of***

*Punjab and another, 1968 S. L. R. 792, wherein P. C. Jain, J. in somewhat similar circumstances, relying on the decision of the Supreme Court in **Bhagat Raja v. Union of India and others, AIR 1967 Supreme Court 1606**, took the view that it was incumbent on a punishing authority to give reasons while arriving at a decision against a delinquent officer as the power of punishing was quasi judicial in nature. The case before P. C. Jain, J. arose from an appellate order of the Government, but here the impugned order is on the original side. In **State of Punjab v. Dr. R. K. Chopra, 1978(1) I. L. R. 1**, a Division Bench of this Court approved P. C. Jain, J's view in Ram Dass Chaudhary's case (supra) To my mind, the dictum of Bhagat Raja's case (supra) applies reinforcedly to an order passed by a punishing authority on the original side. It goes without saying that such an order may be subjected to appeal or revision or be tested in writ jurisdiction of this Court. Ex facie, something has to be available on the face of the order from which the Court of correction has to go by. In the instant case, as is plain, the order was that the reply of the petitioner had been considered by the Government and found to be unsatisfactory and, therefore, one increment was thereby stopped with cumulative effect. That per se, to my mind, does not reveal as to how the mind of the Government was applied towards arriving at such a conclusion. Such an order cannot be sustained merely because in the return filed by the Government, effort has been made to justify that it is a speaking order, and it indicates the reasons because of which action was being taken against the petitioner. That may be true, that it indicates the reasons because of which action was being taken against the petitioner. But it does not indicate the reasons for coming to the conclusion for punishing the petitioner. The arena for the respective two spheres is well marked.*

And though permitted to over-shadow 'to some extent, cannot have the effect of superimposition to wipe out the ultimate aspect altogether.' ”

6. Having heard learned counsel for the parties, I am of the opinion that the order, rejecting the claim of the petitioners, ought to have assigned reasons therein as to what transpired in the mind of the competent authority while passing the said order instead of the same being justified as an afterthought by way of pleadings in this Court.

7. In the premise, order dated 11.01.1994 (Annexure P-4) is set aside. As regards the fixation of pay, it would be travesty of justice to remand that matter at this stage after the petitioner have waited for 25 years for the outcome of adjudication of this petition.

8. Petitioners No.1 to 7 joined their service on different dates in respondent-College as Lecturers on 19.07.1977, 19.07.1977, 19.07.1977, 23.07.1978, 23.07.1979, 23.07.1978 and 23.07.1978 respectively. On 12.01.1988, vide Notification No. 10/14/87 5ED, 1/542, the Lecturers were granted the pay scale as under:

“ Lecturers	700-1600	2200-75-2800-100-4000
Senior Scale (8 years of service)	Not existing	3000-100-3500-125-5000
Selection Grade (16 years of service)”	Not existing	3700-125-4950-150-5700

9. On 01.01.1986, all the petitioners were granted the senior scale after putting 08 years of service. On 19.07.1993, 19.07.1993, 19.07.1993, 23.07.1993, 23.07.1993, 23.07.1994 and 23.07.1994, petitioners were granted the selection grade respectively.

10. The basic salary of the petitioners in the senior grade was fixed at Rs.3,750/-. On the grant of annual increment of Rs.125/-, had the

petitioners continued in senior scale, their salary would have been $3750+125=3875$, but the grievance of the petitioners is that on conferment of selection scale, i.e., the higher grade, they are drawing salary of Rs.3825/-. Thus, their salary has been reduced on grant of a higher scale on account of the anomaly in the fixation of pay on part of the respondents and moreover the juniors of the petitioners, working in the senior scale, are drawing higher salary than the petitioner.

11. In the return filed by the respondents, the prayer of the petitioners, has been resisted on the ground that they are not government servants since the college they are serving is not a government institution but an aided college and, therefore, reliance on Rule 4.4 of Punjab Civil Services is misplaced. It is stated that Punjab Civil Services Rules govern only the government employees. The respondent-College merely because it received grants from the Government and being an aided college, it does not mean that the Punjab Civil Services Rules would be applicable to its employees. It is further stated that even otherwise, Punjab Civil Services Rules nowhere envisage that on promotion and/or conferring of a higher grade, an employee's salary cannot be reduced. Position that emerges thus, on conjoint perusal of the pleadings, is that the salary of the petitioners was reduced on account of their being put in a higher pay scale (selection grade). Resultantly, their juniors were drawing more salary than them.

12. It is not disputed that a Lecturer, after 08 years of service, was/is entitled to a senior scale and after putting 16 years of service was/is entitled to selection grade. Since, the petitioners joined in the years 1977, they were rightly entitled to salary in the selection grade (higher pay scale).

13. Without going into the controversy whether or not, the petitioners are entitled to the benefits of Rule 4.4 of Punjab Civil Services, Rules, one has to apply the very first principle of equity and justice and keeping in view the established principle of law that on promotion/grant of higher pay scale, the salary of employee cannot be reduced.

14. Even otherwise the settled principle of law is that an employee is entitled to step-up of his salary in the event his junior drawing lesser pay gets higher pay than him. I am, therefore, of the opinion that the pay of the petitioners has been anomalously fixed on their being granted higher pay scale and the same deserves to be corrected.

15. Accordingly, petition is allowed with a direction to the respondents to re-fix the pay of the petitioners correctly as per their entitlement in the selection grade i.e. Rs.3700-125-4950-150-5700 and pay them the arrears of salary with interest @ 6% per annum with effect from the date of entitlement till the actual date of payment.

July 22, 2019
smriti

(ARUN MONGA)
JUDGE

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