

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

**CWP No.14221 of 2012 (O&M)
Date of decision : 09.01.2019**

The Lal Bahadur Memorial College, Nabha and another

.....Petitioners

Versus

Dr. (Mrs.) Manju Anand and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. R.S. Randhawa, Advocate
for the petitioners.

Mr. K.S. Boparai, Advocate
for respondent No.1.

ARUN MONGA, J(ORAL)

1. The present writ petition has been filed by Managing Committee of Lal Bahadur Memorial College, Nabha impugning the judgment dated 17.05.2012 passed by Education Tribunal, Punjab. Vide the said judgment, learned tribunal granted the prayer of the respondent No.1 for her entitlement to the pay grade of Rs.3700-5700/- alongwith other admissible allowances prevalent at the relevant time along with increments etc. w.e.f the date of her appointment till the date of her resignation i.e. 04.01.2001.

2. Respondent No.1 at the relevant time served as Principal of the College. He was initially appointed on probation as Principal for a period of one year which period was further extendable as per appointment letter dated 30.06.1989 (Annexure P-1). The appointment letter is though silent

qua the pay grade of respondent No.1, however, an independent agreement dated 01.07.1989 was executed between the Managing Committee of the College through its President and respondent No.1. The pay grade was contractually and mutually agreed as below:-

“2.That the first party is employed in the first instance on probation for a period of one year and shall be paid a monthly salary of Rs. 3700-5700. The period of probation may be extended further by one year, but the total period of probation shall no case exceed two years”.

xxx xxx xxx

“4.That on confirmation (after the period of probation) the second party shall pay to the first party during the continuance of her engagement for her services a salary at the rate of Rs.3700-5700. These annual increments shall be granted on the recommendations of the President and shall not be withheld without assigning specific reasons in writing and further the first party shall have the right to appeal to the Vice-Chancellor.

3. In this background, on an earlier occasion also the petitioner had approached this Court vide CWP No.14977 of 1993 *inter alia* seeking the relief of grant of pay grade as contractually agreed between the parties. However, the writ petition was remanded to the Education Tribunal for adjudication since the petitioner college is unaided college and the disputes of the unaided college are to be decided by the tribunal under the Security of Services of Employees Act, 1974. After the remand of the matter before the Tribunal the other relief that was sought in the writ petition had since become infructuous except the grant of the pay grade as was contractually agreed between the parties at the time of appointment.

4. Learned counsel for the petitioner has vehemently argued that the tribunal while granting the relief of grant of pay grade of Rs.3700-5700/-

over stepped its jurisdiction inasmuch as the said grade is UGC grade and respondent No.1 being an employee/Principal of an unaided college is not entitled to the UGC grade. Learned counsel for the petitioner further argued that the petitioner was entitled to a consolidated salary of Rs.3100/- as was being given to her for the entire period of three years she served as Principal.

5. The contentions of learned counsel for the petitioner on the face of it seem to be misplaced in view of the fact that having once agreed by way of an express contract to grant a pay grade of Rs.3700-5700/- it does not lie in the mouth of the management to claim that the same is the UGC grade.

6. The fact that Rs.3700-5700/- is a UGC grade is of no significance in view of mutually agreed contractual rate of salary as per agreement dated 01.07.1989, executed between an employee and the management.

7. Learned tribunal while dealing with this aspect of the matter also heard rival contentions of the parties at length and observed at below:-

“We have already held above that to the privity of contract, sanctity must be given by the parties and they cannot be allowed to wriggle out. The management agreed to pay the scale of Rs. 3700-5700/- by a written agreement and in these circumstances, it cannot withdraw this liability. Every citizen in a democratic country like ours has a right to agitate for his legal dues and the petitioner did not commit any sin when she claimed under the belief that she was entitled to UGC grades as such. Raising a legitimate demand in itself is not a crime. On the contrary, the management started harassing her and she was insulted upto the maximum and was placed under suspension in various counts. The proposal of dismissal was sent to DPI (c) which was not approved at all. The management did not pursue the appeal also. All these facts

have weighted upon our mind while awarding the back wages”.

8. I am in respectful agreement with the observations of the learned tribunal as produced hereinabove. It is not out of place to mention here that once the relationship of master and servant came into existence between the petitioner and respondent no.1 on the issuance of appointment letter and particularly, on execution of mutually agreed terms and conditions vide agreement dated 01.07.1989 it is too belated now for the management/petitioner to wriggle out of the contractual obligation on the ground that U.G.C grade cannot be given to its employee, being an unaided college. Having once consciously agreed to grant contractual pay grade at parity with the UGC pay grade, the argument of the management that the UGC pay grade is since not applicable to the college of being an unaided college is of no consequence and does not stand judicial scrutiny. It is though a conceded position that respondent college is not a government aided college and for this reason UGC grade would not apply. However, it is always open to the management of an unaided college to consciously signed mutually agreeable contract and to grant a particular pay grade to its employee which may be equivalent or even more then the pay grade of UGC.

9. Another aspect of the matter is that while signing the agreement the management of the College did not have UGC pay grade in its mind. It consciously signed the pay grade Rs.3700-5700/-. In the agreement there is no mention that the management of the unaided college would be granting UGC pay grade to the respondent No.4. Therefore, it seems that the arguments of UGC pay grade being granted to the respondent No.4 is a

complete after thought once some disputes arose between the parties on other grounds which thought do not survive adjudication anymore.

10. Keeping in view my observation as noted above and also the finding of learned tribunal, which I am in complete agreement with, the present writ petition is dismissed. No order as to costs.

09.01.2019
dkp

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No