

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

1. CWP-17127-2016

Tarsem SinghPetitioner

Versus

State of Punjab and othersRespondents

2. CWP-11249-2017

Bhagwan Dass and othersPetitioners

Versus

State of Punjab and othersRespondents

Date of decision: - 30.01.2019

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. R.K. Arora, Advocate
for the petitioner in CWP-17127-2016.

Mr. Pawan Kumar Goklaney, Advocate
for the petitioners in CWP-11249-2017.

Ms. Deepali Puri Sandhu, Additional Advocate General, Pb.

HARSIMRAN SINGH SETHI, J. (ORAL)

By this common order, above-mentioned two Civil Writ
Petitions are being disposed off. For the sake of convenience, the facts are
being extracted from CWP No.17127 of 2016 titled 'Tarsem Singh Vs.
State of Punjab and others.'

In the present writ petitions, the claim of the petitioners is that they are entitled for fixation of their pension on the basis of last pay drawn while working on current duty charge which they drew as Headmaster etc. By the impugned order dated 20.04.2016, the said benefit though initially given to the petitioners, has been withdrawn on the ground that the pension can only be fixed on the basis of the pay drawn on the substantive rank and not the pay given of a higher rank where the petitioners were working on current duty charge only.

Counsel for the petitioners have brought to the notice of this Court a decision rendered by a Co-ordinate Bench of this Court in CWP No.17358 of 2015, decided on 09.09.2016. Counsel for the petitioners further states that under the similar circumstances, a direction was given by this Court to fix the pension and the retiral benefits on the basis of last pay drawn in their official capacity as a Principal /Headmaster / Headmistress. The relevant paragraphs of the said judgment is as under: -

“It being so, the impugned order dated 20.10.2014 (*Annexure P-2*) is not sustainable in the eyes of law and is hereby quashed. The writ petition is allowed and writ of mandamus is issued directing the respondents to fix the pension and other retiral benefits of the petitioners on the basis of last pay drawn by them in their officiating capacity as Principal/ Headmaster/Headmistresses except petitioner Nos. 5, 6 and 16 in whose case the State is not opposing their claim. Needless to say that their pension shall accordingly be re-fixed.”

The State of Punjab filed an appeal against the said judgment being LPA No.37 of 2017 which came to be decided on 25.09.2018. The

said LPA was also decided by this Court and a direction was given to the State to grant the regular promotion to the candidates as per seniority and eligibility conditions from the due date in accordance with the rules which were invoked at the time of the occurrence of the vacancies and the promotion so granted will be retrospectively, but notionally only for fixation of their pension and other retiral benefits. The relevant portion of the said judgment is as under: -

“[2] State of Punjab has preferred this Letters Patent Appeal against the decision dated 09.09.2016 of the learned Single Judge whereby the order dated 20.10.2014 was set aside and a direction has been issued to fix the pension and retiral benefits of the respondents “on the basis of last pay drawn by them in their officiating capacity as Principal/Headmaster/Headmistresses except petitioners Nos.5, 6 and 16 as the State is not opposing their claim.” In other words, the learned Single Judge has held that out of 17 writ petitioners, three had been promoted as Principal/ Headmaster/ Headmistresses on regular basis and the State conceded their claim for fixation of pension and other retiral benefits as per the last pay drawn by them. In respect of remaining 14 writ petitioners, learned Single Judge has found that since they were also officiating as Principal/ Headmaster/ Headmistresses, they are entitled to pension and other retiral benefits as per the last pay drawn by them on such higher posts.

[3] It is not necessary to mention further facts in extenso as a brief reference to the relevant facts has been already given in the judgment dated 23.05.2017 rendered in LPA-681-2017 (**State of Punjab and another vs Sukhminder Singh and others**) and other connected cases, in which Review application bearing RA-LP-35-2017 has also been disposed of vide order dated 31.08.2018. Suffice to mention that several posts of Principal/ Headmaster/Headmistresses meant to be filled up by promotion

from amongst Lecturer/ Master/Mistresses are lying vacant and the promotion quota has not been exhausted apparently for the reasons like pendency of seniority dispute. Since regular promotion could not be made, most of the senior most persons were asked to officiate on the promotional posts. They have unfortunately retired from service without getting formal tag of regular promotion. It is in this backdrop that the learned Single Judge vide order under appeal has held them entitled to pension and other retiral benefits as per the last pay drawn by them on officiating posts.

[4] We have heard learned counsel for the parties at a considerable length and are of the view that the appellants cannot take undue advantage of their own inaction or wrongs. Seniority is a condition of service. It has to be determined at the earliest in accordance with the Rules governing conditions of service. If any delay occurs because of multiple Court proceedings, the authorities ought to have evolved some mechanism to grant regular promotions to the senior most Lecturer/ Master/ Mistresses, for promotion is also a legitimate expectation in service career. The controversy nevertheless does not require further deliberations, for necessary directions to consider and promote the Lecturer/ Master/ Mistresses on higher posts as per their seniority and other eligibility conditions have already been issued by this Court in the above-cited order dated 23.05.2017. Let those directions be complied with within the time-frame given in the cited order. The respondents in the lead case or the writ petitioners in the connected petitions shall also be considered for regular promotion as per their seniority and eligibility conditions from the due date and in accordance with the Rules, which were in vogue at the time of occurrence of vacancies. While the promotions shall be granted retrospectively but on notional basis only and they shall be entitled to fixation of their pension and other retiral benefits as per the pay deemed to have been drawn by them on the higher promotional posts. They shall also be entitled to arrears of pension and other retiral benefits alongwith interest @ 7% per annum. The needful shall be done within a period of six months. However, if the respondents in the

lead case and the writ petitioners in the connected cases have not been granted emoluments for the period they officiated/worked on the higher posts, let such claim be also considered within a period of four months.”

Counsel for the parties agree that the present writ petitions can be disposed of in terms of the directions given by this Court in LPA No.37 of 2017 and other connected cases, reproduced above.

In view of the above, the present writ petitions are disposed of in terms of LPA No.37 of 2017 and other connected cases, decided on 25.09.2018, as requested by counsel for the parties.

January 30, 2019
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**(HARSIMRAN SINGH SETHI)
JUDGE**

Whether reasoned/speaking?	Yes
Whether reportable?	Yes