

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

- 1. CWP-25605-2016 (O&M)**

Jagmit Singh and others **....Petitioners**

Versus

State of Punjab and others **.....Respondents**
- 2. CWP-26736-2016 (O&M)**

Balwinder Singh and others **....Petitioners**

Versus

State of Punjab and others **.....Respondents**
- 3. CWP-4166-2017**

Manjit Singh and others **....Petitioners**

Versus

State of Punjab and others **.....Respondents**
- 4. CWP-5446-2017**

Jujhar Singh and others **....Petitioners**

Versus

State of Punjab and others **.....Respondents**
- 5. CWP-26972-2016**

Dilbag Singh and others **....Petitioners**

Versus

State of Punjab and others **.....Respondents**

6. CWP-8634-2017

Jagdish Chander Sharma and othersPetitioners

Versus

State of Punjab and othersRespondents

7. CWP-11841-2017

Charanjit Singh Chahal and othersPetitioners

Versus

State of Punjab and othersRespondents

8. CWP-13319-2017

Krishan Kumar and othersPetitioners

Versus

State of Punjab and othersRespondents

Date of decision: - 25.02.2019

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

**Present:- Mr. Sunny Singla, Advocate
Mr. S.K. Rattan, Advocate and
Mr. S.K. Arora, Advocate,
for the petitioners.**

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

HARSIMRAN SINGH SETHI, J. (ORAL)

**By this common order, above-mentioned eight Civil Writ
Petitions are being disposed of. For the sake of convenience, the facts are
being extracted from CWP No.25605 of 2016 titled 'Jagmit Singh and
others Vs. State of Punjab and others.'**

In the present writ petitions, the prayer has been made that the pensionary benefits should be fixed according to the last pay drawn by the petitioners keeping in view the directions given by this Court in CWP No.17358 of 2015, decided on 09.09.2016.

As per the factual averments made in CWP No.25605 of 2016, the petitioners were holding the current duty charge of the higher posts of the Principal/Headmaster/Headmistress etc.. It has been averred that as the petitioners retired while holding the higher posts on current duty charge and were being paid the salary of the higher posts, the pensionary benefits should also be fixed according to last pay drawn in respect of the posts on which they were performing the duties though on current duty or temporary basis.

Counsel for the petitioners state that the similar plea raised before this Court in CWP No.17358 of 2015 has already been allowed by this Court on 09.09.2016 wherein, a direction was given that the benefit of pension should be given to the employees on the basis of the last pay drawn by them though on current duty charge/temporary arrangements against the higher post.

Upon notice of motion, reply has been filed on behalf of the respondents today in the Court and the same is taken on record. A copy of the same has been supplied to counsel for the petitioners.

In reply, it has been mentioned that the petitioners were directed to perform the duties of the drawing and disbursing officers being the senior most teachers in the schools so that they could draw the

salary of the employees working in the said schools as the posts of Principal/Headmaster/Headmistress in those schools were lying vacant. Further, it has been mentioned that as the petitioners were substantively working on a lower post, their pensionary benefits have been calculated on the basis of pay which they would have drawn on the substantive rank which is perfectly valid and legal. Further, it has been stated that the petitioners were given the current duty charge or the charge of the higher posts temporarily, therefore, no benefit of the salary or the fixation of the pension by taking into account the salary of the post of Principal/Headmaster/Headmistress etc. can be allowed to them.

In reply, order passed by this Court in CWP No.17358 of 2015, decided on 09.09.2016, has been admitted.

I have heard the counsel for the parties and have gone through the record with their able assistance.

It has not been denied by the respondents that the petitioners retired while working on the higher posts of Principal/Headmaster/Headmistress etc., though they were working on temporary basis/current duty charge basis, but actually they were discharging the duties of the higher posts. This Court while deciding CWP No.17358 of 2015, decided on 09.09.2016 held as under: -

“The combined reading of the aforesaid Rules will make it clear that for the purpose of grant of pension, the State cannot fix two pays; one for the purpose of retirement and one for working in officiating capacity. The pension is fixed as per the last drawn pay and emoluments. The petitioner never drew their pay in their substantive post as Lecturers/Masters/ Mistresses while working as

officiating Principal/Headmaster/Headmistresses. Therefore, the pay drawn by them as officiating Principal/Headmaster/Headmistresses is to be taken into consideration while fixing their pension being the last pay drawn.

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 petitioner shall also be paid interest @ 9% per annum on the late payment of the retiral benefits and arrears. All the arrears alongwith interest be paid within three months from the receipt of certified copy of this order.

In view of the aforesaid observations, the petition is allowed.”

Against the said order as well as the similar orders passed in similar writ petitions, respondents-State preferred appeals.

In respect of judgment rendered by this Court in CWP No.17358 of 2015, decided on 09.09.2016, a LPA No.37 of 2017 was filed by the State challenging the order passed by the learned Single Judge. LPA No.37 of 2017 also came to be decided on 25.09.2018. This Court held as under: -

“[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.”

Once, the judgment passed by a Co-ordinate Bench of this Court in the case of similarly situated persons has already been attained finality, there is no reason, why the petitioners should not be given the benefit of the same.

It is a settled principle of law settled by the Division Bench of this Court in case 'Satbir Singh Vs. State of Haryana, 2002(2)

S.C.T. 354, wherein a Division Bench of this Court has held that when the judgment attains finality, duty is casted upon the State to grant relief to all the similarly situated employees. It is not necessary for the State to require each one of its employees to approach the Courts of law for the grant of a relief which the State ought to grant the employees in normal course of its administration. The relevant portion of the said judgment is as under: -

“When judgments attain finality to which the State is a party, duty is casted upon the State to grant relief to its employees who are similarly situated and on identical facts. Benefit of such approach are many and it causes no disadvantage to the interests of the State. It is not necessary for the State to require each one of its employees to approach the Courts of law for grant of a relief which the State ought to grant to the employees in normal course of its administration, particularly, the cases of the kind afore-referred. Such principles is well known and accepted for years now. By referring to few judgments we would only predicate the principle with greater emphasis of its application in the day-to-day affairs of the State. In the case of Dr. (Mrs.) Santosh Kumari v. Union of India and others, JT 1994 (7) SC 565 : 1995(1) SCT 527 (SC) the Hon'ble Apex Court held as under : -

“The allotment of seats should go according to merit. It does not depend upon who comes to Court and who does not. The matter is one of principle and should not depend upon who comes to the court. A more deserving candidate may not have the means of approach the Court.”

The judgment of learned Single Judge as modified by the Division Bench in LPA No.37 of 2017 should also be made applicable upon the petitioners.

In view of the above, the present writ petitions are also disposed of in the same terms as LPA No.37 of 2017. The respondents shall comply with the directions given in para No.4 of the said LPA, reproduced hereinbefore, in the case of present petitioners as well.

February 25, 2019
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**(HARSIMRAN SINGH SETHI)
JUDGE**

Whether reasoned/speaking?	Yes
Whether reportable?	Yes