

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.25198 of 2017
Date of decision:22.08.2019

Ravinder Kumar and others ... Petitioners

Vs.

State of Haryana and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Dinesh Arora, Advocate
for the petitioners.

Mr. R.K.Doon, AAG, Haryana.

Mr. Padamkant Dwivedi, Advocate
for respondents No.3 and 4.

AMIT RAWAL J.

Petitioners five in number have sought indulgence of this Court for issuance of a writ in the nature of certiorari setting aside condition in the appointment letter (Annexure P-1) prescribing the Grade Pay as Rs.9300-34800 with Grade Pay of Rs.3300/- instead of Rs.4200/- with a mandamus directing the respondents to decide representation.

In the years 2012-14, on the following dates, petitioners joined State Institute of Hotel Management Tilyar Lake, Rohtak on the posts of Assistant Lecturer-cum-Assistant Instructors:-

<i>Serial no.</i>	<i>Name</i>	<i>Date of joining</i>
1	Ravinder Kumar	05/02/14
2	Priyanka	22/06/12
3	Pratibh Budania	01/07/13
4	Amit Kumar	29/11/13

<i>Serial no.</i>	<i>Name</i>	<i>Date of joining</i>
5	Tarun Hooda	09/10/14

Accordingly, the petitioners were issued appointment letters Annexure P-1, (colly) and the Grade Pay was mentioned as Rs.3300/-.

Mr. Dinesh Arora, learned counsel appearing on behalf of the petitioners submitted that Institute was established on 18.12.2018 after obtaining necessary approval and permission from Town and Country Planning. Permission was obtained from various departments vide Annexures P-2 and P-3. It has its own memorandum of association being Society. The memorandum of association envisaged various functions and powers to be discharged by the officers including framing of rules and bye-laws for conducting the affairs of Institute. The Board of Governors came out with rules known as “State Institute of Hotel Management Tilyar Lake Rohtak Society's (staff) Regulations (Annexure P-5)”. The post in question has been categorized in four different groups. The petitioners fall in Group-B where Grade Pay of Rs.4200/- at the entry time was fixed. In this regard, petitioners made representation to the respondents but no action was taken.

Respondent no.4-Institute is governed by Rules and Regulations issued from time to time by National Council of Hotel Management and Catering Technology and rules framed under that also envisaged Grade Pay of Rs.4200/-.The aforementioned rules were circulated to all the Sate Government Institute of Hotel Management affiliated to National Council for Hotel Management and Catering Technology.

Attention of this Court has been drawn to letter dated 26.06.2013 (Annexure P-7). The petitioners have also been claiming parity as the similar Institutes of other States have also fixed the Grade Pay.

In response to notice of motion order, contesting respondents no.3 and 4 filed the reply by raising preliminary objection qua maintainability of writ petition being hit by *doctrine akin to delay and laches*, for, appointment was made between years 2012-14 whereas present writ petition has been filed only in 2017.

Mr. Padamkant Dwivedi, learned counsel appearing on behalf of respondents no.3 and 4 submitted that Government of Haryana vide memo dated 29.03.2012 accorded sanction for creation of certain posts including the posts of Assistant Lecturer-cum-Assistant Instructors and pay structure was assigned as Rs.9300-34,800/- + Grade Pay of Rs.3300/-. The aforementioned sanction was issued with the concurrence of Member Secretary, Haryana Bureau of Public Enterprises vide memo dated 23.12.2011 and 29.03.2012 (Annexures R-4/1 and R-4/2). Respondents-Institute are affiliated to the National Council for Hotel Management and Catering Technology being an undertaking of the Ministry of Tourism, Government of India. As per letter dated 26.06.2013 (Annexure P-7), every Institute has power to frame its own rules and therefore, cannot be governed by rules (Annexure P-5).

In rebuttal, Mr. Dinesh Arora, learned counsel appearing on behalf of the petitioners submitted that there is no emphatical denial to the applicability of rules in paragraphs 6 and 7 of the written statement and

corresponding paragraphs of written statement and thus, department cannot adopt dichotomous approach. The proceedings of Committee cannot partake statutory rules in fixing the Grade Pay as has been attempted.

I have heard learned counsel for parties, appraised paper book and of view that there is force and merit in the submissions of Mr. Dinesh Arora. It would be in the fitness of things to extract paragraphs 6 and 7 of writ petition and corresponding paragraphs of written statement which read thus:-

Paragraphs 6 and 7 of writ petition

6. *“That the memorandum of association laid down various functions and powers to establish and carry n the Administration and Management of respondent no.4 Institute. One of such relates to framing rules and by-laws for the conduct of the affairs of Institute. In pursuance to this provision of memorandum and association, the board of Governors made the rules namely State Institute of Hotel Management, Tilyar Lake, Rohtak Society's (Staff) Regulations. A copy of the same is attached as Annexure P-5). A perusal of the same would reveal that the posts in the Institute have been categorized in four different groups as per their pay scale. The petitioners having been appointed in the pay scale of Rs.9300-34800 fall in Group B. A further perusal of the same also reveals that the grade pay for Group-B is Rs.4200/- at entry.*
7. *That the petitioners approached the official respondents*

by seeking personal appointment as well as in writing and requested to issue fresh corrected appointment letters and grant pay of Rs.4200/- as per their entitlement. Their request was ignored and no response was heard and received in this regard. Some of the petitioners moved an application under Right to Information Act seeking information including a copy of rule book and recruitment rules for Institute of Hotel Management. They were given a copy of rules already attached as Annexure P-5. Counsel for the petitioners also sought information including a copy of service rules applicable to the faculty of State Institute of Hotel Management, Tilyar Lake, Rohtak with regard to qualification pay scale promotion etc. In reply to the application moved by counsel for petitioners a copy of five Annexures has been supplied in which details of Assistant Lecturer-cum-Assistant Instructor are provided in Annexure V. The petitioners respectfully submit that the information was ambiguous, misleading and incomplete as nowhere it was mentioned as to what document these Annexure are annexed with. A copy of reply dated 18.09.2017 is attached as Annexure P-6. The petitioners respectfully submits that the rules of the Society have not been amended and till date (as per the latest information supply under Article) still reflects the grade pay as Rs.4200/- for the category of the petitioners.”

Corresponding Paragraphs of Written Statement

6. *That the contents of para 6 of the writ petition to the extent of framing of rules and bye-laws are matter of record and need no reply. However, the rest of contents of this para i.e. the petitioners are entitled for Rs.4200/- grade pay are wrong and denied. The petitioners were offered pay scales and pay grades and the same were accepted by them while joining their respective duties.*

7. *That the contents of para 7 of the writ petition to the extent of ignoring any request of the petitioners are wrong and denied. The providing of information under RTI Act are matter of record. It is, however, denied that the Rules provide Grade Pay of Rs.4200/- for the category of petitioners.”*

On juxtaposition of aforementioned pleadings, it is evident that applicability of the existence and applicability of rules (Annexure P-5) has been stated to be “matter of record”. Annexure R-4/1 are the proceedings of Standing Committee held on 13.12.2011 wherein agenda regarding creation and filling up the posts was approved and Grade Pay against Group B of the Assistant Lecturer-cum-Assistant Instructor fixed as Rs.3300/- whereas in Rules (Annexure P-5), Grade Pay is at page 47 of the paper book and proceeding of Committee at page 105 of paper book which read thus:-

“A central civil post carrying the following grade pays- Rs.5400, Rs.4800/- Rs.4600/- Rs.4200/- in the scale of Rs.9300-34800 in pay Band-2”- Group B.

“Assistant Lecturer- cum-Assistant Instructor Food Production:2/F&B Service:1/Accounts/Eco nomics:1Management Skills:1	Rs.9300-34800 +GP 3300
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Proceedings of the Committee do not reveal that officers at the helm of affairs were brought to notice of Staff Regulations known as State Institute of Hotel Management Tilyar Lake. The Chapter 1 of the aforementioned rules envisaged as under:-

“iii) They shall apply to all the employees of the Society. In respect of the persons employed by the Society on Agreement/contract, the rules shall be those as may be specifically provided in the Contract or Agreement as the case may be in respect of the persons appointed on deputation from the Central or State Government, all matters relating to such employees shall be governed by the terms of deputation and if on any specific matter there is no provision about the same in terms of deputation, and reference should be made to the parent Government or department as the case may be.”

Thus, it is irresistibly concluded that aforementioned rules applied to all the members of Society. However, an attempt was made by Mr. Padamkant Dwivedi by relying upon the observations made in the letter

of NCHM i.e. National Council for Hotel Management addressed to all the State Government Institutes, private and Government Institutes with regard to 'No Objection' if affiliated Institutes framed their own rules. Since applicability of rules (Annexure P-5) has not been denied, the Committee on its own cannot reduce the Grade Pay. Such action, in my view, is wholly without jurisdiction and nonest in the eyes of law. Much emphasis was laid to Annexure R-4/2 whereby aforementioned decision was approved by the Government. If the Governor was not apprised of the rules, as a necessary corollary, the proceedings of the Committee would definitely had the nod but that would not become a sermon enabling the Institute to fix the Grade Pay as Rs.3300/-.

As regards objection with regard to delay and laches, I am of the view that such a cause of petitioners who had been representing since the date of appointment was and is recurring, therefore, same would not be impediment and hereby rejected.

Accordingly, on cumulative reading of aforementioned observations, I am of the view that petitioners are entitled to fixation of their Grade Pay as Rs.4200/- instead of Rs.3300/-.

Writ petition is allowed and respondents are directed to rectify the appointment letters of petitioners and issue fresh appointment letters fixing their Grade Pay as Rs.4200/-.

August 22, 2019
savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No