

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

**CWP No. 6739 of 2014
DATE OF DECISION : 17.01.2019**

Ashok Kumar and others

...Petitioners

versus

State of Punjab and others

...Respondents

and

CWP No. 19775 of 2013

N. S. Khanna and another

...Petitioners

versus

State of Punjab and others

...Respondents

and

CWP No. 27139 of 2018

Renu Singla

...Petitioner

versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Tushar Sharma, Advocate,
for the petitioner(s) in
CWP No. 6739 of 2014.

Mr. Sameer Sachdeva, Advocate,
for the petitioner(s) in
CWP No. 19775 of 2013.

Mr. Vijay Rana, Advocate,
for the petitioner (s) in
CWP No. 27139 of 2018.

Mr. Abhay Pal Singh, AAG, Punjab.

Mr. Rajdeep Singh Cheema, Advocate,
for respondent No.4.

Mr. Salil Sablok, Advocate,
for respondent-UGC.

ARUN MONGA, J.

1. The present bunch of petitions have been filed by the serving Assistant Professors/Associate Professors of various government aided colleges, some of whom have retired during the pendency of writ petitions, seeking issuance of writ in the nature of certiorari to quash the impugned order dated 30.11.2012 passed by the Director Public Instruction (Colleges), Punjab Chandigarh. The common case of all the petitioners is that vide impugned order, claim of the petitioners for extension of time for completion of refresher course for career advancement and consequential benefits, has been rejected, on the sole ground of paucity of funds to be provided to the Education Department by the Finance Department of Government of Punjab.

2. The petitioners state that otherwise the claim of petitioners is admitted by the Education Department for grant of benefit of extension in time period for completion of refresher course for Career Advancement. The said relief has already been granted to the government colleges. The petitioners, thus, are seeking to enforce parity between government aided colleges and government colleges.

3. It is the conceded position in the written statement filed by the respondents that government college teachers and private aided college teachers are at par with each other as far as their pay and allowances are concerned. However, an artificial distinction has been pleaded on the ground that the government college teachers are governed by the Punjab Civil Services Rules, whereas the private aided college teachers are governed by Punjab Affiliated College (Security of Service of Employees) Act, 1974 (hereinafter referred to as "the Act 1974").

4. The primary grouse of the petitioners is based on the premise that once it is avowed that the government college teachers and the aided college teachers are given parity in respect of their pay and allowances, then the discrimination which has been resorted to by the respondents, while rejecting the claim of the petitioners, is violative of Article 14 of the Constitution of India.

5. Facts of the case are not in dispute. For better appreciation of the case, the same are taken from CWP No.6739 of 2014.

6. Petitioners No.1 to 5 are working as Associate Professors, whereas petitioners No.6 to 13 are working as Assistant Professors in non-aided affiliated private college i.e S.D College, Barnala in State of Punjab. The petitioners have challenged the impugned order dated 30.11.2012 (Annexure P-

13) whereby claim of the petitioners for grant of extension for refresher/orientation course has been rejected on the ground of financial crunch.

7. The petitioners state that they have completed necessary refresher/orientation courses on various dates as and when the said courses were made available to them as per the chart given herein below :-

Sr No	Name	Designation	Date of Joining	Next Grade (senior/selection) due from	Date of completion of RC/OC	Date on which next grade granted
1	ASHOK KUMAR	LECTURER	10.10.1984	27.07.1998	19.08.2000 02.06.2001	03.06.2001
2	MANOHAR LAL SHARMA	LECTURER	09.08.1994	09.08.1999	29.09.2001 03.01.2002 17.03.2007 24.12.2007	04.01.2002
3	AMRISH KUMAR	LECTURER	16.01.1989	27.07.2003	05.01.1995 23.04.1997 07.07.2001 28.12.2006	29.12.2006
4	NEERAJ BALA GOEL	LECTURER	01.09.1992	27.07.1998	20.04.2001 26.03.2002 28.03.2004 29.03.2005	26.03.2002
5	ANURADHA SHARMA	LECTURER	06.09.1994	06.09.1999	14.10.2000 17.12.2001 17.03.2004 03.04.2006	18.12.2001
6	SHAOIB ZAFAR	LECTURER	22.11.1999	22.11.2004	28.06.2006 17.03.2007 28.03.2009 31.12.2010	18.03.2007
7	ASHWANI KUMAR	LECTURER	22.11.1999	22.11.2005	28.06.2005 05.04.2006 22.05.2010 17.12.2012	06.04.2006
8	ANCHALA RUPAL	LECTURER	01.12.1999	01.12.2004	15.07.2003 13.06.2006 24.12.2009 23.12.2011	14.06.2006
9	UPASANA RANI	LECTURER	01.09.2000	01.09.2006	23.05.2005 28.12.2007 22.05.2010 17.12.2012	29.12.2007
10	BAHADUR SINGH	LECTURER	25.09.2000	25.09.2005	29.06.2006 26.03.2007 23.03.2009 13.07.2011	27.03.2007

11	ANAMIKA BHARDWAJ	LECTURER	29.05.2001	29.05.2007	10.02.2010 01.07.2011 11.02.2013	02.07.2011
12	RAJNI GUPTA	LECTURER	03.08.2002	03.08.2008	28.12.2007 24.12.2009 28.12.2010 17.12.2012	25.12.2009
13	REETU AGGARWAL	LECTURER	31.10.2002	31.10.2008	29.06.2009 26.03.2010 30.06.2012	27.03.2010

8. Learned counsel for the petitioners contend that state implemented the revised pay scales, as notified in 1998 notification of UGC (Annexure P-2). The relevant whereof is extracted herein below :-

7.00 CARRER ADVANCEMENT

7.1.1 Minimum length of service for eligibility to move into the grade of Lecturer (Senior Scale) would be four years for those with Ph.D, five years for those with M.Phil and six years for others at the level of Lecturer, and for eligibility to move into the Grade of Lecturer (Selection Grade)/ Reader the minimum length of service as Lecturer (Senior Scale) shall be uniformly five years.

7.1.2 For movement into grades of Reader and above, the minimum eligibility criterion would be Ph.D. Those without Ph.D can go up to the level of Lecturer (Selection Grade).

7.1.3 A Reader with a minimum of eight years of service in that grade will be eligible to be considered for appointment as a Professor.

7.1.4 The Selection Committees for Career Advancement shall be the same as those for Direct Recruitment for each category.

7.1.5 The existing scheme of Career Advancement for non academic staff namely, Assistant Director of Physical Education, Assistant, Registrar, Assistant Librarian would continue.

7.2.0 **LECTURER (SENIOR SCALE)**

A Lecturer will be eligible for placement in a senior scale through a procedure of selection, if she/he has:

- (i) Completed 6 years of service after regular appointment with relaxation of one year and two years, respectively, for those with M.Phil and Ph.D.
- (ii) Participated in one orientation course and one refresher course of approved duration, or engaged in other appropriate continuing education programmes of comparable quality as may be specified or approved by the University Grants Commission. (Those with Ph.D degree would be exempted from one refresher course).
- (iii) Consistently satisfactory performance appraisal reports."

9. It is the case of petitioners that the benefit of revised pay scale to those teachers serving in government colleges who have undergone refresher courses have been granted with effect

from the date they were eligible, regardless of the date they have undergone the refresher courses by giving relaxation of time period within which they were otherwise supposed to undergo the courses. It is common case of all the petitioners that they have all along been willing and ready to undergo the refresher courses. However, owing to the delay attributable to the respondents, the said refresher courses were not made available at the first instance and as and when they were asked to undergo the same, they have successfully completed the courses.

10. The petitioners have further stated in the petition that once it is established that similarly situated teachers in the government colleges have been granted benefit of UGC pay scales, then denial thereof to the petitioners on the basis of financial crunch is not a legally sustainable ground. They contended that it is an established principle of law that the equals cannot be treated unequally.

11. The stand taken by the respondents in their counter affidavit filed by Director Public Instruction (Colleges) essentially hinges on following three grounds :-

- i) Service rules governing the teachers of colleges are different from those of the teachers serving in government aided colleges;
- ii) The decision to relax the period of delay in undergoing refresher/orientation courses in order to grant them the benefit of UGC pay scales with effect from the date of their eligibility is a policy decision and

cannot be interfered by this Court;

iii) The benefit of relaxation of time period for undergoing the refresher/orientation courses is being a benevolent/welfare gesture of the State. The State well within its right to confine the same to the teachers working in its own college and not the teachers working in government aided/funded colleges.

12. I have gone through the pleadings and the records appended thereto by the respective parties and have heard rival contentions of various learned counsel appearing in the cases, at length.

13. Once it is a conceded position that the teachers be it from the government colleges or the aided colleges, are to be treated on parity then on the face of it, the stand taken by the State that they can classify them in separate categories, is nothing but creating an artificial classification which has no nexus with the object sought to be achieved. Any such artificial classification cannot stand the judicial scrutiny and is hit by Article 14 of the Constitution of India. A moonshine defence has been taken by the State that service of teachers of government colleges is governed by the Punjab Civil Services Rules, whereas those of the government aided colleges is governed by the Act, 1974. This contention is untenable in view of the conceded position that the government aided colleges are funded to the extent of deficit of 95% by the State and they are eventually

under the ultimate administrative control of Director of Public Instruction. The said position is reflected by the provisions of grant-in-aid Scheme (Annexure P-1/B). The relevant extract thereof is extracted herein below :

“14. The DPI (Colleges) Punjab has the right to refuse, withhold, suspend stop, withdraw the grant partially or wholly, if the institution is unable to maintain proper academic standards and discipline and shall have the right to recover any such grant in case of over payment or misuse of the grant of non compliance with instructions issued by the Govt. from time to time.

15. The Government shall have the right to nominate representative of the Management Committee of the College.”

14. The other ground argued by learned State counsel that grant of benefit by relaxing the time period under the refresher/orientation courses is within the policy domain, is also not sustainable, as no such policy has been placed on record to reflect that the government has taken a policy decision. As and when any such policy decision is taken, the petitioners are at liberty to seek redressal of their grievance qua the said policy.

15. The third argument of learned State counsel that being a welfare/benevolent measure, such a relaxation of time period, as has been sought by the petitioners, cannot be granted to them since they are employees of private colleges. He contends that any such benevolent/welfare measure can be confined only to an

employee directly working for the State i.e government colleges herein. I am not in agreement with the submission of learned State counsel, in view of the fact that any welfare/benevolent measure has to be granted across board to every such employee who is to be treated on parity, regardless of their serving for the State or the State aided institutions.

16. Learned counsels for the petitioners have also placed reliance on a judgment rendered by Division Bench of this Court in CWP No. 10097 of 2001 titled as "**Sadhu Singh v. State of Punjab**" wherein it has been held that financial crunch in the State cannot be a ground for denial of benefit to the similarly situated employees. It is an admitted position that said benefit has since been conferred on the similarly situated government teachers working in the government colleges. Whereas, those working in the government aided colleges are being denied the benefit on the ground of financial crunch.

17. A perusal of the impugned order dated 30.11.2012 (Annexure p-13) reflects that the Administrative Department i.e Department of Education, Government of Punjab, was in agreement with the contentions of the petitioners that they were entitled to benefit which has been granted to the similarly situated teachers in the government colleges and their case was accordingly recommended to the Finance Department vide its proposal/office note dated 05.09.2012 (Annexure P-12) to approve the requisite extensions (as sought by the petitioners

upto 31.12.2005.) Speaking apart from the impugned order, the order dated 05.09.2012 clearly reflects that the Administrative Department has observed that request of the petitioners was under active consideration and the Administrative Department was only to pursue their case to get it expedited, as and when the funds were to be made available. While the petitioners were informed by respondent No.3 vide order dated 05.09.2012 that he had sent proposal to the Finance Department, Punjab to approve the requisite extension upto 31.12.2005. However, vide impugned order dated 30.11.2012, the Director Public Instruction (Colleges) conveyed that since the department of finance has expressed its inability to accept the proposal sent by the Administrative Department, therefore, relaxation as sought by the petitioners, cannot be granted to them. This led to the filing of present writ petition.

18. In view of my observations and the reasons as stated above, I am, therefore, of the opinion that the impugned order dated 30.11.2012 does not stand the judicial scrutiny, being violative of Article 14 of the Constitution of India and is as also against the settled principle of service jurisprudence that the equals must get equal salary. The impugned order dated 30.11.2012 is set-aside with a direction to respondents No.1 to 3 to grant relaxation to the petitioners for undergoing refresher/orientation courses at par with the relaxation granted to the teachers serving in the government colleges. The present

writ petitions are accordingly disposed of. Let the said exercise be carried out by the respondents within a period of three months from the date of receipt of certified copy of this order and the petitioners be granted consequential benefits accordingly.

(ARUN MONGA)
JUDGE

JANUARY 17, 2019
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| 1. | Whether speaking/reasoned : | Yes/No |
| 2. | Whether reportable : | Yes/No |