

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-5611-2016 (O&M)

Date of decision : 04.07.2019

Acharya Shambhu Nath Shastri

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Ms. Divya Sharma, Advocate for the petitioner.

Ms. Anju Sharma Kaushik, DAG, Punjab.

Mr. K.S. Rekhi, Advocate for respondent No.4.

JITENDRA CHAUHAN J.

This writ petition under Articles 226/227 of the Constitution of India has been filed for the issuance of a direction to the respondents to grant the benefit of college cadre and lecturer scale to the petitioner.

It is contended that the petitioner was appointed as a Sanskrit Teacher in Government College, Kapurthala on temporary basis vide office order dated 31.01.1977 and worked as such till the expiry of the academic session i.e. 23.03.1977. Thereafter, he was appointed on temporary basis as Sanskrit Teacher in Government Girls Higher Secondary School, Kapurthala vide order dated 03.05.1977 and worked as such till 30.09.1980. His services were regularized w.e.f. 01.10.1980. Vide order dated 20.12.1991 (Annexure P-1), the petitioner was transferred from Government Girls

Higher Secondary School, Kapurthala to Government College Kapurthala, earlier known as Randhir College, Kapurthala and at present called Nawab Jassa Singh Ahluwalia Government College, Kapurthala (respondent No.5), against a substantive post of college lecturer on a permanent basis to teach Sanskrit (Oriental Classes). The petitioner joined respondent No.5-college on 21.12.1991 and has been working there as such till date.

Further submits that the petitioner has been performing the same duties as are being performed by other lecturers of the college for the past more than 24 years. He is a scholar of Sanskrit and has been teaching *Prag Shastri*, *Shastri* and *Acharya* classes which equate with Diploma, Graduation Degree and Post Graduation Degree, respectively. However, he is not being paid the salary of a college lecturer and continues to be paid the salary of a school teacher which is in complete violation of the principle of 'Equal Pay for Equal Work'. It is further contended that there are only three Government Colleges in the State of Punjab where *Shastri* and *Acharya* Classes i.e. Oriental Studies are taught i.e. Government College, Nabha; Government College, Patiala (both being affiliated to Punjabi University, Patiala); and respondent No.5-college (being affiliated to Guru Nanak Dev University, Amritsar-respondent No.4). The benefit of pay scale of a college lecturer has already been granted to the Oriental Studies' teachers teaching in Government College Nabha and Government College, Patiala in terms of the judgment rendered by Hon'ble the Supreme Court in SLP (Civil) No.17176-17177 of 2013 (Annexure P-5).

On the other hand, learned State counsel submits that the

instant petition severely suffers from delay and laches. The petitioner already stands superannuated from service on 31.07.2016. Even otherwise, the petitioner belongs to school cadre and teaching in a college could not entitle him to the pay-scale of college cadre. He even did not possess necessary qualification for college lecturers at the time he was transferred to respondent No.5-college. The judgment (Annexure P-5) cited by the petitioner does not help him as it is a judgment in persona.

Heard.

As regards the delay in laying claim by the petitioner, the relief sought in the present petition would be termed as a recurring cause of action, therefore, the delay, if any, can safely be ignored.

It is not in dispute that the petitioner, who belongs to School cadre, was transferred in College cadre to teach Sanskrit in the year 1991. Till the date of his retirement, the petitioner had been discharging the duties and responsibilities of a College Lecturer. However, in order to deny him the benefits admissible to him for discharging higher duties and responsibilities, the respondents have taken a plea that at the time of his transfer from School cadre to College cadre, the petitioner did not possess requisite qualification for being a College lecturer. However, this plea would not be available to the respondents who being a competent authority, passed the orders of transfer of the petitioner. If the petitioner was not qualified to be a college lecturer, the respondents ought not have transferred him to a college and once having done so, the petitioner cannot be denied the benefit of higher remuneration attached to the post in question. The case of

the petitioner is squarely covered by the principle of 'Equal Pay for Equal Work'. A Full Bench of this Court in ***Subhash Chander Vs. State of Haryana and others, CWP-21358-2008, decided on 20.12.2011***, while deciding the question “Whether an employee who is given independent charge and responsibility of a higher post alone is entitled to regular pay scale without being substantively appointed to such post.”, has held as under:-

“12. A close examination of Rule 4.13 of the Rules would show that once a person like the petitioner has been given independent charge of a post, which involves assumption of duties and responsibilities of greater importance than the one attaching to the post held by such an employee on which he holds a lien or would have held his lien had it not been suspended, then he is entitled to pay of the higher post. A post is regarded to involve assumption of duties and responsibilities of greater importance if it carried higher pay scale than the one on which he holds the lien. In the present case, the pay scale of the post of Accountant is lower than that of the post of the Secretary.

13. xxxx

14. xxxx

15. xxxx

16. xxxx

17. In view of the above, the question posed in para no.1 is answered in affirmative and it is held that if any employee is appointed to officiate on a post involving assumption of duties and responsibility of greater importance than those attaching to the substantive post then he would be entitled to the salary of his officiating

post in higher grade....”

In view of the above, the petitioner is held entitled to the higher pay and emoluments attached to the post of a college lecturer. His pay, pension and other retiral benefits be re-fixed accordingly. However, the arrears thereof shall be restricted to a maximum of 38 months from the date of filing the instant petition and be paid within three months from the date of receipt of a certified copy of this judgment.

Allowed in the above terms.

04.07.2019

atulsethi

**(JITENDRA CHAUHAN)
JUDGE**

Whether speaking/reasoned :

Yes

No

Whether Reportable :

Yes

No