

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

CWP No.3365 of 2018 (O&M)

Date of decision : 21.05.2019

Subhash Sapra

...Petitioner

Vs.

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Gaurav Tyagi, Advocate,
for the petitioner.

Mr. Harish Nain, AAG, Haryana.

Ritu Bahri, J. (oral)

Petitioner is seeking a writ of certiorari for quashing the order/memo dated 01.12.2017 (Annexure P-11), whereby benefit of grant of Selection Grade has been denied to the petitioner keeping in view that he is facing departmental proceedings under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules. He is seeking further direction to the respondents to grant him the Selection Grade of Rs.12000-18300, which fell due to the petitioner on his entitled on 27.07.1998 (cut off date) as per Govt. notification dated 08.12.2000 (Annexure P-1).

The petitioner was appointed as Assistant Professor/Lecturer in Commerce on 18.06.1987 in the Department of Commerce in Govt. College, Krishan Nagar, District Mahendergarh. He was granted senior scale on completion of 08 years of service in the year 1995. After 11 years of service, he was entitled to be awarded Selection Grade in view of the notification dated 08.12.2000 (Annexure P-1). As per this notification, after completing 11 years of service, petitioner was required to be placed in the

Selection Grade. Petitioner has further placed on record instructions dated 05.12.2001 (Annexure P-2), relevant part of the same is reproduced as under:-

“(V) Having considered the issues and implications involved in each of these propositions in depth, and with the above stipulation, the Committee decided on following principles to be followed by the Higher Education Department in the Government/Universities/Colleges and other Institutions wherever these revised schemes are applicable. Subject to fulfilment of all other conditions and requirements for grant of Senior Scale/Selection Grade:-

(a) the case of teachers, who are without Ph.D. or M. Phil. for grant of Senior Scale/Selection Grade are to be considered on completion of total eligible service of 6/11 years or as 27.07.1998, whichever is later.”

Petitioner has not done Ph.D./M.Phil. and has completed 11 years of service before the cut off date i.e. 27.07.1998. As per certificates (Annexure P-3 Colly.), petitioner has attended/completed various orientations and refresher courses during his service period w.e.f. 21.12.1991 to 08.06.2010. With regard to his grievance, petitioner made his first representation dated 06.12.2012 (Annexure P-4). Thereafter, he made representations dated 23.04.2014, 10.08.2016, 05.09.2017 and 19.09.2017 (Annexures P-5 to P-8), but no action has been taken thereon till date. Hence, this petition.

Upon notice, written statement on behalf of the respondents have been filed, wherein it has been stated that petitioner's case for award of selection grade was sent by the Principal, Dronacharya Govt. College, Gurugram on 25.10.2012. During investigation, it was found that the petitioner was charge-sheeted under Rule 7 of the Haryana Civil Service (Punishment and Appeal) Rules, 1987 vide office order dated 19.08.2010/27.08.2010 (Annexure R-1). A screening committee was

constituted for grant of selection grade to the Lecturers of the Govt. colleges

and meeting of the screening committee was held on 13.07.2018 (Annexure R-2). As per recommendation of the screening committee, matter of the petitioner was sent to the Chief Secretary, Govt. of Haryana, for his opinion. It was further stated that departmental proceedings against the petitioner were still pending. As and when departmental proceedings would be concluded, the case of the petitioner would be referred to the office of the Chief Secretary to Govt. of Haryana.

After hearing learned counsel for the parties, present petition deserves to be allowed. At the outset, perusal of the charge sheet dated 19.08.2010 (Annexure R-1) shows that while he was posted as Lecturer in Commerce in Govt. College, Sector-9, Gurugram from 14.01.2006 to 07.01.2006, he indulged in private tuitions at his residence at Gurgaon. Apart from this, he sexually harassed one of his students Miss Preeti Bassa, while taking private tuition at his residence. An FIR No.981 dated 23.12.2005 was also got registered by the aggrieved parents. Along with the charge sheet, list of documents and witnesses was handed over to the petitioner. Petitioner is claiming the benefit of grant of Selection Grade as per clause (v) (a) of the notification dated 05.12.2001 (Annexure P-2). As per this notification, selection grade can be given after completing 06/11 years of service as on 27.07.1998. The respondents are not disputing that the petitioner was appointed as Assistant Professor of Commerce on 18.06.1987 and he completed 11 years of service on 18.06.1998 i.e. much before 27.07.1998. Hence, he had a right to be given the benefit of senior scale/selection grade w.e.f. 18.06.1998 when he had completed 11 years of service. At that time i.e. in 1998, he was not facing any departmental proceedings nor any charge-sheet had been issued to him. Hence, the

charge sheet dated, which was issued on 19.08.2010 (Annexure R-1), cannot be made basis for taking the benefit of senior scale selection grade as per notification dated 05.12.2001 (Annexure P-2).

Hon'ble the Supreme Court in Union of India vs. K.V. Jankiraman, 1991 (3) SCT 317, has held that promotion can be withheld only when disciplinary proceedings have been initiated, after issuing charge sheet or memo of charge to the employee. Simply because preliminary enquiry is pending against an employee, that cannot be made a ground to deny him promotion. In para nos. 16 and 17, it has been further held as under:-

“16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a chargesheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many-cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/chargesheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend

the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows:

"(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

(2)

(3)

(4) the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before;"

17. There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion No.1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions."

It is not the case of respondents that the petitioner was facing any charge sheet or disciplinary proceedings when he had completed 11 years of regular satisfactory service as on 18.06.1998. As per reply filed, his case was recommended for grant of selection grade on 25.10.2012. At that time, it was found that he was facing a charge sheet dated 19.08.2010/27.08.2010 (Annexure R-1). The screening committee has wrongly denied the benefit of selection grade to the petitioner. He cannot be denied the said benefit keeping in view the notification dated 08.12.2000 (Annexure P-1) and instructions dated 05.12.2001 (Annexure P-2).

In view of the above discussion, the present petition is allowed

and respondents are directed to grant selection grade of Rs.12000-18300 to

the petitioner w.e.f. 27.07.1998 i.e. the cut off date as per notification dated 08.12.2000 (Annexure P-1) along with all consequential benefits. This exercise be completed within a period of six months from the date of receipt of certified copy of this order and compliance report thereof, be sent to this Court.

21.05.2019
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No