

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

CWP-13897-2018

Date of decision: - 25.02.2020

Mohinder Lal and others

....Petitioners

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Ms. Aruna Sachdeva, Advocate,
for the petitioners.

Ms. Anju Arora, Additional Advocate General, Punjab.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the challenge is to the order dated 17.04.2018 (Annexure P-11), by which the claim of the petitioners for fixing the pensionary benefits on the last drawn wages which they were getting while working on a higher post on current duty charge, has been rejected. The prayer of the petitioners is for issuance of a direction to the respondents to grant them the benefit of fixation of the pensionary benefits on the last drawn pay while working on the post of Block Primary Education Officer (hereinafter referred as 'BPEO') though they were working on the higher post of BPEO on current duty charge.

As per the averments mentioned in the writ petition, all the petitioners were working on the post of BPEO on officiating basis at the time of their retirement. Though, the petitioners have already been given

the salary for the period they discharged the duties of the post of BPEO, but they were not satisfied with the same as they also requested the respondents-department to compute their pensionary benefits on the basis of the pay, which they were drawing on the post of BPEO at the time of their retirement. The said claim of the petitioners was rejected by the respondents vide order dated 17.04.2018 (P-11) while replying to the legal notice served by the petitioners. The said order is under challenge in the present writ petition.

Upon notice of motion, the respondents have filed the reply.

In the reply, the respondents have stated that the petitioners were working on a substantive rank of Headmaster. Respondents have further stated in the reply that petitioners were only discharging the duties of the higher post of BPEO in an officiating capacity, hence, their pensionary benefits can only be fixed keeping in view their substantive rank, therefore, their claim for computing the pensionary benefits on the basis of salary, which they were drawing while working in officiating capacity as BPEO, is not maintainable/covered under the rules.

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

It is not disputed that the substantive rank of the petitioners at the time of their retirement was that of Headmaster. It is also not disputed by the learned counsel for the petitioner that under the rules governing the service, pensionary benefits are to be fixed according to the substantive rank held by an employee at the time of retirement.

Learned counsel for the petitioners in support of claim of the

petitioners relies upon a judgment of Co-ordinate Bench of this Court passed in **CWP-17358 of 2015** titled as '**Jagjit Singh and others** Vs. **State of Punjab and others**', decided on **09.09.2016**. The relevant paragraphs of the said judgment is as under: -

“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.”

Learned counsel for the petitioners on the basis of the judgment in **Jagjit Singh** (*supra*) contends that the petitioners are entitled for the benefit of computation of their pensionary benefits on the last pay drawn on the post of BPEO even though they were working on the said post on officiating basis.

Learned counsel for the respondents argues that the judgment in **Jagjit Singh** (*supra*) of the Co-ordinate Bench was challenged by the State of Punjab by filing **LPA No.37 of 2017** titled as '**State of Punjab and others** Vs. **Jagjit Singh and others**', in the said LPA, the order passed by the Co-ordinate Bench dated 09.09.2016 has already been modified by the Division Bench on 25.09.2018. The relevant portion of the said judgment of the Division Bench is as under: -

“[2] State of Punjab has preferred this Letters Patent Appeal against the decision dated 09.09.2016 of the learned Single

Judge whereby the order dated 20.10.2014 was set aside and a direction has been issued to fix the pension and retiral benefits of the respondents “on the basis of last pay drawn by them in their officiating capacity as Principal/Headmaster/Headmistresses except petitioners Nos.5, 6 and 16 as the State is not opposing their claim.” In other words, the learned Single Judge has held that out of 17 writ petitioners, three had been promoted as Principal/ Headmaster/ Headmistresses on regular basis and the State conceded their claim for fixation of pension and other retiral benefits as per the last pay drawn by them. In respect of remaining 14 writ petitioners, learned Single Judge has found that since they were also officiating as Principal/ Headmaster/ Headmistresses, they are entitled to pension and other retiral benefits as per the last pay drawn by them on such higher posts.

[3] It is not necessary to mention further facts in extenso as a brief reference to the relevant facts has been already given in the judgment dated 23.05.2017 rendered in LPA-681-2017 (**State of Punjab and another vs Sukhminder Singh and others**) and other connected cases, in which Review application bearing RA-LP-35-2017 has also been disposed of vide order dated 31.08.2018. Suffice to mention that several posts of Principal/ Headmaster/Headmistresses meant to be filled up by promotion from amongst Lecturer/ Master/Mistresses are lying vacant and the promotion quota has not been exhausted apparently for the reasons like pendency of seniority dispute. Since regular promotion could not be made, most of the senior most persons were asked to officiate on the promotional posts. They have unfortunately retired from service without getting formal tag of regular promotion. It is in this backdrop that the learned Single Judge vide order under appeal has held them entitled to pension and other retiral benefits as per the last pay drawn by them on officiating posts.

[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.”

A bare perusal of the above order would show that the Division Bench had already given a direction to the respondents to consider the claim of the employees, who were working on officiating capacity against a higher post at the time of their retirement, for their regular promotion against the available regular vacancies of the higher cadre and in case, the employees are held entitled for the promotion against the vacancies available in the higher cadre, against which posts

employees were discharging duties on officiating basis, the regular promotion was to be granted with the consequential benefits.

Learned counsel for the petitioners does not dispute the order passed by the Division Bench of this Court in LPA No.37 of 2017.

Learned counsel for the petitioners states that the petitioners will be satisfied in case the present writ petition is also disposed of in the same terms as **LPA No.37 of 2017** titled as '**State of Punjab and others Vs. Jagjit Singh and others**', decided on 25.09.2018.

Keeping in view the above, the present writ petition is disposed of with a direction to the respondents to consider the claim of the petitioners for regular promotion against the available vacancies of the higher cadre of BPEO against which the petitioners were discharging duties at the time of their retirement for regular promotion, keeping in view their service record and the rules & regulations governing the service. Let consideration, as directed in this order, take place within a period of three months from the date of receipt of certified copy of this order and in case, the petitioners are found entitled for the relief after consideration, the same be also released to them within a period of one month thereafter.

February 25, 2020
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes