

Sr. No.752 (Ist case)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
CWP-10033-2001 (O&M)
Date of decision: 26.05.2022

Ram Lal Sharma and others	Vs.	...Petitioners
State of Haryana and others		...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: None for the petitioners.

Mr. R.D.Sharma, DAG, Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of mandamus directing the respondents to continue to grant higher pay scale (master scale) to the petitioners from the dates of acquiring higher qualification of BA/Inter/BA-I in terms of letter dated 23.07.57.

2. Petition was admitted on 11.02.2003.

3. When called out for hearing, there is no representation on behalf of the petitioners. It seems that by sheer effluxion of time and pendency of the writ petition for more than 20 years before this Court, either it has been rendered infructuous or even otherwise the petitioners seem to have lost interest in pursuing the same.

4. In any case, having perused the pleadings, it appears that even on merits, claim of the petitioners is not admissible. They are seeking grant of pay scale of Rs.110-250 (w.e.f. 01.11.1956) and Rs.220-400 (w.e.f. 01.12.67) on acquiring of higher qualification of B.A./Inter/T.D.C. Part-I. Reliance is placed on an office order/ pay revision letter dated 23.07.57 (Annexure P-1) governing pay scales of certain classes of non-gazetted Govt. Servants, including teachers with effect from 01.05.1957 (Annexure P-1), appointed after the formation of State of

Haryana. In this context, a decision has already been rendered by this Court in CWP No.6645 of 2000 titled as ***Pushpa Devi Vs. State of Haryana and others decided on 25.05.2000***. Speaking for this Court, G.S.Singhvi, J. (as his Lordship then was in this Court) opined as under :-

“4. We have thoughtfully considered the argument of the learned counsel and have gone through the decisions relied upon by him, but have not felt persuaded to agree with him that the petitioner is entitled to get relief in terms of the prayer made. In the past a number of writ petitions and appeals have been filed in this Court and the Supreme Court for grant of the benefit of higher grade in accordance with the instructions contained in the circular dated 23.7.1957. Some of these petitions/appeals have been dismissed while others have been allowed and directions have been given for payment of salary in the higher pay scale on the basis of higher qualifications possessed by the petitioner-appellant. However, before advertng to those decisions, we deem it proper to examine the ambit and scope of Circular dated 23.7.1957 and other circulars issued by the Government of Haryana, which constitute the bed-rock of the petitioner's claim. The same reads as under:-

"No. 5068-II/57/5600

From

Sh. S.R. Verma, IAS,

Secretary to Government, Punjab,

Finance Department.

To

All Heads of Departments and the High Court, Commissioners of Divisions, District and Sessions

Judges and Deputy Commissioners, in the Punjab.

Dated Chandigarh, the 23rd July, 1957.

Sir,

I am directed to state that for some time past the question of the revision of scales of pay of the subordinate services and removing anomalies occasioned by the piecemeal of non-gazetted Government servants in the past, has been engaging the attention of the Government. After carefully considering the recommendations made by the Pay Revision Committee appointed to examine this matter, it has been decided that the existing scales of pay of certain categories of posts should, with effect from the 1st May, 1957, be revised as shown in enclosed statement.

2. It has further been decided to rationalise the scales of pay of certain posts such as Stenographers, Store Keepers, Librarians, and Assistant Librarians, Photographers, Head Clerks and Head Assistants, for which there exists at present multifarious scales of pay varying from office to office, to the following extent:

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3. Teachers in the Education Department : it has been decided that all the teachers according to their qualifications should be placed in the following two head categories:

CATEGORY 'A'

B.A./B.Sc./B.Com./B.Sc.(Agriculture)/and B.T./Diploma in Physical Education/Diploma in Senior Basic Training.

CATEGORY 'B'

Group I : Matric with Basic Training (including JTs)

Group II : J.Ts. (including Assistant Mistress with B.A./Inter/Matric Plus J.A.V. Training).

Group III : (i) Shastries.

(ii) Gianies, Prabhakars, Drawing Masters and Craftsmen Certificate Holders.

(iii) Munshi Fasil.

(iv) S.Ts. including S.Vs. with training in physical education or Agriculture.

Group IV : Untrained teachers with qualifications like B.Com., B.Sc. (Agriculture) etc.

In addition, there are smaller categories of special posts, such as Head Master/Headmistresses/District Inspectors of Schools, with qualifications of Category 'A' above. Teachers in these categories, regardless of men and women cadres, should carry the following scales of pay:

CATEGORY 'A'

Rs. 110-3-190-10-250 with a higher start for M.A. or M.Sc. as at present, the existing percentage of posts fixed by Government for the scales of Rs. 110-8-190/10-250 and Rs. 250-10-300 should remain unchanged at 85 per cent and 15 per cent respectively.

CATEGORY 'B'

Lower : Rs. 60-80/5-100-5-130

Middle : Rs. 120-5-175

Upper : Rs. 140-10-220

With a view to providing incentives, it has been decided that posts falling in these groups should be in the following percentages:

Group : Lower scale : 85 per cent.

Middle scales : 15 per cent. 15 per cent of teachers in the group should straightway be promoted to the Middle scale by selection based on seniority and merit, while the rest should be given the lower scale.

Group II

Existing incumbents in this should be allowed to retain their present scale of Rs. 80-5-110/9- 190/10-250.

Group III

Lower scales : 50 per cent

Middle scales : 35 per cent

Upper scales : 15 per cent.

(i) So far as the upper scale is concerned 15 per cent of teachers in this group are already enjoying it and no selection for this scale of pay is immediately required. For further

selections in this scale of pay, the choice should be confined to teachers in the Middle scales, the selections to be based on seniority and merit irrespective of educational qualifications.

(ii) 35 per cent of teachers in this group are at present in the scale of Rs. 104-7-140 which correspond to the proposed middle scale of Rs. 120-5-175. Their pay should be fixed in the later scale according to the principles defined in paragraph 4 below. Further selection to the Middle scale should be by promotion based on merit and seniority irrespective of the educational qualification.

(iii) Shastries should be allowed as starting pay of Rs. 80/- per mensem in the lower scale whereas, Prabhakars/Gianies/Drawing Masters/Arts and Crafts teachers, a starting pay of Rs.72/- per mensem in the lower scale.

Group IV :

The present incumbents constituting this group should continue in their existing scale of pay. Further requirement of such untrained teachers should be discouraged. Similar categories of special posts like Headmaster/Headmistresses/ District Inspectors and Inspectors of Schools, should continue to be in the existing scale of pay of Rs. 250-10-300. If their will remain any class of teachers not covered by these orders, such cases may be referred to Finance Department for a final decision.

Yours faithfully,

Sd/-

Sant Ram Verma

Secretary to Govt. Punjab."

On September 5, 1979, the Government of Haryana issued the following order:-

"Sanction of the Governor of Haryana is hereby accorded w.e.f. 5.9.1979 of the grant of Master grade to unadjusted J.B.T. teachers who have passed B.A., B.Ed., subject to the following conditions :

i. That the expenditure involved would be met from the savings of the current year revised sanctioned estimates.

ii. That these teachers will not be allowed any seniority in the cadre of masters.

iii. That it will not form a precedent for future.

iv. That the award of Master's grade to the concerned teachers would be personal to them."

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10. In our opinion, the reasons assigned by respondent No. 2 for declining the petitioner's prayer can neither be termed as arbitrary nor extraneous nor it can be said that the petitioner has been discriminated in the matter of grant of higher pay scale. The Circular dated 23.7.1957 was in existence when Legislature of Haryana enacted the 1971 Act and the State Government had framed the 1974 Rules. If the Legislature and its delegate wanted to confer the benefit of higher pay scale/grade to the Teachers of the private aided schools who possessed qualifications higher than those prescribed for the post at the time of recruitment or who acquired such qualifications after

joining the service then they would have incorporated the Circular dated 23.7.1957 either in the 1971 Act or in the 1974 Rules, However, the fact of the matter is that neither the 1971 Act nor the 1974 Rules provide for grant of higher pay scale to the Teachers employed in the private aided schools simply because he/she possessed higher qualifications at the time of recruitment or acquired such qualifications after joining the service. Therefore, we are unable to agree with Shri Aggarwal that the reasons assigned by respondent No. 2 for rejecting the petitioner's claim are arbitrary and the order passed by him is vitiated by an error of law justifying interference by the High Court.

11. *The matter deserves to be examined from another angle. A person holding qualification of Intermediate or B.A. may apply for recruitment as J.B.T. Teacher for which the minimum qualification is Matric and two years J.B.T. course. If he/she is appointed as J.B.T. Teacher and joins the post, he/she does so as per his/her sweet will. He/she then becomes entitled to be paid salary in the pay scale prescribed for the post of J.B.T. Teacher with qualification of Matric and the required training and continues to be a member of the cadre of J.B.T. Teachers irrespective of his/her acquiring higher qualifications during the course of employment. His/her cadre does not undergo change with the acquisition of higher qualification and he/she does not become a member of another service. Therefore, a person who is appointed as J.B.T. Teacher with higher qualification does not automatically become entitled to be paid salary in the pay scale prescribed for a higher post. If we were to accept the claim of the petitioner for fixation of her pay in the higher pay scale from the date she has passed intermediate examinations, then an extremely anomalous situation would crop up. Acceptance of the claim of the petitioner and the similarly situated persons would amount to judicial recognition of a situation in which a person is recruited as J.B.T. Teacher pursuant to an advertisement for recruitment of J.B.T. Teachers which may have been issued by the competent authority indicating the minimum qualifications as also the pay scale prescribed for that post, but he will have to be paid salary in the higher pay scale prescribed for a higher post. In other words, the Management will have to fix the salary of a J.B.T. Teacher in the pay scale of a higher post which may neither have been advertised nor against which the appointment may have been made. It would also mean that although a J.B.T. Teacher will be required to teach classes of a particular level, he will be placed at par with Language Teacher, Master/Mistress/Lecturer or a Head Master in the matter of pay scale, even though the latter categories of teachers are required to teach higher classes. Other anomaly which will result due to acceptance of the claim of the petitioner would be that although she had assumed charge of the post of J.B.T. Teacher, she will have to be paid salary of the higher posts against which she did not work. It would also amount to introducing a fiction, namely, that a J.B.T. Teacher becomes a notional member of the cadre of the higher post and he/she will be deemed to have been appointed on a higher post for which he/she never applied. Thus, we do not find any rationale or justification to accept such a claim.”*

5. I am in respectful agreement with the above view. Learned State counsel has also canvassed arguments as per the stand taken in the written statement and relies on the judgment, *ibid*.

6. In view of the aforesaid, no grounds are made out to interfere.
Dismissed.

26.05.2022
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No