

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

CWP No.4740 OF 2014 (O&M)

Date of decision : 07.11.2022

Sulekh Chand

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Salil Bali, Advocate
for the petitioner.

Mr. Saurabh Mohunta, D.A.G., Haryana.

ARUN MONGA, J.

Petitioner, blind/visually impaired to the extent of 100%, is before this court, in what can be termed as his fourth foray of his, seeking, *inter alia*, issuance of a writ in the nature of Certiorari for quashing an order dated 20.09.2013 (Annexure P-25), whereby his claim for promotion to the post of Music Lecturer was rejected.

2. Succinct facts first, as pleaded in the petition.

2.1. Pledged case is that, notwithstanding his visual impairment, petitioner acquired following educational qualifications:-

Examination Passed	Year of Passing
Matriculation	1987
10+2	1990
Bachelor of Arts	1996
M.A.	2000
Sangeet Parbhakar (Tabla)	1985
Sangeet Parbhakar (Vocal)	1992
Sangeet Parveen (Vocal)	2000
National Education Test	2001

He also qualified the National Educational Eligibility Test for Lectureship in the subject of Music in December 2001, the requisite eligibility for Lectureship in University/Colleges (Annexure P-9).

2.2. Petitioner was appointed as a Tabla Player in Government College, Panchkula, on 06.04.1988. Ever since, till the filing of the instant petition, he continues to work on the said post for the past 34 years.

2.3. After completing his M.A., he moved a representation seeking promotion in the office of respondent No.2-Higher Education Commissioner in the year 2000, i.e. more than 12 years back. However, vide letter dated 18.07.2002 (Annexure P-11), the Principal of the College where the petitioner is working, was intimated by respondent no. 2 that there was no provision for promotion to the post of Lecturer. Therefore, it was not possible to promote the petitioner.

2.4. Subsequently, despite having cleared the National Educational Eligibility Test for Lectureship in the subject of Music, petitioner though also cleared National Educational Eligibility Test for Lectureship in the subject of Music in December 2001, but yet he was not made Lecturer.

2.5. Aggrieved, petitioner moved a statutory representation dated Nil before the Chief Commissioner for Persons with Disabilities, New Delhi. Vide an office order dated 05.07.2007 (Annexure P-12), his representation was duly forwarded to the Commissioner (Disabilities), Haryana, with a specific direction that petitioner should not be denied promotion merely on ground of his disability.

2.6. Chief Commissioner (Disabilities) also directed the Commissioner (Disabilities), Haryana vide letter dated 29.05.2007 (Annexure P-13) to enquire into the matter and decide the case of the petitioner.

2.7. However, despite several reminders and representations, nothing was heard from the respondents. Petitioner caused a legal notice dated 04.08.2010 (Annexure P-17/Colly) through his counsel, seeking promotion to the post of Lecturer in Music. In response, respondent No.4-Assistant Director (Colleges-I) informed vide a letter dated 06.08.2010 (Annexure P-18) that after due consideration, case for petitioner's promotion to the post of Lecturer was filed/rejected.

2.8. Assailing the aforesaid rejection, petitioner approached this court vide a writ petition bearing CWP No.16533 of 2010 which was dismissed as withdrawn with liberty to file fresh one. Petitioner subsequently filed another writ petition bearing CWP No.18358 of 2012 which was, however, dismissed by a Single Bench on merits vide order dated 21.09.2012 (Annexure P-23), *inter alia*, on the ground that in the absence of any channel of promotion or any statutory Rules, claim of petitioner could not be accepted.

2.9. Challenging the aforesaid SB order, the petitioner filed a letters patent intra court Division Bench appeal bearing LPA No.1821 of 2002. Same was decided vide order dated 02.07.2013, Annexure P-24, whereby the order of the Single Bench was modified, inasmuch as, the respondents were directed to consider the desirability of providing some promotional avenues to the appellant-petitioner, if it is feasible, to prevent stagnation in his service career and to take appropriate action in accordance with law.

2.10. Equipped with Division Bench LPA order, the petitioner approached respondent No.3-Director General Higher Education, Haryana by way of another representation. However, once again his claim was rejected on the same ground of there not being any provision in Rules for promotional avenues for Tabla Players. Further, qua stagnation on one post, as was pointed out by the Division Bench, that too was not found favor stating that the Government had already provided the benefit of three ACP scales to this cadre.

2.11. Hence, the fourth round of litigation in this court through instant writ petition.

3. In the return, impugned order has been defended *inter-alia* on the following grounds:-

- “i. As per existing service rules there is no provision of any kind of promotion to the post of lecturer in Govt. Colleges.*
- ii. As per rule the post of lecturer can be filled either by direct recruitment or by transfer or deputation of a lecturer already in service of any State Govt./Govt. of India.*
- iii. Sh. Sulekh Chand faced HPSC for interview for lecturer in music in the year 2003 but was not selected.*
- iv. He was not selected by the selection committee of Higher Education Department during the year 2006 when there was 4 posts reserved for visually disabled persons in the subject of music.*
- v. The Petitioner had served a legal notice wherein it is mentioned that the State of Haryana has formulated certain conditions for promotion as lecturers in Music for Haryana State School Education Department which by all means should be applicable to Higher Education. In this regards it is submitted that in School Education Department policy of promotion exists from elementary to secondary education, but the recruitment /promotion in college cadre is governed*

by separate service rules and as per the recommendations made by UGC according to which the post of college lecturer can be filled only by direct recruitment. On the above mentioned ground the legal notice served by the petitioner was ignored.

vi. *It is further submitted that petitioner, when joined the service as Tabla Player fully knew that there would be no promotion avenues available on this post for him and despite that he has joined this service.*

vii. *It is further submitted that keeping in view the stagnation of employees the Govt. has provided for grant of ACP for this cadre as per ACP, Rules, 2008.*

viii. *That in compliance with the order dated 02.07.2013 of Hon'ble High Court passed in LPA No. 1821 of 2012 in CWP No. 18358 of 2010, detailed speaking orders have already been issued by the department vide order no. 15/26-2011CI(2) dated 20.09.2013 (Annexure R-1)."*

4. Learned counsel for the petitioner would vehemently argue that the petitioner being a 100% visually impaired person and working as Tabla Player for the last more than 30 years is entitled to be promoted to the post of Lecturer in Music. He would further argue that in light of the policy formulated by the Govt. for the welfare of the visually handicapped persons and the directions issued by the higher authorities, the respondents ought to have framed/amended the Rules to provide for promotional avenue to Tabla Players like the petitioner as Lecturer in Music in the College cadre. This would also have been in consonance with observations made in the final order dated 20.07.2013 passed by the Division Bench while disposing of LPA No. 1821/2012 and the interim orders dated 22.02.2018 and 29.01.2019 passed in the instant petition.

4.1. He would contend that even on compassionate grounds, the petitioner, being 100% blind, is entitled to be promoted as Lecturer in Music in the College cadre.

4.2. Relying upon the Haryana Government Notification dated 27.03.1998 (Annexure P-19), he would canvass that in the Haryana School Education Department, there is a provision for appointment of School Lecturer in Music by promotion.

5. He would further argue that in a similar situation in the Administration of Justice Department, Haryana, one Shyam Sunder Shukla, Legal Assistant (Blind) was promoted as Superintendent(Legal) vide order dated 02.02.2001 (Annexure P-26). The petitioner is thus entitled to be promoted as Lecturer in Music on parity with the said case.

6. *Per contra*, learned State counsel would argue that the claim of the petitioner for promotion as Lecturer in Music was considered and rightly rejected vide impugned speaking order dated 20.09.2013. Subsequently, on further consideration, in compliance with the orders dated 20.07.2013, 22.02.2018 and 29.01.2019 passed by this Court, the competent authority, by taking into consideration the facts and circumstances in their totality and after due application of mind, has already amended the relevant Rules. Promotion of Tabla Player as Senior Tabla Player has been provided in the Rules. In accordance therewith, the petitioner and four others have been actually promoted from the post of Tabla player to that of Senior Tabla Player (College cadre) in pay scale FPL-5 Cell-1-29,200-92,300.

6.1. He would urge that there is no provision in the Rules for promotion of Tabla Player or Senior Tabla Player to the post of Lecturer

in Colleges which can be filled only by direct recruitment or by transfer or deputation of a Lecturer already in service.

6.2. He would further argue that the petitioner had applied for the post of Lecturer in Music, when there were 4 posts reserved for visually disabled persons in the subject of music in the year 2006. However, he was not selected by the Selection Committee set up by respondent No.2.

6.3. Further, it was contended that there is no parity or similarity between the provision in the School Education Department for promotion of Master/Classical & Vernacular Teacher to the post of Lecturer Music in school cadre vis-à-vis the promotion of Tabla Player to the post of Lecturer in Music in the College cadre.

6.4. Likewise, there is no parity between the promotion of Shyam Sunder Shukla, Legal Assistant (Blind) as Superintendent (Legal) in the Administration of Justice Department, Haryana, and the petitioner's claim.

6.5. He would also contend that for stagnation, employees of the State have been provided a salve by granting three ACP Scale as per the ACP Rules.

7. Having had the benefit of hearing the competing contentions, I shall now proceed to deal with the same and render my opinion thereupon.

8. Before adverting further, reference may first be had to court orders dated 22.02.2018 and 29.01.2019 passed during pendency of present writ proceedings by Rajiv Narain Raina, J. (as he then was in this Court). Being relevant, same are reproduced as under:

Order dated 22.02.2018:

“Heard respective counsel at some length.

It appears rather clear that the spirit of the orders passed by the Division Bench of this Court in the case of the petitioner dated 02.07.2013 in Letters Patent Appeal No.1821 of 2012 have not been translated in the impugned executive order dated 21.09.2013. When the Division Bench used the word 'desirability' of providing some promotional avenues, then the answer could be only in the same language whether creating promotional avenues for Tabla players is or is not desirable. 'Desirability' in the appellate order has to be read with the word 'feasible' used in the last para of the order of the Division Bench. It would thus be appropriate to reproduce the last para of the order, which reads:

"Consequently and in modification of the order under appeal, we dispose of this appeal with a direction to respondents to consider the desirability of providing some promotional avenues, if it is feasible, and take an appropriate action in accordance with law, preferably within a period of six months."

Not only has the competent authority to examine desirability and feasibility, but it had to do it in the light of the two judgments of the Supreme Court noticed in the order, that is, Dr. Ms. O.Z. Hussain Vs. Union of India & others, AIR 1990 SC 311 and CSIR Vs. K.G.Bhatt, 1991 (17) ATC 204. It would still further be appropriate to reproduce the observations of the Supreme Court in Dr. Ms. O.Z. Hussain's case, so that they remain present in the mind of the competent authority before it takes a decision. The same read as follows:

"7. This Court, has on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other Ministries would have the benefit of promotion, the non-medical 'A' Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the 'A'

category scientists in the nonmedical wing of the Directorate.”

The competent authority would also factor the directions issued by the Supreme Court in Dr. Ms. O.Z. Hussain. It may be mentioned that rules of service and promotional avenues therein are not impermeable or frozen in time forever. If an adjustment is required for lifting the spirit of the service and firing the will to work to foster peace and harmony in service, then avenues of promotion can always be created consistent with the efficiency of administration and the legitimate aspiration of a class or classes of employees. But appointing a man and retiring him on the same post is not the best thing that the welfare state should be seen supporting today.

The petitioner in the instant petition is one hundred percent blind and has served as Tabla Player in the Department of Higher Education (at Government College, Panchkula) for the last 26 years. Therefore, the ultimate decision to be taken by the competent authority should also reflect the spirit of humanism in Article 51A(h) of the Constitution of India, which creates fundamental duties in every citizen of India to develop the scientific temper, humanism and the spirit of inquiry and reform.

The Court understands that if a channel is to be created, it can only be through proviso to Article 309 of the Constitution and that would take time. However, what this Court expects is a final decision in the light of the observations made above in case of the petitioner; whether the matter should be dropped or taken forward and an avenue created without any inordinate delay. The order to be passed or action taken should reflect this aspect clearly and holistically. Let the entire exercise be completed within six months and the same be placed on record on the next date of hearing. List again on 18.09.2018.”

Order dated 29.01.2019:

Learned Single Judge by his order dated 21.09.2012 had dismissed the petitioner’s case finding that in the rules there is no channel of promotion for a Tabla Player. In the appeal carried by the present petitioner through LPA No.1821 of 2012, the learned Division Bench by order dated 02.07.2013 while referring to the decisions of the Supreme Court in Dr. Ms. O.Z.Hussain Vs. Union of India & others, AIR 1990 SC 311 and CSIR Vs. K.G.Bhatt, 1991 (17) ATC 204, modified the order of the learned Single Judge, directing as follows:

“Consequently and in modification of the order under appeal, we dispose of this appeal with a direction to respondents to consider the desirability of providing

some promotional avenues, if it is feasible, and take an appropriate action in accordance with law, preferably within a period of six months. ”

In pursuance of the directions in appeal, the impugned order has been passed rejecting the claim for the simplistic and narrow reason that no promotional avenues are available in the rules. In effect what the officer has done is to put the clock back to the stage of the order dated 21.09.2012 passed by the learned Single Judge which stands modified. The order lamentably does not take into consideration the pointed direction that the case of the petitioner has to be considered regarding desirability of providing some promotional avenues and if it is feasible, then take an appropriate action in accordance with law. This exercise has not been done at all, which makes the order open to invalidation for the reason that the mandate of the court has not been carried out in letter and spirit. The order cannot be read as vacuous or an empty formality.

In view thereof, instead of quashing the order right away, another opportunity is given to the State to mend its fences and consider the desirability of providing promotional avenues to a Tabla Player, who is physically handicapped with 100% blindness, and persons like him, by going beyond the text and the rule and into the context of the subject matter of challenge.

Accordingly, a request is issued to the Chief Secretary, Haryana to constitute a Committee which would include a senior officer of the rank of Secretary from the Department of Administrative Reforms and rule making authority detailed to look at the case holistically so that a Tabla Player does not start his career and end it on the same post. ACP scales are beneficial measures but remain ultimately a poor substitute for substantive promotion. The proposed Committee would examine the feasibility of creating a step or two in the ladder of promotion for the post of Tabla Players and other musicians, handicapped or not, in college cadre by even considering making an ex-cadre channel or by other possible means or through exercise of power vested in Government in amendment of rules beneficially under proviso to Article 309 of the Constitution. The Committee will also keep in mind holistically the articulations in the interim order dated 22.02.2018 passed in this case and deal with the same apart from the directions of the appellate bench.

I am told at the hearing from the petitioner, who is present in person, that he not only plays the musical instrument Tabla, but also teaches its theory to the students.

List again on 14.05.2019.”

9. *Apropos, during pendency of instant writ proceedings, notification dated 24.08.2021 (AnnexureP-27) namely, the Haryana*

Government Education College Cadre (Group C) Service (Amendment) Rules- 2021, was issued to amend the Haryana Government Education College Cadre (Group C) Service Rules, 1986. Consequently, in the main Rules, an entry for the post of Senior Table Player FPL-5Cell-1=29,200/- was *inter alia* inserted, providing for appointment thereto by promotion from Tabla Player with twenty years of experience or by transfer/deputation. Order dated 19.04.2022 (Annexure P-28) was also issued by respondent No. 3 promoting the petitioner and four others from the post of Tabla player to Senior Table Players in the pay scale FPL-5 Cell-1-29,200-92,300.

9.1. On promotion, which unwittingly it turned out to be a punitive, petitioner was transferred since it appears that the promotional post was not available in the college he was serving. He was asked to relocate from Panchkula to Government College, Ambala Cantt. Notwithstanding the fact, that being blind, his natural habitat/environment and surroundings, which he had mastered over a lifetime, ought not be changed on sheer humanitarian grounds. Even the special statute envisages so. At this stage it is pertinent to notice the provisions of sub-clause(2) of Section 3 of The Rights of Persons with Disabilities Act, 2016 which are as under:-

“3. Equality and non-discrimination : -

XXXXXXXXXXXX

(2). The appropriate Government shall take steps to utilise the capacity of persons with disabilities by providing appropriate environment.

XXXXXXXXXXXX”

9.2. The petitioner is 100% blind. His natural habitat/environment and surroundings was at Panchkula which he had mastered over a lifetime (since 1988). The same ought not be changed

on sheer humanitarian grounds, unless of course there was no promotional post of Senior Tabla Player available at Panchkula or his transfer was otherwise unavoidable. Here, on promotion, the petitioner was transferred from Panchkula to Government College, Ambala Cantt. Transfer no doubt is an incidence of Government service, is not by itself punitive and Ambala Cantt is not very far away from Panchkula. However, in the peculiar circumstances of the instant case, the competent authority was expected to take into consideration the obvious hardships resulting from the petitioner's transfer/dislocation from his natural habitat/environment and surroundings at Panchkula to the new place. As things are, it seems that whatever was the charm of the only promotion after 34 years of service, was more or less lost to the petitioner, as it by his transfer and dislocation. The Court expects that in future the respondents would take humane and more sympathetic view of the sufferings and hardships of similarly situated employees before ordering their transfer/dislocation from the natural habitat/environment and surroundings.

10. Reverting to the controversy under adjudication, no doubt, as per Haryana Government Notification dated 27.03.1998 (Annexure P-19), the eligibility requirement for promotion of Master/Classical & Vernacular Teacher as School Lecturer in Music is M.A.in Music with 50 marks and two years teaching experience as Master/Classical and Vernacular Teacher. As against this, for promotion of Tabla Player (College cadre) to Senior Tabla Player, the requirement prescribed in notification dated 24.08.2021 is twenty years' experience as Tabla Player. On a Court query, it transpired that the present pay scale of School Lecturer Music now re-designated as Post Graduate Teacher (PGT) Music

is Rs.47,600-1,51,000 as against pay scale of College Lecturer Music re-designated as Assistant Professor in Music being Rs.57,700-1,82,400. Obviously, the status and pay scale of College Lecturer Music re-designated as Assistant Professor in Music is considerably higher than School Lecturer Music re-designated as Post Graduate Teacher (PGT) Music.

10.1. In the overall analysis, it is borne out that the eligibility requirements for promotion of College cadre Tabla Player as Senior Tabla Player are different and are not equal or similar to the eligibility requirements for promotion of School cadre Master/Classical & Vernacular Teacher as School Lecturer in Music. Secondly, even the eligibility requirements for promotion of School cadre Master/Classical & Vernacular Teacher as School Lecturer in Music re-designated as TGT are also different *vis-à-vis* those prescribed for appointment of College Lecturer in Music re-designated as Assistant Professor in Music.

10.2. Thus, strictly speaking, no parallel can be drawn between the petitioner's claim, in the absence of any provision in Rules, for promotion from the post of College cadre Tabla Player to the post of College Lecturer Music re-designated as Assistant Professor in Music in the pay scale of Rs.57,700-1,82,400 and the promotion of Master/Classical & Vernacular Teacher as School Lecturer in Music re-designated as TGT in the pay scale of Rs. 47,600-1,51,000.

10.3. Admittedly, under the existing Rules, College lecturers are appointed either only by direct recruitment or by transfer or deputation.

11. I am, therefore, inclined to agree with the contention of learned State counsel that promotion to the post of College Lecturer (Music) has been denied in accordance with the Rules and provisions as

they stand on date. It is a matter of policy to be decided by the Government whether or not to make any provision for appointment of College lecturer in Music also by promotion of Tabla Players, as is done in schools. The Court would refrain from venturing into the policy-making domain of the Government.

12. Adverting now to the petitioner's claim of parity with promotion of one Shyam Sunder Shukla, Legal Assistant (Blind) as Superintendent (Legal) vide order dated 02.02.2001 (Annexure P-26) in the Administration of Justice Department. In the absence of citing or placing on record, the prescribed eligibility requirements, *inter-se* pay scales of posts in question and other significant data and relevant facts and circumstances, I am unable to accept a merely bald argument of seeking parity between Shukla's case and the petitioner's claim for promotion from the post of Tabla Player to College Lecturer (Music). There is no parity between the petitioner's claim for appointment by promotion, either from the post of Tabla Player as College Lecturer Music or with the case of promotion of Shyam Sunder Shukla.

13. In the context of denial of promotion, at the cost of repetition, reference may however be had to Supreme Court judgment rendered in **Dr. Ms. O.Z. Hussain v. Union of India and others, AIR 1990 SC 311** (*relevant already extracted in this Court's interim order dated 22.02.2018 reproduced above*). The question before the Apex court therein was whether the Group 'A' Scientists belonging to Non-Medical wing of the Director General of Health Services, who have stagnated on a particular post, should be deprived of suitable promotional avenues as were available to their counterparts in other ministries. The Apex Court made the following observations:-

“This Court had on more than one occasion, pointed out that provision for promotion increase sufficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other Ministries would have the benefit of promotion, the non-medical ‘A’ group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenues for the said category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science & Technology with such alternations as may be necessary, appropriate rules be framed providing promotional avenue for the ‘A’ category scientists in the non-medical wing of the Directorate.”

14. Relying upon aforesaid, I am of the opinion that, on the model of 1998 Rules (Annexure P-19), framed by the State Government, providing for promotion of Master/Classical and Vernacular teacher as School Lecturer Music, this too is a fit case where it was/is imperative that appropriate Rules be framed for the College Cadre Tabla Players, with such alternations as may be necessary, to provide them with fair and reasonable promotional avenue, rather than making recruitment on the promotional posts only by direct recruitment.

15. Petitioner is differently abled, being 100% blind, and yet has never been undeterred. His grit and sheer resilience is borne out as per narrative in succeeding part of sub paragraphs.

15.1. He passed his Matriculation examination in 1987. After joining service on 06.04.1988 as Tabla Player (College cadre), by dint of his continuous hard work, he acquired further higher qualifications. He successfully cleared all the examinations; (i) Graduated from High School [Ten Plus two 10+2], (ii) Bachelor of Arts, (iii) M.A., (iv) Sangeet Prabhakar (Tabla) and (v) Sangeet Prabhakar (Vocal). Not only that, he

also cleared the mandatory requisite eligibility test for direct recruitment at Lecturer i.e. The National Education Test.

15.2. On acquiring eligibility for direct appointment as College Lecturer, he applied for the said post. He was interviewed by the HPSC in 2003 and again in year 2006, albeit unsuccessfully. As a result, he has remained stuck on the same post of Tabla Player ever since he was initially appointed on 06.04.1988.

15.3. Prior to his qualifying NET, petitioner applied to the departmental authorities in the year 2000 for promotion as College Lecturer Music, claiming to be eligible for the same. He actively pursued the claim with the concerned authorities till 2010, but to no avail. The petitioner then approached this Court by filing the first writ petition bearing CWP No. 16533 of 2010 which was dismissed as withdrawn. Next, he filed a second writ petition bearing CWP No. 18358/2012. On its dismissal, the petitioner filed LPA No.1821/2012, which was disposed of vide order dated 02.07.2013 (Annexure P-24) directing the respondents to consider the desirability of providing some promotional avenues, if feasible, and for taking appropriate action. However, respondent No.3 again dismissed the petitioner's representation/appeal vide order dated 20.09.2013 (Annexure P-25). Undaunted, the petitioner again filed the instant writ petition.

15.4. All this though already noted in factual narrative, but what is pertinent to note here is the petitioner's long and sustained struggle, despite the handicap of 100% blindness, related hardships and hurdles, is quite impressive and inspiring. Having said so, I am also conscious that the same does not *per-se* entitle him to the relief as claimed.

16. This Court indeed appreciates the positive approach and the steps already taken by respondents during the pendency of the petition towards amelioration of the petitioner's grievance. The Haryana Government Education College Cadre (Group C) Service Rules, 1986 were amended to provide for the promotion of Tabla Players as Senior Table Player. Pursuant thereto, petitioner and four other Tabla Players were actually promoted as Senior Table Players in College cadre. However, what has been afforded to the petitioner falls short of what he deserves and there is certainly some justification and scope for further relief.

17. Office order dated 23.02.2007 (Annexure P-20) issued by the Principal, Govt. College, Panchkula shows that petitioner, holding the post of Tabla Player, was asked to take the Music classes of Lecturer in Music and impart practice sessions to the students, indicating that the College cadre Tabla Players also take Music classes and give practice to the students, even if occasionally and in the absence of Lecturer in Music.

18. At this juncture, it is apposite to refer to a decision of Supreme Court rendered in **State of Haryana and another v. Ram Chander and another AIR 1997 SC 2468**, the relevant portion whereof is reproduced as below:

"We find that before a set of employees can claim parity of pay scales on the principle of 'equal Pay for Equal Work' it has to be shown by such claimants that qualitatively said quantitatively the work which they do is of the same type and nature as that of their counterparts whose pay scales are pressed in service for getting the parity.

.....

That the difference in the nomenclature between the two sets of employees, namely, Language Teachers like the respondents in technical institutes and Lecturers in higher secondary schools does not represent any substantial cleavage in the quantity and quality of work done by both these sets of employees.

In the light of these salient features which are well established on record there would be no escape from the conclusion that but for the difference in educational qualifications both these sets of employees are similarly circumscribed. So far as the educational qualifications difference is concerned that would have, as noted above, made some vital difference but for the fact that the appellants themselves in their own wisdom thought it fit to ignore this difference in the educational qualifications by offering a uniform time scale of Rs.1640-5900/- to all Post Graduate Lecturers a in higher secondary schools.”

19. It seems that for all practical purposes, a Tabla Player is a skilled Teacher to his students who have chosen to learn Tabla playing as a part of Music curriculum. As already noted above, order dated 23.02.2007 (Annexure P-20) shows that the College cadre Tabla Players also take Music classes. In our culture, the person who imparts training in the nuances of music to his disciples is known, treated and respected as ‘Guru’ i.e. teacher.

Thus, the ground reality is that Tabla Players and Senior Tabla Players in College impart training to their students in the nuances of music, perform the duties akin to teachers in the discipline of music and are known, treated and respected as teacher i.e. ‘Guru’. Merely because of their nomenclature and tag of Tabla Player and Senior Tabla Player does not negate the ground reality that the incumbents of these posts perform the duties/functions akin to teachers in the discipline of music and are known, treated and respected as teachers.

20. As noted above, under the Haryana Educational College Cadre (Group C) Service Amendment Rules, 2021 (notification dated 24.08.2021), the eligibility requirement prescribed for promotion of Tabla Player College cadre as Senior Tabla Player, is **twenty years’ experience** as Tabla Player. For School cadre Master/Classical & Vernacular Teacher, the eligibility requirement for promotion as School Lecturer in

Music re-designated as TGT in terms of Notification dated 27.03.1998 (Annexure P-19) is M.A.in Music with 50 marks and **only two years teaching experience** as Master/Classical and Vernacular Teacher.

20.1. Taking into consideration the entirety of facts and circumstances, particularly the eligibility requirements for promotion to the respective posts as mentioned above, it appears to me that pay scale FPL-5 Cell-1-29,200-92,300 given to Senior Tabla Player on promotion, after acquiring twenty years' long experience as Tabla Player is quite on the lower side and disproportionate to the pay scale of Rs.47,600-1,51,000 given to School Lecturer in Music on promotion after only two years teaching experience as Master/Classical & Vernacular Teacher.

20.2. College cadre Tabla Players do deserve further relief by suitably upgrading the promotional pay scale FPL-5 Cell-1-29,200-92,300 of Senior Tabla Players, given that the promotion is offered after a minimum of 20 years long experience as a Tabla Player, so as to bear a better proportion with pay scale of Rs. 47,600-1,51,000 given to School Lecturer in Music (re-designated as TGT) on promotion after only two years' experience as Master/Classical & Vernacular Teacher.

20.3. It also seems desirable to suitably re-designate the post of College cadre Tabla Player like that of Tabla Instructor and that of Senior Tabla Player as Senior Tabla Instructor consistent with the nature, dignity and worth of their work and for a perception of enhanced status. A direction to the respondents for considering the feasibility of affording further relief, as above, seems appropriate.

21. No doubt, pursuant to the interim order passed by Rajiv Narain Raina, J. as well as the Division Bench (as noted hereinabove) certain steps were taken for amelioration of the grievance of the

petitioner, but on a closer scrutiny thereof, it appears to me that the so called promotion avenue provided by framing the rules is merely a metaphoric salve, that too without adequately treating the ailment, let alone curing and healing the same. The promotion as Senior Tabla Player is after a minimum of 20 years of service as Tabla Player as against a Classical Teacher in School who becomes eligible for promotion as a School Lecturer in Music merely after 2 years of service. Pertinently there is a huge disparity of pay-scale between Senior Tabla Player and a School Music Lecturer. There seems no reasonable justification or reason to show how the job of School cadre instrumental Music Lecturer which is to teach/train the students in instrumental music, is different from that of a College cadre Senior Tabla Player which is also to train the students in the nuances of Tabla music.

21.1. Being so, for implementing the Division Bench order in letter and spirit with regard to 'desirability' and 'feasibility', it was expected of the respondents to consider providing the pay scale for promotional post of Senior Tabla Player near about that of Music Lecturer in School.

21.2. Furthermore, certainly it would have been in the fitness of things if a decent nomenclature was given to College cadre Tabla Player like Tabla Instructor and to Senior Tabla Instructor as Senior Tabla Instructor consistent with the nature, dignity and worth of their work and for a perception of enhanced status, on the analogy of the designation of Music Lecturer in School given on promotion from Master/Classical & Vernacular Teacher.

22. In the premise, respondents are directed to consider the feasibility of appropriately upgrading the pay scale of FPL-5 Cell-1-

29,200-92,300 given to Senior Tabla Player in the College cadre so as to be near about or at least bear a better proportion with the pay scale of Rs. 47,600-1,51,000 given to School Lecturer in Music (re-designated as TGT) and also for suitably re-designating the post of College cadre Senior Tabla Player like Tabla Instructor and of Senior Tabla Player as Senior Tabla Instructor consistent with the nature, dignity and worth of their work and for a perception of enhanced status. The Court expects that by carrying out the necessary exercise, a decision will be taken by the competent authority within 4 months of the web print of the instant order being made available by the petitioner.

23. Disposed of in the above terms.

24. Pending civil miscellaneous application, if any, also stands disposed of.

November 07, 2022
ashish

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No