

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 23653 of 2011

**Reserved On: 26.04.2023
Pronounced On: 04.05.2023**

Kulbir Singh and Others

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. G.S.Bal, Senior Advocate
with Mr. Laxman Choudhary, Advocate
for the petitioner(s).

Mr. Navdeep Chhabra, Senior Deputy Advocate General,
Punjab, for the respondents.

Anil Kshetarpal, J.

1. Though, this writ petition was filed by as many as 65 teachers, however, the learned senior counsel representing the petitioners admits that all the petitioners except petitioner No.11 are not entitled to the relief prayed for in the writ petition. Hence, the writ petition survives only qua petitioner No.11.

2. The petitioner No.11 prays for issuance of the writ in the nature of mandamus directing the respondents to grant two/three increments as applicable w.e.f. the date he passed the post graduation qualification or from his date of joining as the case may be on the basis of the instructions issued on 01.09.1960. On 20.04.2023, the following order was passed:-

“The learned counsel representing the applicant-petitioners fairly submits that all the petitioners except

petitioner no.11 are not entitled to the relief prayed for in the writ petition. He submits that the petitioner no.11 was appointed as a teacher on 06.10.1978, whereas he passed his Post Graduation in History subject in Second Division in April, 1982. Hence, the petitioner as per the government instructions dated 01.09.1960 is entitled to grant of three increments.

On the other hand, the respondents while contesting the petition have stated that the Government had de-linked/disconnected the pay of the teachers from the qualification and a conscious decision was taken that anyone who acquires the higher qualification after 19.02.1979 shall not be entitled to any increments on account of higher qualification. It has also been brought to the notice of the court that the State of Punjab notified the Punjab Pay Scales of Teachers Act, 2004, which was made effective from 01.01.1986. The State of Punjab has also relied upon the judgment passed by the Division Bench in State of Punjab vs. Joga Singh and others (LPA No.374 of 1994, decided on 20.02.1996).

At this stage, the learned counsel representing the petitioner prays for a short accommodation to examine the issue in detail before assisting the Court.

List, in the urgent list, on 26.04.2023.”

3. The instructions issued on 01.09.1960 provide as under:-

“Sanction of the Government of Punjab is accorded is the grant of advance increment to the masters/teachers working in the Punjab Education Department who improved their educational qualification in the manner detailed below:-

Category of Personal	Nature of improved qualifications	Extent of Adverse increments
Masters	(110-8-190/10-250) M.A./M.Sc./M.Ed. (3 rd Division)	2 increments
	1 st or II nd Division	3 increments

2. *The advance will be enjoyed only once and not for doing any subsequent M.A. It will not be available to those who were given higher start on entry for being M.S./M.Sc./M.Ed.”*

4. The writ petition is contested by the State claiming that on 19.02.1979 a conscious decision was taken to make a paradigm shift in the manner in which the teachers are paid their salary. As per the submission, the scheme of providing increments or higher pay scales to the employees based on their higher qualifications has been terminated. Instead, the teachers were being paid according to the pay scale of the category to which they were appointed against the sanctioned posts.

5. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

6. The relevant part of the instructions issued on 19.02.1979 as annexed by the writ petitioner is extracted as under:-

“3. In order to ensure that these unintended and large financial implications do not continue arising in future, the whole matter has been reconsidered by the State Govt. As a result of the reconsideration the Governor of Punjab is pleased to order that henceforth the teacher of the Education Department shall not become entitled to be placed in the higher scale of pay in terms of para 3 of the Punjab Govt letter No.5058-FR-11-57/5600, dated 23 July, 1957, automatically on their improving/acquiring higher qualifications during the course of their service. The masters and teachers in the Education Department shall be placed in the scale of pay of their respective categories to which they are appointed against the sanctioned posts and mere possession/acquisition of posts will not entitle them to automatically claim higher pay scales. However, in order to avoid discrimination between teachers,

who have already been allowed higher scales of pay on account of having improved their qualifications and these who have not yet been allowed this benefit, even though who have they also possess higher qualifications, it is decided that all teachers in the Education Department, who have improved their qualifications before the issue of this letter, may be allowed the benefit of higher scales of pay on the basis of their qualifications. This benefit shall be allowed to those who are appointed or improve their qualifications after the issue of this letter.

4. *The contents of this communications may be brought to notice of all concerned. Instructions, if any, issued by the Education Department, bearing on the subject, may be suitably modified in so far as they run counter to the spirit of the instructions contained in this communication. Necessary clarification in the service rules may also be incorporated in consultation with Chief Secretary and Department and it should be made effective from the date of issue of this letter.*

5. *Please acknowledge receipt.”*

7. Thereafter, the State of Punjab enacted the Punjab Pay Scales of Teachers Act, 2004 (hereinafter referred to as “the 2004 Act”) which received the assent of the Governor of Punjab on 31.12.2004. The relevant extract of the objects and reasons is extracted as under:-

“Whereas the Finance Department, - vide its executive instructions issued, - vide circular letter No. 5058-FRII-57/5600, dated the 23rd July, 1957, while revising pay scales of Government servants, had provided that the teachers in the Education Department shall be placed in two broad categories, namely, category 'A' and category 'B' according to their qualifications mentioned therein and had further provided that they shall be given pay scales specified in that letter;

Whereas the Finance Department, - vide its instructions No. 9/9/79- FR(2)/143, dated the 19th February, 1979, reconsidered circular letter No. 5058-FRII- 57/5600, dated the 23rd July, 1957 and decided that the benefit of higher pay scale on the basis of the qualifications shall be allowed to only those teachers, who were appointed up to the 19th February, 1979 or who improved their qualifications up to that date and not thereafter;

Whereas the pay scales on the basis of the possession or acquisition of qualifications mentioned in circular letter No. 5058-FRII-57/5600, dated the 23rd July, 1957, continued to be allowed to the teachers up to the 31st day of December, 1985;

Whereas on the basis of the recommendations of the Third Pay Commission, the Finance Department framed the Punjab Civil Services (Revised Pay) Rules, 1988 for granting revised pay scales to all the employees of different departments of the Punjab Government and in pursuance of these rules, read with Finance Department Notification No. 10/3/89-FPI/953, dated the 20th January, 1989, the State Government, - vide its Notification No. 11/64/87- Edu.6/666, dated the 17th February, 1989, granted the specific pay scales according to the post held by a teacher with effect from the 1st day of January, 1986;

Whereas consequent upon granting the specific pay scales by the State Government, - vide the aforesaid statutory rules and notifications, the executive instructions of the Finance Department issued, - vide its circular letter No. 5058-FRII- 57/5600, dated the 23rd July, 1957 (which entitled the teachers to higher pay scales merely on the basis of qualifications although actually holding posts of lower pay scales which resulted in creating a different class leading to disparity and discrimination between similarly situated teachers i.e. those who were appointed on or before the 19th February, 1979 and

those who were appointed after the 19th February, 1979 even though they were possessing the same basic qualifications as per the service rules and were working on the same post, performing same duties and responsibilities), stood superseded and no benefit of higher pay scales can be claimed by the teachers or be given to them on the basis of these executive instructions with effect from the 1st day of January, 1986;

And whereas in these circumstances, it is expedient to enact a law in public interest to remove disparity and discrimination within the same class of teachers and to avoid undue and un-reasonable financial liabilities on the State exchequer.”

8. Section 3 of the 2004 Act reads as under:-

“3. Grant of pay scales as per rules and notifications.-
Notwithstanding anything contained in any instruction, rule or other law for the time being in force and any judgement, decree, order or decision of any Court, Tribunal or Authority, the teachers shall be entitled only to the pay scales of the posts held by them, which were granted under the Punjab Civil Services (Revised Pay) Rules, 1988, read with Finance Department Notification No. 10/3/89-FPI/953, dated the 20th January, 1989 and the State Government Notification No. 11/64/87-2Edu.6/666, dated the 17th February, 1989, irrespective of their qualifications with effect from the 1st day of January, 1986, and nothing more than that shall be payable to them.”

9. In the order dated 20.04.2023, the petitioner is stated to be appointed as a teacher on 06.10.1978, whereas he passed his Post Graduation in History subject in Second Division in April, 1982. Hence, the question that arises for adjudication is “Whether the petitioner is entitled to

State of Punjab decided to make a tactical shift in the manner in which the teachers are being paid their salaries. A conscious decision was taken by the government in this regard. From the reading of the extracted portion of the instructions, it is evident that the benefit of higher scale of pay or increments on account of having their improved qualifications to the teachers was completely stopped w.e.f. the date the instructions of 1979 were issued. Subsequently, as noticed above, an Act was enacted to bring about the aforementioned changes. On the careful reading of the statement of objects and reasons along with Section 3 of the 2004 Act, it is evident that the government moved from the regime of qualification based pay of the teachers to scales of pay according to the categories to which they were appointed. In these circumstances, the question that arises for determination is “Whether the instructions issued on 01.09.1960 are still enforceable in the present circumstances?”

10. On the one hand, the learned senior counsel representing the petitioner contends that the instructions dated 01.09.1960 have never been superseded or withdrawn, whereas, on the other hand, the learned State counsel, while referring to the instructions issued on 19.02.1979 followed by the 2004 Act, submits that the writ petition deserves to be dismissed.

11. Undoubtedly, the instructions dated 01.09.1960 have not been specifically superseded. However, it is evident from the reading of the instructions dated 19.02.1979 and the 2004 Act, that the State Government has made a significant change in the manner the teachers employed by them are paid. Although there has been no explicit withdrawal or overruling of the instructions dated 01.09.1960, however, the government’s intent from the

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instructions dated 19.02.1979 and the 2004 Act is crystal clear in these circumstances. The government has taken a conscious decision to discontinue the practice of granting increments or higher scale of pay to the teachers on passing the higher qualification. The challenge to the validity of the 2004 Act was dismissed in *Beant Singh and Others v. State of Punjab and Others (Civil Writ Petition No. 14634 of 2009, decided on 30.08.2010)*.

12. Once the government's intent is unambiguous and categorical, there is no scope for doubt that the instructions dated 01.09.1960 will not continue to operate. While filing the written statement, the State has made it categorical that any teacher appointed either on or after 19.02.1979 will not be entitled to higher increments or higher scale of pay merely on having acquired the higher qualification. It has been stated that on 19.02.1979 the qualifications have been delinked from the pay scale and the incumbents are being paid based on the pay scale of the post they hold.

13. Admittedly, the petitioner passed his post graduation examination in April, 1982, which is more than three years after the instructions dated 19.02.1979 were issued by the government.

14. In view of the aforesaid facts and discussion, the result is inevitable, hence, the present writ petition is dismissed.

(Anil Kshetarpal)
Judge

May 04, 2023
"DK"

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No