

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

105

**CWP No.4342 of 2023
Date of Decision : 18.12.2023**

*Pardeep Kumar**..... Petitioner**versus**Union of India and others**..... Respondents*

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. S.S. Rana, Advocate, for the petitioner

TRIBHUVAN DAHIYA J.

This petition has been filed, *inter alia*, seeking a writ of *certiorari* quashing the order dated 8.3.2022, Annexure P-3, passed by the District Judge-cum-Educational Tribunal, Panipat (for short 'the Tribunal'), whereby the petitioner's claim for release of salary as per the pay scale prescribed for the regular post of Assistant Professor has been rejected.

2. As per facts on record, the petitioner was appointed as Assistant Professor in private un-aided college/respondent no.5, and his appointment was approved by the Kurukshetra University, vide letter dated 3.5.2010, Annexure P-5. It is claimed that during service he was not paid salary as per norms notified by the All India Council of Technical Education (for short 'AICTE'). After working for more than three and a half years, he resigned from service due to compelling circumstances on 19.3.2014, and later approached this Court by filing a petition, CWP No.10158 of 2015, seeking salary in regular pay scale, but it was

dismissed as withdrawn vide order dated 20.5.2015, to avail alternate remedy. After about three years on 3.4.2017, he approached the Tribunal by filing an Appeal, which was dismissed vide the impugned judgment.

3. Learned counsel contends that the Tribunal could not have declined the relief claimed, i.e., regular scale of pay with allowances as Assistant Professor during the period he worked in the college, since his selection was duly approved by the affiliating University. The respondents only paid him consolidated salary during service, despite mentioning in the communications sent to the affiliating University regarding profile of faculty that he was being paid in the regular scale of pay as Assistant Professor.

4. Heard.

5. It is not denied that during the entire service the petitioner was paid a consolidated salary. His appointment letter is not on record to establish that he was appointed in a regular scale of pay, and not on consolidated salary that was paid to him by the college. Nor has any explanation been given for approaching the Tribunal after about three years' delay.

6. Considering the aforesaid facts and circumstances, the Tribunal concluded that the petitioner's appeal was not maintainable as it had been filed after more than three years of resigning from service. Even to file a civil suit, the maximum period of limitation prescribed is three years from the date of cause of action. Mere dismissal of the writ petition as withdrawn to avail alternate remedy will not extend the period of limitation, nor was there any direction by this court to do so. In these circumstances, the appeal was held barred by limitation.

7. Further, the Tribunal considered merits of the petitioner's case also, and concluded that the nature of his relationship with the private unaided college was contractual, and there was no material on record to establish that his salary was fixed in the minimum of pay scale as Assistant Professor. It is apt to reproduce the Tribunal's findings hereunder:

In the present case, the respondent-college which is a private educational institution is undoubtedly imparting education and to that extent is performing public duty. However, for any other matter i.e. qua appointment of employees and payment of salary to them, the duty discharged by it cannot be stated to be a public duty. The right of the appellant being an employee of a private unaided institution is purely of a private character and the management does not perform any public duty in this regard. The appellant being employee of a private unaided institution, his relationship with the respondent-college was contractual in nature, bound by the terms of the appointment letter Ex.A5. Though in this appointment letter, it was not categorically mentioned that the salary of the appellant was fixed at minimum pay scale of Rs.15,600-39,100/-, however, it is proved that he was paid a consolidated salary after making payment of basic pay and some other allowances. No doubt, as per Haryana Affiliated Colleges (Seniority of Services) Act, 1979, the scales and other allowances and privileges and the salary of employees shall be such as may from time to time are specified by the Government, however, these provisions are applicable in case of a regular employee of Government aided college/Government college and not to an employee of private unaided self-financed educational institution. Therefore, these provisions did not serve any purpose in the case of the appellant. The appellant claimed an amount of Rs.14,65,125/-towards difference of salary. However, no calculation as to how he assessed this much amount had been given by him. In view of the discussion as made above, it emerges that the claim as made by the appellant with regard to his entitlement to receive the difference of salary has no basis and, therefore, it is held that the relief so claimed by the appellant cannot be granted to him.

Accordingly, this issue is decided against the appellant and in favour of the respondent.

8. The findings are well reasoned, based upon proper appreciation of facts as well as law on the issue, and do not suffer from any error or infirmity. Consequently, there is no ground to interfere with the impugned judgment.

9. Dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

18.12.2023

Ashwani

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No