

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

CWP-2246-2014
Date of Decision: 22.02.2023

Ban Bihari Lal

....Petitioner

Versus

State of Haryana etc.

...Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. R.S. Hooda, Advocate, for the petitioner.

Mr. Rohit Arya, DAG, Haryana.

HARNARESH SINGH GILL, J.

The petitioner seeks quashing of the order dated 21/25.03.2013 (Annexure P.8) passed by respondent No.1, whereby the claim of the petitioner for stepping up of his pay at par with respondent No.4, who according to the petitioner is his junior, has been declined.

Before advertng to the facts of the case, it may be noticed that this is the second round of litigation. The petitioner had, earlier approached this Court, by way of CWP-19203-2012, which was disposed of by a Coordinate Bench on 26.09.2012, directing the respondent No.2 therein to decide the legal notice of the petitioner. In compliance with the said directions, the Principal Secretary to Government of Haryana, School Education Department, vide impugned order dated 25.03.2013, had declined the claim of the petitioner.

The sole grievance of the petitioner is that respondent No.4- Brijesh Kumar, Lecturer in English, being his junior, has/had been drawing higher pay than him and that the petitioner's legitimate claim has illegally been declined by the respondents.

As per the facts on record, the petitioner was appointed as Math Master on adhoc basis in the Education Department, Haryana, in 1981. His services were regularized on 30.12.1982 and he was promoted as a Lecturer on 02.06.1992. Respondent No.4, appointed as a Science Master on 31.12.1982, was promoted as Lecturer in English on 02.12.1997 and in this way, the petitioner was senior to respondent No.4.

Learned counsel for the petitioner would, thus, argue that once it is undisputed on record that the petitioner is senior to respondent No.4, there was no occasion for the respondents to decline the claim of the petitioner. It is further argued that as a matter of fact, the entire approach of the respondents, in declining the claim of the petitioner is cryptic, whimsical and illegal.

On the other hand, learned State counsel, while referring to the reply filed in the form of affidavit of the Director General, Secondary Education, Haryana, argues that the petitioner earned his promotion from the feeder post of PGT (Post Graduate Teacher) i.e. Lecturer, whereas, respondent No.4 was promoted from the cadre of Headmasters High School. It is further argued that the pay scales of the PGT (Lecturer) and Headmaster High School, have been altogether different since

01.01.1996 and that when the promotional posts are filled from two different cadre, there arises no question of equating of the pay thereof. Reliance is placed upon the judgment of the Hon'ble Apex Court in Union of India Vs. O.P. Saxena, (1997)6 SCC 360.

It is further submitted that respondent No.4 before getting promotion as PGT (English) w.e.f. 02.12.1997, received the benefit of Assured Career Progression (ACP) Scheme, whereas no such ACP was available to the PGT (Economics), promoted as such on 02.06.1992. It is, therefore, argued that the higher pay drawn by respondent No.4 on account of said ACP is pay to him as a personal measure and that the petitioner cannot seek stepping of his pay, on this ground.

Having heard learned counsel for the parties, I do not find any merit in the present petition.

The petitioner is basing his claim on the joint Gradation/Seniority List and emphasizes that he was senior to respondent No.4, not only as per the date of appointment, but in the said Gradation/Seniority List as well. However, there is no counter from the petitioner to the fact that petitioner was promoted from the cadre of PGT (Lecturer) and respondent No.4 from that of Headmasters High School. Once, the pay scales for the said two promotional posts are different w.e.f. 01.01.1996, the claim of the petitioner for stepping of his pay is not sustainable. Still further, the stand of the respondents that respondent No.4 had obtained higher pay than the petitioner on account of having obtained ACP, is also not disputed.

The pay fixation is an intricate exercise that cannot be gone into by this Court, while exercising the writ jurisdiction. It is by now well settled that such exercise is to be best left to the authorities concerned and the judicial review can be done, when there is an apparent error on the face of the record and when the issue relates to the interpretation of some Statute or Rules.

The Hon'ble Supreme Court in State of Madhya Pradesh Vs. R.D. Sharma and another, 2022(3) SLR 361, has, while reiterating the earlier consistent view, held that the equation of post and determination of pay scales is the primary function of the executive and not the judiciary and therefore ordinarily courts will not enter upon the task of job evaluation which is generally left to the expert bodies like the Pay Commissions. The relevant part of the said judgment would read as under:-

“...14. The High Court in the impugned orders passed in Writ Petition as well as in the Review Petition had thoroughly misdirected itself by applying the principle of “equal pay for equal work” placing reliance on the decision of this court in case of State of Punjab and Ors. Vs. Jagjit Singh and Ors., 2017 SCC 148, which had no application to the facts of the present case. It may be noted that this court has consistently held that the equation of post and determination of pay scales is the primary function of the executive and not the judiciary and therefore ordinarily courts will not enter upon the task of job evaluation which is generally left to the expert bodies like the Pay Commissions. This is because such job evaluation exercise may include

various factors including the relevant data and scales for evaluating performances of different groups of employees, and such evaluation would be both difficult and time consuming, apart from carrying financial implications. Therefore, it has always been held to be more prudent to leave such task of equation of post and determination of pay scales to be best left to an expert body. Unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post, and that the court's interference was absolutely necessary to undo the injustice, the courts would not interfere with such complex issues. A beneficial reference of the observations made in this regard in case of Secretary, Finance Department Vs. West Bengal Registration Service Associations and Ors., 1993 Supl. 1 SCC 153 be made. As held in State of Haryana and Anr. Vs. Haryana Civil Secretariat Personal Staff Association, 2002 (06) SCC 72 "equal pay for equal work" is not a fundamental right vested in any employee, though it is a constitutional goal to be achieved by the Government."

It is the assertion of the petitioner that he was promoted as PGT (Economics) on 02.06.1992, ranked as 1256 in the Combined Seniority List, whereas respondent No.4 was promoted as PGT (English) on 02.12.1997 placed at 3276 in the said Seniority List. The petitioner claims that his pay in 1997 was Rs.7300/- and that of respondent No.4 as Rs.7500/- and as on 01.01.2006, it was Rs.17210/- in case of the petitioner and that of respondent No.4 as Rs.17590/-. As per the respondents, respondent No.4, promoted in 02.12.1997, had been granted

ACP, whereas no such ACP was applicable in case of the petitioner, who was promoted as PGT (Economics) on 02.06.1992. There is no counter coming forth as regards the non-applicability of the ACP to the promotional post of the petitioner in the year 1992. Thus, this Court is left with no option, but to concur with the stand of the respondents that the element of increased pay on account of ACP was a personal measure to respondent No.4 and that the petitioner cannot seek parity with him, though respondent No.4 was junior to the petitioner.

In view of the above, finding no merit in the present petition, the same is hereby dismissed.

22.02.2023
ds

(HARNARESH SINGH GILL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No