

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

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Date of decision: 15.02.2023

(1) CWP-23919-2021 (O&M)

Richa and another

...Petitioners

Versus

State of Haryana and others

.....Respondents

(2) CWP-2213-2018 (O&M)

Dr. Pushpander Kadian and others

...Petitioners

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Padamkant Dwivedi, Advocate, for the petitioners
in CWP-23919-2021.

Mr. Sumit Sangwan, Advocate, for the petitioners
In CWP-2213-2018

Mr. R.S. Budhwar, Addl. A.G. Haryana.

Mr. A. K. Goyal, Advocate,
for respondent No.4 UGC in CWP-23919-2021.

HARNARESH SINGH GILL, J.

This order shall dispose of the above noted two writ petitions raising common questions of law and facts.

The petitioners seek issuance of a writ in the nature of Mandamus directing the respondents to merge the five non-compounded additional increments granted to the petitioners at the entry level of recruitment as Assistant Professors, for possessing the degree of Ph.D as well as NET qualification in their basic pay scale as per the University Grant Commission (UGC) guidelines/ instructions.

As per the facts on record, in CWP-23919-2021, petitioner No.1 was appointed as an Assistant Professor in Commerce in the Department of Higher Education, Haryana, on 24.01.2012 and she joined her services on 01.02.2012, whereas petitioner No.2 was appointed as an Assistant Professor in Bio-Tech in the Department of Higher Education, Haryana, on 27.06.2012, and he joined as such 05.09.2012. In CWP-2213-2018, all the petitioners are working as Assistant Professors (Lecturers) in various Government Colleges of Haryana in the Higher Education Department.

Learned counsel for the petitioners would contend that the Government of Haryana, on 21.07.2011, took decision regarding the adoption of the recommendations of the UGC and MHRD, whereby it was resolved that the non-compounded increments shall be admissible at the entry level of recruitment as Assistant Professor to persons possessing the degree of Ph.D. awarded in the relevant discipline by a University following the process of registration, course work and external evaluation as prescribed by the UGC, if such person joins service after qualifying NET.

It is further submitted that in terms of the said Instructions, the petitioners were granted 5 additional increments in lieu of Ph.D, but the pay of the petitioners was fixed wrongly as the said increments were not merged with the basic pay; that the University Grant Commission issued a memo dated 10.06.2013 (P.5) to Swami Ramanand Teerth Marathwada University, Nanded, Maharashtra, clarifying that the advance increments granted on account of acquisition of higher qualifications, would be merged with the basic pay; that on the persistent demand of the petitioners, respondent No.2 on 18.06.2015, sent their request to the UGC and in response, thereto UGC has intimated that the Circular dated 10.06.2013 had already been issued in this regard. It is further case

of the petitioners that various Universities in the State i.e. Maharishi Dayanand University, Rohtak; Deenbandhu Chhotu Ram University of Science & Technology, Murthal (Sonapat) and Chaudhary Devi Lal University, Sirsa, have already implemented the benefit of merging the five non-compounded increments in the basic pay of the Assistant Professors.

In support of their contentions, learned counsel for the petitioners rely upon the judgment of the Hon'ble Supreme Court in Prof. Narendra Singh Bhandari Vs. Ravindra Jugran and others, 2022(4) SCT 750 and a Division Bench judgment of this Court in LPA-970-2011- The Punjab and Haryana High Court Vs. Priya Sood and others, decided on 30.05.2011.

It is yet further submitted that the Doctors and Engineers working under the Government are getting separate non-practicing allowance and that such allowance is granted to them in view of the higher qualifications acquired in their field(s).

On the other hand, the learned State counsel states that as regards the issue in question, a clarification was sought from the Finance Department, Haryana, and the said department after considering the claim of the petitioners, rejected the same by observing that if the prayer of the petitioners are considered, then the other categories of employees like Doctors, Engineers will raise the similar demand and it will create disparity among these categories and that since the possession of Ph.D degree being the essential qualification now for the post of Assistant Professor and concept of additional increment has been discontinued during 7th CPC, there would be a disparity between the existing and the new candidates in respect of their basic pay despite of having same qualifications.

It is still further submitted that the increments granted on the account of possessing Ph.D/M-Phil degree are advance

increments and as per the provision contained in Rule 8(3) of the Haryana Civil Services (Pay) Rules, 2016 these increments cannot be merged into the basic pay.

It is still further argued by the learned State counsel that in terms of the judgment of the Hon'ble Supreme Court in Jagdish Prasad Sharma etc. etc. Vs. State of Bihar and others, (2013)8 SCC 633, the State Government is not bound by the recommendations made by the UGC and such recommendations are only optional.

Learned counsel appearing for respondent No.4-Commission in CWP-23919-2021, while referring to the contents in the written statement filed by it, would submit that the UGC vide letter dated 10.06.2021, addressed to the Ministry of Education, Department of Higher Education, New Delhi, issued a clarification that the date of next increment falling due after acquisition of Ph.D or M.Phil, degree can be treated as one increment for this purpose and such amount can be multiplied by number of increments due to the concerned teacher on acquisition of higher qualification and that the amount of five non-compounded increments is to be kept separate all the time, but it is pay for all purposes and will remain fixed.

I have heard the learned counsel for the parties and find that, the present petition deserved to be dismissed.

It may be noticed that in CWP-23919-2021, both the petitioners are no longer in teaching profession. Both the petitioners joined HCS (Executive Branch) in the year 2013.

The question for determination in these petitions is whether the five-non compounded increments can be merged into the pay of the petitioners or the same has to remain as a separate component for all purposes.

In this regard, this Court finds force in the contention of the learned State Counsel that in terms of the judgment of the Hon'ble

Apex Court in Jagdish Prasad Sharma's case (supra), the recommendations made by the UGC are not binding upon the respondent-State, unless the same are opted for by the State. The Hon'ble Apex Court in the said judgment, after considering the various aspects of the matters, has held as under:-

“65. We are then faced with the situation where a composite scheme has been framed by the UGC, whereby the Commission agreed to bear 80% of the expenses incurred by the State if such scheme was to be accepted, subject to the condition that the remaining 20% of the expense would be met by the State and that on and from 1st April, 2010, the State Government would take over the entire burden and would also have enhanced the age of superannuation of teachers and other staff from 62 to 65 years. There being no compulsion to accept and/or adopt the said scheme, the States are free to decide as to whether the scheme would be adopted by them or not. In our view, there can be no automatic application of the recommendations made by the Commission, without any conscious decision being taken by the State in this regard, on account of the financial implications and other consequences attached to such a decision. The case of those Petitioners who have claimed that they should be given the benefit of the scheme dehors the responsibility attached thereto, must, therefore, fail.”

Still further, it is the clear stand of the respondent No.4-UGC in CWP-23919-2021 that the grant of five non-compounded increments has to be treated as a fixed and separate component.

In view of the above, this Court is of the considered opinion that the petitioners cannot seek merging into their pay, the five non-compoundable increments. Firstly, in view of the judgment of the Apex Court in Jagdish Prasad Sharma's, the recommendations of the UGC are not ipso-facto applicable to the respondent-State and

secondly, the UGC itself has issued a clarification that the grant of five non-compoundable increments, must be kept as a fixed and separate component.

In view of the above, finding no merits in the present petitions, the same are hereby dismissed.

15.02.2023
joyti/ds

(HARNARESH SINGH GILL)
JUDGE

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