



202

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-19531-1998 (O&M)
Date of Decision:14.05.2024

B.B.SHARMA AND OTHERS *Petitioners*
V/s. _____
STATE OF HARYANA AND OTHERS *Respondents*

CORAM: **HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA**
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present Mr. A.S. Chadha, Advocate for the petitioners.
Ms.Tanisha Peshawaria, DAG, Haryana.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. Learned counsel for the petitioners submits that the petitioners were designated as Library Superintendents/Semi Professional Grade-I/S.P. Grade-II as per the resolution dated 05.05.1995 of the Executive Council and were also granted the pay-scales of the designated posts. However, the said resolution of the Executive Council was not approved by the State Government. In the meanwhile, the petitioners were drawing higher pay scales of the designated posts.

2. It is to be noticed that the petitioners had given an undertaking to the respondent-University that if the necessary sanction is not received from the State Government, they would have to refund the excess amount received by them on account of placement to the higher grade. The petitioners have, therefore, challenged the action of the State Government in not approving the re-designation as recommended by the Executive Council.

3. Learned counsel for the petitioners submits that the Special Secretary, Finance, Government of Haryana was the Member of the said



Executive Council along with Director Higher Education and their presence in the Executive Council indicates that there was due approval from the State Government as the recommendations of the Executive Council can only be given with the quorum wherein a Government representative is involved.

4. Learned counsel for the petitioners submits that as per notification dated 20.07.1994, an amendment was made to the Kurukshetra University Act, 1986 and Section 12-A was added which provides as under:-

“For creation of teaching and non-teaching posts, notwithstanding anything contains in this Act, the University shall not create any teaching and non-teaching post or revise the pay scale of the teaching and non-teaching employees without obtaining the prior approval of the Government.

5. In the said notification, the Haryana Act, 1986 was also amended and in the schedule to the principal Act, which provides as under

“(4) (iii) after para 10, the following para was inserted:-

10(A) Decision of the Executive Council:-

Any decision of the Executive Council in the matters involving additional financial liability and those relating to the annual budget of the University shall hold good only if at least one representative of the Government is present at the time of taking such decision and has consented to that decision.”

6. Learned counsel for the petitioners has relied on the said clause to submit that once the Government representative was present and has given his consent to the designation of the posts by the Executive Council,



the same would attain finality and the pay scales were required to be given to the petitioners.

7. Learned State counsel has opposed the submissions and taken us to the reply and documents filed on behalf of the respondent-State. She submits that a letter was received on 14.12.1998 from the Director Higher Education which reflected that in accordance with the notification issued by the Government, the review of the pay scales of Semi Professionals/Library Attendants which have been made without approval of the Government stands null and void being in violation of the Rules. The Government had not approved the action of the University.

8. Learned State counsel also relies on the judgment passed by the Hon'ble Supreme Court in the case of **Director of Public Instructions, Punjab** Vs. **Mahesh Chander and Others** ; Civil Appeal No.4053-4054 of 1998 decided on 14.08.1998 wherein the Supreme Court has examined the issue relating to the Minutes of the Meeting held by the State Council of Higher Education recommending the counting of previous service without any break as Lecturers or equivalent for placing the Lecturers in senior scale/selection grade, and the same was not concurred by the State. The Supreme Court in the circumstances held that *"Since the State concurrence has not yet been given, therefore, the High Court was not right in granting benefit of the University Grant Commission, letter dated 27.11.1990"* and the appeals of the State Government were allowed.

9. We have considered the submissions of the learned counsel for the parties and found that the decision of the Executive Council as per the



amended schedule would be good but, once the decision is taken, the same has to be approved by the State Government before it becomes a Rule.

10. Section 12-A of the Kurukshetra University Act, as quoted above, starts with a *non-obstante* clause, and therefore, the same would over-ride all the other provisions of the Act and the Schedule. We accordingly read down provisions of the schedule in consonance with Section 12-A of the Act. Thus, if the State Government has not granted approval for upgradation of the scales of the petitioners even if the Executive Council has made recommendations where Government representative was present, they have no right to claim the higher posts and the salary appended to the same.

11. So far as the recovery part is concerned, since we have been told that the petitioners have already attained superannuation, we deem it appropriate to direct the respondents not to take any steps for making recovery of the salary from the petitioners which has been already paid, keeping in view the principles laid down in the case of State of Punjab v. Rafiq Masih (White Washer) ; (2015) 4 SCC 334.

12. The Writ Petition stands **disposed of** in the aforesaid terms.

13. All pending applications filed in this case shall stand disposed of accordingly.

[SANJEEV PRAKASH SHARMA]
JUDGE

May 14, 2024
Ess Kay

[SUDEEPTI SHARMA]
JUDGE

Whether speaking / reasoned	:	Yes	/	No
Whether Reportable	:	Yes	/	No