

2024:PHHC:006300
CM-666-CWP-2024 in/and
CWP-17752-2014
Date of Decision: 18.01.2024

Vs.

RAJESH KUMAR
2024.01.23 11:54
I attest to the accuracy and authenticity
of this order/judgment. Punjab &
Haryana High Court, Chandigarh.

category of employees who were granted the benefits after 19.02.1979 and no withdrawal could be done from the petitioner. Learned counsel submits that pursuant to withdrawal of the said benefit, petitioner's pay has been refixed and retiral benefits have been revised to the lower side.

3. Per contra, learned counsel for the respondents submits that the issue with regard to acquiring higher qualification was examined afresh by the Hon'ble Supreme Court in the case of Chaman Lal and others vs. State of Haryana, 1987 (3) SCC 113 and Punjab Higher Qualified Teachers and others vs. State of Punjab 1988 (2) SCC 407, and it was held that the State is empowered to change its criteria and deny benefit of advance increments. Learned counsel submits that the clarificatory instructions dated 21.04.2009 specifically directs that the advance increments are not admissible w.e.f. 21.1.1978 and as the petitioner was granted the said benefit after 21.01.1978, the clarificatory instructions would be applicable on the petitioner.

4. I have considered the submissions.

5. In Chaman Lal's case (supra), the Hon'ble Supreme Court has held as under:-

“This order of the Government is now sought to be interpreted and it has been so interpreted by the High Court of Punjab and Haryana in the judgment under appeal that those teachers who had acquired the B.T. or B.Ed. qualification subsequent to December 1, 1967 (the date on which the 1968 order came into force) and before September 5, 1979 would be entitled to the higher grade but with effect from September 5, 1979 only and that those who acquired the qualification subsequent to September 5, 1979 would not be entitled to the higher grade. According to the judgment of the High Court under Appeal, the 1968 order did away with the principle of the 1957 order that teachers acquiring B.T. or B.Ed. qualification should get the higher grade and that a concession was shown in 1979 enabling

the teachers who acquired the B.T. or B.Ed. qualification between 1968 and 1979 to get the higher scale from 1979. In our opinion this is plainly to ignore all the events that took place between 1957 and 1980. The principle that pay should be linked to qualification was accepted by the Punjab Government in 1957 and when Kirpal Singh Bhatia's case was argued in the High Court and in the Supreme Court there was not the slightest whisper that the principle had been departed from in the 1968 order. In fact the 1968 order expressly stated that the Government had accepted the Kothari Commission's report in regard to scale of pay was the linking of pay to qualification. That was apparently the reason why no such argument was advanced in Kirpal Singh Bhatia's case. Even subsequently when several writ petitions were disposed of by the High Court of Punjab and Haryana and when the Government issued consequential orders, it was never suggested that the 1968 order was a retraction from the principle of qualification linked pay. The 1968 order must be read in the light of the 1957 order and the report of the Kethari Commission which was accepted. If so read there can be no doubt that the Government never intended to retract from the principle that teachers acquiring the B.T. or B.Ed. would be entitled to the higher grade with effect from the respective dates of their acquiring that qualification. The 1979 order was indeed superfluous. There was no need for any special sanction for the grant of Master's grade to unadjusted JBT teachers who had passed B.A., B.Ed. That was already the position which obtained both as a result of the 1957 and 1958 orders and the several judgments of the Court. We do not think that the Punjab and Haryana High Court was justified in departing from the rule in the judgment under appeal. The rule had been well established and consistently acted upon. Nor was it open to the Government to act upon the principle in some cases and depart from it in other cases. In the result we allow the appeal and the Writ Petitions and direct the respondents to give the higher grade admissible to Masters to all the teachers

who have acquired the B.T./B.Ed. qualification with effect from the respective dates of their acquiring the qualification. The appellants and the petitioners are entitled to their costs.”

6. The petitioner was appointed on 02.01.1978 and her services were regularized from 01.10.1980. She possessed higher qualification of Prabhakar on 17.08.1977 and in terms of the government instructions dated 23.07.1957, she was granted the said benefit of three advance increments in terms of higher qualification. The respondents have specifically issued a circular on 19.02.1979 treating 19.02.1979 as a cutoff date for granting the aforesaid benefit. The State Government again issued a memorandum on 20.09.1979, clarifying that the said higher scale granted on account of acquiring higher educational qualification would be a personal measure to the individual. The petitioner continued to draw the three advance increments benefit and subsequently vide a detailed memorandum dated 07.08.1985, the State Government too clarified that the teachers who had passed the examination of Giani/Prabhakar shall be entitled to three advance increments in the pay scale of Rs.170-350 w.e.f. 01.11.1971 and Rs.570-1080 w.e.f. 01.01.1978. Another notification was issued on 17.02.1989, giving the benefit of three advance increments to C & V teachers

7. The issue was again examined by the High Court and thereafter matter travelled upto the Hon'ble Supreme Court and the Hon'ble Supreme Court again upheld the benefit which was granted to the C & V teachers. The petitioner admittedly retired on 14.02.2009 and her last pay was fixed on the basis of three advance increments which were granted to her w.e.f. 02.01.1978.

8. Keeping in view the above, this Court is well satisfied that the petitioner was rightly granted the benefit of three advance increments and

there was no occasion to withdraw the said benefit by interpreting the instructions dated 21.04.2009. The said interpretation of instructions dated 21.04.2009, if so understood, would result in the same being treated as illegal and arbitrary and would only be understood to protect the said benefit as personal measure. The action of the respondents, therefore, is found to be unjustified. Moreover, the action of the respondents of withdrawing the benefit of three advance increments was without giving any opportunity of hearing and thus the same is patently illegal and is liable to be struck down as void ab initio. However, keeping in view of the reasons as examined hereinabove, the impugned action of the respondents is also termed as illegal.

9. Accordingly, the writ petition is allowed and the respondents are directed to restore the benefit of three advance increments to the petitioner and refix her pension and retiral benefits. The entire excise shall be conducted within three months henceforth.

10. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

18.01.2024

rajesh

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| 1. Whether speaking/reasoned? | : | Yes/No |
| 2. Whether reportable? | : | Yes/No |