



CWP-24798-2016

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-24798-2016

Date of Decision: 04.09.2024

MUKESH KUMAR

...Petitioner(s)

Versus

CHAUDHARY DEVI LAL UNIVERSITY AND OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Vikas Chatrath, Advocate
for the petitioner.

Mr. Indresh Goyal, Advocate
for respondents No.1 and 2.

Mr. L.K. Narang, Advocate
for respondent No.3.

TRIBHUVAN DAHIYA, J. (Oral)

This petition has been filed, *inter alia*, seeking a writ of *mandamus* directing the respondents to promote the petitioner, who is working as Assistant Professor in Law from Stage-I to Stage-II under Career Advancement Scheme (for short, 'the Scheme') on completion of five years' service with degree in Master of Laws (LL.M.).

2. The facts of the case in brief are, the petitioner has done Bachelor of Arts (B.A.) and three years degree of Bachelor of Laws (LL.B.), apart from doing LL.M., and was appointed as Lecturer in Law in the respondent-University on 28.10.2002. On the basis of five years teaching experience as Lecturer (the post is now known as 'Assistant Professor'), he made a claim for



Senior Scale of pay (Promotion to Stage II) with effect from 28.10.2007, in terms of the Scheme. It prescribed that minimum length of service for a Lecturer to move to Senior Scale would be four years for those who possessed qualification of Ph.D, five years for those with M.Phil., and six years for the rest. The claim was based on the assertion that LL.M. degree possessed by the petitioner should be considered equivalent to M.Phil., and on that basis, he should be given Senior Scale of pay after five years of service as Lecturer.

3. Learned counsel for the petitioner has referred to recommendations of a committee constituted by the Vice Chancellor for award of Senior Scale/Selection Grade to the petitioner, dated 13.01.2009, Annexure P-2; it had recommended that his LL.M. degree be considered equivalent to M.Phil., and the scale be given with effect from completing five years in service. The recommendations were approved by the Vice Chancellor in anticipation of approval of the Executive Council (for short, 'the EC'), by exercising emergency power under Section 11(6) of Chaudhary Devi Lal University Act, 2003, on 31.07.2013. Once the approval stood granted, the petitioner could not have been denied Senior Scale of pay with effect from 28.10.2007, based on the sixth pay commission's recommendations which were accepted by the State Government vide memo dated 21.07.2011, Annexure P-7. Vide this memo, the Government adopted the UGC Regulations for "Minimum qualifications for appointment of teachers and equivalent cadres in universities and colleges, and measures for the maintenance of standards in Higher Education, 2011" (for short, 'the Regulations'). Para 8 of the Regulations, deals with the Scheme; 8.2(iii), whereof provides as under:



(iii) Assistant Professors possessing M.Phil. Degree or post-graduate degree in professional courses approved by the relevant Statutory Body, such as LL.M./M.Tech, etc. shall be eligible for the AGP of Rs.7,000 after completion of five years service as Assistant Professor.

On the strength of these Regulations, it is claimed that Lecturers/Assistant Professors with LL.M. qualifications are also eligible for Stage-II Promotion/Senior Scale of pay/Academic Grade Pay (AGP) of ₹7,000 on completion of five years' service. It is also contended that the Regulations are clarificatory in nature, and will be applicable from the date of earlier guidelines regarding the Scheme notified by the UGC, which required five years' service with M.Phil. as essential qualifications for Senior Scale of pay.

4. *Per contra*, learned counsel representing the University as well as the third respondent contend that the petitioner is not entitled to Senior Scale of pay on completion of five years' service with effect from 28.10.2007, since at the relevant time the applicable UGC guidelines for grant of Senior Scale of pay required five years' service with M.Phil. Para 11(i) of the guidelines reads as under:

Minimum length of service for eligibility to move into the grant of Lecturer (Senior Scale) would be four years for those with Ph.D. five years for those with M.Phil and six years for others at the level of lecturer and for eligibility to move into the Grade of Lecturer (Selection Grade) Reader, the minimum length of service as Lecturer (Senior Scale) shall be uniformly five years.

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The latter UGC guidelines, referred to by the petitioner, were issued on 21.07.2011, and would be applicable prospectively. It has been so provided in para 9 of the Regulations itself. Accordingly, the petitioner's claim cannot be considered valid. It is further contended that recommendations of the committee were approved by the Vice Chancellor in anticipation of approval by the EC. The matter was placed before the EC for approval in its meeting held on 05.03.2014, wherein it was resolved 'to defer the matter for further examination'. Thereafter, the matter was again placed before the EC on 06.07.2016, wherein after considering minutes of Screening-cum-Evaluation Committee regarding grant of scales under the Scheme to the petitioner, it was resolved 'to file the matter'. Accordingly, the Vice Chancellor's decision was never approved by the EC, and on that ground also the petitioner's claim become unsustainable.

5. Heard.

6. Undisputed facts on the record are, the petitioner was appointed as Lecturer/Assistant Professor in the Department on 28.10.2002, and had LL.M. qualification to his credit. As per the then applicable UGC guidelines for grant of Senior Scale of pay, the Lecturers were required to possess five years' experience with M.Phil. His claim for Senior Scale is based upon a decision of the committee, dated 13.01.2009, recommending it to him with effect from 28.10.2007, by considering LL.M. degree equivalent to M.Phil., and its approval by the Vice Chancellor under Section 11(6) of the University Act by exercising powers vested with the EC/competent authority. The decision was taken in anticipation of its acceptance by the EC in its next meeting. Accordingly, to be valid and binding, the decision needed final

assent from the EC. It also remains undisputed that the Vice Chancellor's



decision to approve recommendations of the committee on 31.07.2013, was not assented to by the EC. Initially, on 05.03.2014, the EC deferred the matter for further examination; and later, on 06.07.2016, resolved to 'file' it. Since the decision was never approved by the competent authority, it could not have been given effect. Besides, the EC's decision, dated 06.07.2016, is not under challenge in the petition; therefore, its validity cannot be tested.

7. Further, when the petitioner acquired five years teaching experience as Lecturer/Assistant Professor, i.e., 28.10.2007, the applicable UGC guidelines for grant of Senior Scale required the incumbents to possess five years' experience with M.Phil. The petitioner's claim for the same is based upon para 8.2(iii) of the UGC Regulations containing the new Scheme for Career Advancement, notified by the State Government vide memo dated 21.07.2011, wherein Assistant Professors possessing either LL.M. or M.Phil. degree were held entitled to the Scale. The claim is not sustainable for the reason the new Scheme cannot be made applicable retrospectively. There is a specific stipulation to that effect in para 9, which reads as under:

9.0. Career Advancement Scheme Regulations:

The new Career Advancement Scheme shall be effective prospectively i.e. from the date of notification. Provided that in the event any candidate becomes eligible for promotion under Career Advancement Scheme in terms of these regulations on or after date of notification, the promotion of such candidate shall be governed by the provisions of these regulations. Provided further that the candidates become eligible for promotion under Career Advancement Scheme during the period from 01.09.2009 to date of notification their cases shall be governed by the

provisions of the existing scheme as per Notification dated 08.12.2000 and their pay shall be fixed in accordance with FD notification dated 20.08.2009, 27.08.2009 and 02.09.2009.

Since the Scheme has explicitly been made applicable only prospectively from 21.07.2011, the petitioner cannot be given any benefit in terms thereof, as he claims Senior Scale of pay with effect from 28.10.2007. Also, provisions of the Scheme making it applicable prospectively are not under challenge before this Court.

8. In view the aforementioned reasons, there is no merit in the petition and it stands dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

04.09.2024
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>