

**CWP-20767-2018****-1-**

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

219**CWP-20767-2018****Date of Decision: 08.07.2024****Vinod Kumar****...Petitioner(s)**

Versus

State of Haryana and others**...Respondent(s)****CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present:- Mr. Sandeep Kumar, Advocate for Mr. Vikram Singh, Advocate
for the petitioner

Mr. Rohit Arya, DAG, Haryana

TRIBHUVAN DAHIYA, J. (Oral)

The petition has been filed, *inter alia*, seeking a writ of *certiorari* setting aside the order dated 04.05.2018, Annexure P-1, whereby the second respondent has refused to count the previous service rendered by the petitioner for the purpose of senior scale/selection grade on completion of eight years of service.

2. Facts of the case in brief are, the petitioner is fully qualified to be appointed as Lecturer/Assistant Professor in Mathematics; he has passed M.Sc. in 1999, M.Phil. in 2000, cleared National Eligibility Test (NET) in 2001, and obtained Ph.D. degree in 2009. He was duly selected and appointed as Assistant Professor Mathematics in the Department of Higher Education on 21.12.2011. Before joining the Department, he served as Lecturer, Senior



Lecturer and Assistant Professor in different institutions on regular/temporary basis; the details are as under:

Sr. No.	Post	Pay Scale	Nature of Job	Period	Total time period	Organization
1	Lecturer	8000-13500	Temporary	11.09.2000 To 31.12.2003	3 Y 3 M	NC College of Engg., Israna, Panipat
2	Lecturer	8000-13500	Regular	01.01.2004 To 20.06.2006	2 Y 6 M	NC College of Engg., Israna, Panipat
3	Sr. Lecturer	10000-15200	Regular	21.06.2006 To 30.09.2007	1 Y 3 M	NC College of Engg., Israna, Panipat
4	Astt. Professor	12000-18300	Regular	01.10.2007 To 06.07.2009	1 Y 9 M	NC College of Engg., Israna, Panipat
5	Assistant Professor	12000-18300	Regular	07.07.2009 To 20.12.2011	2 Y 5 M	RP Educational Trust Group of Institutions Bastara Karnal

2.1. The previous service rendered by the petitioner, as aforementioned, was without any break and in equivalent grade/scale of pay as prescribed for the post of Assistant Professor. He had been appointed on those posts after due selection, on fulfillment of the requisite qualifications. Later, he applied for the post in the respondent Department, where he is now working, through proper channel.

2.2. The State government issued instructions vide memo dated 28.08.2001, Annexure P-8, for counting previous service towards senior scale/selection grade. It is as under:

It is intimated that State Govt. agrees to count the service rendered by a Lecturer in a College for the period it remained a Non-Aided institution in the similar manner as in the case of aided institution for the purpose of grant of senior scale selection grade subject to the following conditions-

That Lect. was selected in accordance with the prescribed procedure and fulfills the qualifications conditions prescribed by the UGC vide their letter no. F.I.6/90(P.S.Cell) Dated 27.11.90 notified by Haryana Govt. vide letter No. 1199 Edu-I(1) dated 8.12.2000.



That on account of granting of benefit of unaided period towards senior scale and selection grade the financial expenditure prior to the date from which college was brought on grant in aid list will be borne by the Management of the concerned college.

Claiming entitlement under the aforementioned instructions, the petitioner submitted representation for counting his previous service, dated 01.05.2013, Annexure P-2. The same was, however, rejected vide impugned order dated 04.05.2018, Annexure P-1, on the ground that the benefit cannot be granted in view of para no. 19.1.a. of notification dated 21.07.2011, Annexure R-1.

2.3. The notification, dated 21.07.2011, has been issued by the Government to adopt the recommendations issued by the UGC and MHRD regarding minimum qualifications for appointment of teachers and other academic staff in Universities and Colleges; para 19 whereof reads as under:

19.0 Counting of past service for Direct Recruitment and Promotion Under CAS

19.1. Previous regular service, whether national or international, as Assistant Professor, Associate Professor or Professor or equivalent in a University, College, National Laboratories, or other Scientific/Professional Organizations such as the CSIR, ICAR, DRDO, UGC, ICSSR, ICHR, ICMR, DBT, etc. funded by State/Central Government, should be counted for direct recruitment and promotion under CAS of a teacher as Assistant Professor, Associate Professor, Professor or any other nomenclature these posts are described as per **Appendix III** - Table No. II provided that:

- a. The essential qualification of the post held were not lower than the qualifications prescribed by the UGC for Assistant Professor, Associate Professor and Professor as the case may be.
- b. The post is/was in an equivalent grade or of the pre-revised scale of pay as the post of Assistant Professor (Lecturer) Associate Professor (Reader) and Professor.



- c. The candidate for direct recruitment has applied through proper channel only.
- d. The concerned Assistant Professor, Associate Professor and Professor should possess the same minimum qualifications as prescribed by the UGC for appointment to the post of Assistant Professor, Associate Professor and Professor, as the case may be.
- e. The post was filled in accordance with the prescribed selection procedure as laid down in the Regulations of University/State Government/Central Government/Concerned Institutions, for such appointments.
- f. The previous appointment was not as guest lecturer for any duration, or an ad hoc or in a leave vacancy of less than one year duration. Ad hoc or temporary service of more than one year duration can be counted provided that:
 - i. the period of service was of more than one year duration;
 - ii. the incumbent was appointed on the recommendation of duly constituted Selection Committee; and
 - (iii) the incumbent was selected to the permanent post in continuation to the ad hoc or temporary service, without any break.
- g. No distinction should be made with reference to the nature of management of the institution where previous service was rendered (private/local body/Government), was considered for counting past services under this clause.

2.4. In the written statement filed by the respondents, it has not been disputed that the condition laid down in para 19.1.a. of the notification, dated 21.07.2011, stood fulfilled by the petitioner, as essential qualifications of the post held by him prior to joining service in the Department were not lower than the qualifications prescribed by the UGC for Assistant Professor.

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However, a new objection has been taken that he was not working in equivalent scale in the previous institutions and, accordingly, in terms of para 19.1.b., would not be entitled to counting of previous service from 11.09.2000 to 20.12.2011 for grant of senior scale and selection grade. It needs mention that the duration of past service rendered by the petitioner, the posts, organisation/college as well as the pay scales, in which it was rendered, as aforementioned, were not disputed by the respondents.

2.5. Precisely, the only objection in not granting senior scale and selection grade to the petitioner by counting his previous service is, that he was not working in equivalent scale of pay. He joined as Assistant Professor in the Department in pay scale of ₹15600-39100+6000 grade pay, whereas his previous service was in the pay scale of ₹12000-18300 (revised to ₹15600-39100+8000 grade pay).

3. In this background, learned counsel for the petitioner contends that respondents have wrongly rejected the petitioner's case for grant of senior scale and selection grade, since he was working in the equivalent grade of pay as prescribed for the post of Assistant Professor in the previous institutions, and fulfilled all the requisite conditions, including those of para no. 19.1.b. He has unnecessarily been harassed by rejecting the case, forcing him to approach this Court for the purpose.

4. *Per contra*, learned State counsel contends that the claim was rightly rejected by the respondents since the petitioner had not rendered the previous service in the equivalent grade of pay meant for the post of Assistant Professor, i.e., ₹15600-39100+6000, and it cannot be said he fulfilled the conditions laid down in para no.19.1.b. of the notification.



5. Arguments advanced by learned counsel for the parties have been considered.

6. There is no dispute regarding the previous service rendered by the petitioner from 11.09.2000 to 20.12.2011, i.e., prior to joining service as Assistant Professor Mathematics in the Department, as also that he fulfilled all the requisite conditions, except the one laid down in para no.19.1.b. of the notification dated 21.07.2011, for counting the service for grant of senior scale and selection grade. As apparent on record, while rendering the previous service as Lecturer from 11.09.2000 to 20.06.2006, the petitioner was placed in the regular pay scale of ₹8000-13500; as Senior Lecturer from 21.06.2006 to 30.09.2007, he was placed in the regular pay scale of ₹10000-15200; and as Assistant Professor from 01.10.2007 to 20.12.2011, he was placed in the regular scale of ₹12000-18300. On joining the Department as Assistant Professor on 21.12.2011, he was placed in the entry level grade of ₹15600-39100+6000 Academic Grade Pay (AGP).

6.1. As per notification dated 21.07.2011, Lecturers working in the pre-revised pay scale of ₹8000-13500 were required to be re-designated as Assistant Professor in pay band ₹15600-39100 with 6000 AGP. And the Lecturers, who were working in the pre-revised senior scale of ₹10000-15200 were to be re-designated as Assistant Professor in pay band ₹15600-39100 with 7000 AGP. Similarly, Readers and Lecturers working in the pre-revised selection grade of pay ₹12000-18300 for three years as on 01.01.2006, were to be placed in pay band ₹37400-67000 with 9000 AGP and re-designated as Associate Professor; and in case three years service in the pre-revised selection grade had not been completed on that date, the incumbents were to be placed in pay band ₹15600-39100 with AGP of ₹8000. After completing



three years in the selection grade of Lecturer/Reader, they were to be placed in the higher pay band of Associate Professor. This has been provided in para 8.1 of the notification, dated 21.07.2011, regarding revised pay scales for teachers and equivalent positions. Relevant clauses thereof read as under:

8.0. Revised Pay Scales, Service conditions and Career Advancement Scheme for teachers and equivalent positions:

The pay structure for different categories of teachers and equivalent positions shall be as indicated below:-

8.1. Assistant Professor / Associate Professors / Professors in Universities

- (i) Persons entering the teaching profession in Universities and Colleges shall be designated as Assistant Professors and shall be placed in the Pay Band of Rs.15,600-Rs.39,100 with AGP of Rs.6,000. Lecturers already in service in the pre-revised scale of Rs.8000-Rs.13,500, shall be re-designated as Assistant Professors with the said AGP of Rs.6000.
- (ii) to (v) xxx xxx xxx
- (vi) The pay of the incumbents to the posts of Lecturer (senior scale) (i.e. the unrevised scale of Rs.10,000-Rs.15,200) shall be re-designated as Assistant Professor, and shall be fixed at the appropriate stage in Pay Band of Rs.15,600-Rs.39,100 based on their present pay, with AGP of Rs.7,000.
- (vii) & (viii) xxx xxx xxx
- (ix) Incumbent Readers and Lecturers (Selection Grade) who have completed three years in the current pay scale of Rs.12,000-Rs.18,300 on 1 January, 2006 shall be placed in Pay Band of Rs.37,400-Rs.67,000 with AGP Pay of Rs.9,000 and shall be re-designated as Associate Professor.
- (x) Incumbent Readers and Lecturers (Selection Grade) who had not completed three years in the pay scale of



Rs.12,000-Rs.18,300 on 1 January, 2006 shall be placed at the appropriate stage in the Pay Band of Rs.15,600-Rs.39,100 with AGP of Rs.8,000 till they complete three years of service in the grade of Lecturer (Selection Grade)/Reader, and thereafter shall be placed in the higher Pay Band of Rs.37,400-Rs.67,000 and accordingly re-designated as Associate Professor.

6.2. The requirement of para 19.1.b. of the notification is, *'the post was in an equivalent grade or of the pre-revised scale of pay as the post of Assistant Professor (Lecturer) Associate Professor (Reader) and Professor'*.

Undisputedly, while working on the post of Lecturer the petitioner had already been granted senior scale of ₹10000-15200, as also selection grade of ₹12000-18300 by the previous employer. In fact, he worked in the selection grade for more than three years with effect from 01.10.2007, and became entitled to be placed in the revised grade of Associate Professor ₹37400-6700 with 9000 AGP, in terms of para 8.1(x) of the notification dated 21.07.2011. Merely because on joining the Department as Assistant Professor thereafter, he was placed at the initial of grade ₹15600-39100 with 6000 AGP, it would not exclude him from the benefit claimed because it is not the respondents' case that the pre-revised selection grade was not the prescribed scale for Lecturers.

6.3. Further, as aforementioned, the petitioner previously worked as Lecturer and joined the Department also on the same post (re-designated as Assistant Professor in the revised pay scales' notification). The higher scales meant for the post, senior scale and selection grade, have also been recognised as such in the revised pay grades/scales meant for the post, as apparent from para 8.1 of the notification. The post of Lecturer/Assistant Professor has three different scales/grades, viz., the initial scale, senior scale and selection grade.

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After being appointed at the initial of scale as Lecturer/Assistant Professor, an incumbent becomes entitled to higher scales on fulfilling the laid down conditions and experience. The requirement of clause 19.1.b. is that the *post* should be in equivalent grade/pre-revised scale. The previous post of Lecturer as well as the present one of Assistant Professor are in equivalent grades as detailed hereinbefore; in fact, post is the same only nomenclature has changed with the revision of pay scales. Accordingly, it cannot be said the petitioner's previous post was not in equivalent grade/pre-revised scale. In considering equivalence under clause 19.1.b., the Department wrongly equated only one of the scales attached to the post, and not the post as such. Equivalence of post is to be seen in appropriate context, because a post can include varied pay scales/grades as well, as in the instant case.

6.4. There is another fallacy in the respondents' action in equating the initial scale of Assistant Professor to that of selection grade, the scale petitioner was placed in before joining the Department. The minimum of scale/grade being drawn by an employee at the time of joining, cannot be the same as the selection grade, since the latter is earned after rendering a few years of service on the post. Accordingly, equating these two amounts to equating the unequals, which can never be the same. Declining the claim of counting previous service on such specious grounds, is arbitrary, illogical and unreasonable. Additionally, if the respondents' argument were to be accepted, and past service benefit is to be declined to the petitioner because of his entire previous service not being in the minimum of pay scale for the post of Assistant Professor, it would amount to giving premium to academic inefficiency. As by fulfilling the requisite conditions and gaining experience, the petitioner earned higher scales of pay while working as Lecturer/Assistant



Professor. Had he continued at the minimum of scale throughout his previous service, it would have been counted for the benefit. This is irrational as it denounces merit and career progression, and violates the object of counting past service in terms of clause 19.1. of the notification. Resultantly, the petitioner is entitled to get his previous service counted for the claimed benefit.

7. In view of the discussion, the petition is allowed. The impugned order dated 04.05.2018, is set aside, directing the respondents to give senior scale and selection grade of pay to the petitioner by counting the previous service rendered by him from 11.09.2000 to 20.12.2011, and release arrears of salary with interest at the rate of six per cent from the due date to actual payment. The directions are to be carried out within four weeks of receiving a certified copy of this order. There shall be no order as to costs.

(TRIBHUVAN DAHIYA)
JUDGE

08.07.2024
Payal

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