

CWP-15896-2023 (O&M) and
other connected cases

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2024:PHHC:120979



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(226) CWP-15896-2023 (O&M)
Date of Decision : 13.09.2024
Saurabh Sharma and others
...Petitioners

Versus

State of Punjab and another
...Respondents

(226/2) CWP-26941-2023 (O&M)
Gurpreet Singh and another
...Petitioners

Versus

State of Punjab and another
...Respondents

(229) CWP-20454-2024 (O&M)
Harish Kumar and others
...Petitioners

Versus

State of Punjab and another
...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Samrat Malik, Advocate for the petitioners
in CWP-15896-2023 and CWP-26941-2023.

Mr. Prateek Gupta, Advocate and
Mr. Vishal Verma, Advocate for the petitioners
in CWP-20454-2024.

Mr. Satnam Preet Singh, Deputy Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

1. In the present bunch of petitions, the grievance being raised by

the petitioners is that the petitioners are entitled for the grant of pay scale of



the post of Assistant Professor as envisaged under the Punjab Medical Education (Group-A) Service Rules, 2016 (hereinafter referred to as '2016 Rules') whereas, the respondents have rejected the said claim of the petitioners and that too without any valid justification. Learned counsel for the petitioners submit that the petitioners are being paid the consolidated salary of ₹67,700/-, whereas in the regular pay scale admissible to the post, their pay with the initial start comes to ₹19,319/-.

2. The facts leading to the filing of the present writ petitions are as under :-

3. The respondent-State issued an advertisement advertising the post of Assistant Professors to be filled in the Department of Medical Education and Research. The petitioners applied and competed for the said post and were appointed on various dates starting from August, 2021 onwards till September, 2021. All the candidates were appointed by way of common appointment order dated 20.08.2021 in pursuance to which the petitioners joined on the various dates. In the appointment order dated 20.08.2021, the petitioners were appointed with the starting salary of ₹67,700/- which action of the respondents is under challenge on the ground that the post of Assistant Professor is governed by the 2016 Rules and under the said Rules, as per Appendix-A, the pay scale of the said post is ₹37,400 – ₹67,000/- + ₹8600/- Grade Pay. The prayer of the petitioners is that the petitioners are entitled for the pay as per the Rules governing the service upon their appointment.

4. Upon notice of motion, the respondents have filed the reply, wherein, they have stated that though, the post of Assistant Professor is



governed by 2016 Rules, wherein the pay scale provided for the post of Assistant Professor is ₹37,400 – ₹67,000/- + ₹8600/- Grade Pay but, before the issuance of appointment order of the petitioners, the Instructions dated 17.07.2020 were issued by the Government of Punjab, wherein, it was mentioned that any recruitment which will be made, the same is to be done on the basis of the pattern of the Government of India's 7th Central Pay Commission, hence, the petitioners have been given the pay of ₹67,700/- which is perfectly valid and legal.

5. Learned counsel for the petitioners submit that promotion to the post of Assistant Professor, which has been made after July, 2020, pay scale which has been mentioned in 2016 Rules governing the post, has been given and only the direct recruits have been discriminated. Learned counsel for the petitioners further submit that the direct recruits appointed prior to the appointment of the petitioners as well as the promotees, who were promoted after the appointment of the petitioners are getting the pay scale of ₹37,400 – ₹67,000/- + ₹8600/- Grade Pay, whereas the petitioners are being paid the consolidated salary of ₹67,700/- which is discriminatory in nature.

6. Learned counsel for the respondents has not been able to rebut the said fact that even the promotees who have been promoted to the post of Assistant Professor after the appointment of the petitioners are getting the regular pay scale of ₹37,400 – ₹67,000/- + ₹8600/- Grade Pay as envisaged under 2016 Rules rather than being paid under the 7th Central Pay Commission.

7. I have heard learned counsel for the parties and have gone through the record with their able assistance.



8. It is a settled principle of law that the appointment as well as the pay scale is to be given in accordance with the rules governing the service. Learned counsel for the respondents concedes the fact that as per 2016 Rules, which are applicable upon the petitioners qua the post of Assistant Professor, the pay scale envisaged therein is ₹37,400 – ₹67,000/- + ₹8600/- Grade Pay. That being the position, the petitioners should have been given the pay scale of the post of Assistant Professor as envisaged under the 2016 Rules.

9. Further, with regard to the argument of learned counsel for the respondents that when the posts were advertised, the Instructions of the State dated 17.07.2020 were already in operation, hence, the petitioners have been granted the benefit of pay only as per the Instructions dated 17.07.2020, it may be noticed that merely that the respondent-State had issued Instructions dated 17.07.2020, the same will not overwrite the 2016 Rules governing the service. It is a settled principle of law that in case, there is a conflict between the Instructions and the Rules governing the service, the 2016 Rules will prevail over the Instructions dated 17.07.2020, hence, once under the 2016 Rules which have supremacy over the Instructions dated 17.07.2020, the petitioners are held entitled for the pay scale of ₹37,400 – ₹67,000/- + ₹8600/- Grade Pay while working on the post of Assistant Professor as envisaged under 2016 Rules, they cannot be denied the said benefit of pay under 2016 Rules merely that contradictory Instructions dated 17.07.2020 have been issued by the State. Until and unless the 2016 Rules are amended to be in conformity with the Instructions dated 17.07.2020, the Instructions dated 17.07.2020 cannot be given effect to till the said Instructions remain in conflict with the 2016 Rules governing the service.



10. At this stage, learned counsel for the respondents submits that the Instructions have only been issued to supplement the Rules. The State has a power to issue Instructions to supplement the Rules. The supplement Instructions will only operate in a field which is not covered by the 2016 Rules governing the service or on the aspect qua which 2016 Rules are silent.

11. In the present petitions, the pay scale of the post in question has been described in the 2016 Rules itself, hence, it cannot be said that by the Instructions dated 17.07.2020, respondents were supplementing the Rules. Rather the Instructions dated 17.07.2020 are contrary to the 2016 Rules qua the pay scale of the post on which petitioners are working and hence, said Instructions dated 17.07.2020 cannot be made operational till 2016 Rules are amended.

12. Even otherwise, in case the plea of the respondents is accepted that after 17.07.2020, the Instructions dated 17.07.2020 will operate then also the respondents have violated their own Instructions dated 17.07.2020 qua the promotions which have been made to the post of Assistant Professor. It is a conceded fact that the employees promoted to the post of Assistant Professor after the appointment of the petitioners in 2021, have been given the pay scale as envisaged under 2016 Rules, hence, the respondents cannot pick and choose as to when the 2016 Rules will be applicable or the Instructions dated 17.07.2020 will be applicable.

13. The scenario in the present cases is that all the appointees to the post of Assistant Professor prior to the appointment of the petitioners are enjoying the pay scale of the post as envisaged under 2016 Rules and even the promotees who have been promoted after the appointment of the



petitioners, the Instructions dated 17.07.2020 have not been made applicable on them and their pay has been fixed according to the pay scale mentioned in 2016 Rules. This is clear case of pick and choose to apply 2016 Rules to some employees and Instructions to other employees, which cannot be permitted.

14. Hence, once the 2016 Rules governing the service which have a statutory force, are operational and prescribes a particular pay scale for the post being held by the petitioners and have not been amended so far, the same has to be made applicable by ignoring the Instructions dated 17.07.2020, which are contrary to 2016 Rules, hence the respondents are directed to grant the petitioners the pay scale as envisaged under 2016 Rules i.e. ₹37,400 – ₹67,000/- + ₹8600/- Grade Pay.

15. As in CWP No. 20454-2024, some of the petitioners have been appointed as Associate Professors in pursuance to the Advertisement dated 22.05.2022, they will also be covered by the decision rendered here-in-before, as the pay scale of the Associate Professor has also been described in 2016 Rules to mean ₹37,400 – ₹67,000/- + ₹8900/- Grade Pay, which is not being extended to them.

16. Keeping in view the above, the present petitions are allowed. The respondents are directed to give the petitioners the pay scale which they are entitled under the 2016 Rules from the date of their direct appointment. The petitioners will also be entitled for arrears of salary as they have performed the duties for the post in question from the date of their direct appointment. Let the arrears be calculated and be extended to the petitioners within a period of eight weeks from the date of receipt of copy of this order.



17. At this stage, learned counsel for the petitioners submit that though the petitioners have claimed interest but keeping in view the fact that they are only interested in the pay scale as entitled to them under 2016 Rules, they are not pressing their claim for the grant of interest.

18. All the petitions are allowed in above terms.

19. Pending miscellaneous application, if any, also stands disposed of.

20. A photocopy of this order be placed on the file of connected cases.

September 13, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes