



LPA-2977-2024(O&M)

1

126

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

LPA-2977-2024(O&M)

Date of Decision: 10.12.2024

STATE OF PUNJAB AND ANOTHER

.....APPELLANTS

VERSUS

DR. SAURABH SHARMA AND OTHERS

....RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MS. JUSTICE LAPITA BANERJI**

Present: Ms. Anu Chatrath, Additional A.G., Punjab
for the appellants.

Mr. R.K. Malik, Sr. Advocate with
Mr. Varun Veer Chauhan, Advocate
for the respondents/caveators.

ANUPINDER SINGH GREWAL, J (ORAL)

CM-7327-LPA-2024

This is an application for condonation of delay of 40 days in
preferring the appeal.

For the reasons stated in the application, the same is allowed.

Delay of 40 days in preferring the appeal is condoned.

**LPA-2977-2024(O&M)**

2

Main case

The appellants have challenged the judgment of the Single Bench dated 13.09.2024, whereby CWP-15896-2023 preferred by the respondents seeking pay scale in accordance with the rules has been allowed.

2. Learned State counsel for the appellants has vehemently argued that as the pay scale had been clearly spelt out in the advertisement/appointment letters and accepted by the private respondents at the time of their appointments, they could not later turn around and seek higher pay scale. The State Government had taken a conscious decision to adopt the Central Pay Scale which had been granted to the respondents vide notification dated 05.07.2021 which is applicable to the Government employees who were recruited in service on or after 17.07.2020.

3. Heard.

4. The State had issued an advertisement on 03.06.2021, whereby the applications for the posts of Assistant Professors under the Punjab Medical Education (Group-A) Service Rules, 2016 (for short 'Rules 2016') were invited. The Central Pay Scales were made applicable on these posts.

5. Admittedly, the conditions of service of the respondents are governed by the Rules 2016. It has been stipulated that the members of the service shall be entitled to such scales of pay as may be authorised by the Government of Punjab in the Department of Finance from time to time. The pay scale applicable at present in respect of the members of the service are given in Appendix-A. The relevant extract of Appendix-A, prescribing the pay

LPA-2977-2024(O&M)

3

scale of Rs.37400-67000 with grade pay of Rs.8600/- for the post of Assistant Professor is reproduced hereunder:-

	Assistant Professor (37400-67000+8600)
Pay in pay band	37400
G. Pay	8600
IR 5%	2300
NPA 25%	12075
DA 148%	89355
HRA 20%	12075
FMA	500
MOB	500
CCA	120
ACDA	250
Total	163175

6. It is manifest that the respondents having been appointed under 2016 Rules were entitled to the pay scales as prescribed thereunder. Merely because in the advertisement/appointment letters, the State had prescribed a lower pay scale, the same cannot come in the way of the respondents, seeking the enforcement of their lawful rights of getting the pay scales as prescribed under the statutory rules. It is trite that the executive instructions cannot override the statutory rules. In the event of the State intending to provide another or lower pay scales, the proper course to be adopted was the amendment of the rules. There is no dispute that the aforementioned rules have not been amended. Executive instructions would have the force of law only in the absence of statutory rules or to fill the gaps in the statutory rules which is not



LPA-2977-2024(O&M)

4

there in the case at hand.

7. The Supreme Court in the case of **Tata Chemicals Ltd. Vs. Commissioner of Customs (Preventive), Jamnagar reported in 2015 (11) SCC 628** has held in paragraph No.18 as under:-

“18. The Tribunal's judgment has proceeded on the basis that even though the samples were drawn contrary to law, the appellants would be estopped because their representative was present when the samples were drawn and they did not object immediately. This is a completely perverse finding both on fact and law. On fact, it has been more than amply proved that no representative of the appellant was, in fact, present at the time the Customs Inspector took the samples. Shri K.M. Jani who was allegedly present not only stated that he did not represent the Clearing Agent of the appellants in that he was not their employee but also stated that he was not present when the samples were taken. In fact, therefore, there was no representative of the appellants when the samples were taken. In law equally the Tribunal ought to have realized that there can be no estoppel against law. If the law requires that something be done in a particular manner, it must be done in that manner, and if not done in that manner has no existence in the eye of law at all. The Customs Authorities are not absolved from following the law depending upon the acts of a particular assessee. Something that is illegal cannot convert itself into something legal by the act of a third person.”

8. Reference can be made to the judgments of Supreme Court in the cases of **Union of India Vs. Majji Jangamayya, (1977) 1 SCC 606**, **Union of India Vs. Ashok Kumar Aggarwal, (2013) 16 SCC 147**, **Krishna Rai (dead) through LRs and others Vs. Banaras Hindu University through Registrar**

LPA-2977-2024(O&M)

5

and others in Civil Appeal Nos.4578-4580 of 2022 decided on 16.06.2022 and Civil Appeal No.152 of 2022 titled The Employees' State Insurance Corporation Vs. UOI and others, decided on 20.01.2022, whereby it has been held that in the event of conflict between statement in advertisement and service regulations, latter shall prevail.

9. The Single Bench has rightly held that the respondents are entitled to the pay scales under the 2016 Rules. It is apt to notice that the arbitrary and unreasonable action of the State has compelled the doctors to knock the portals of this Court. The doctors ought to be treated with respect and dignity and given their lawful dues under the rules.
10. Consequently, the appeal is dismissed.
11. Pending application(s), if any, shall also stand disposed of.

(ANUPINDER SINGH GREWAL)

JUDGE

(LAPITA BANERJI)

JUDGE

10.12.2024

Prince

Whether speaking/ reasoned : Yes/No

Whether Reportable : Yes/No