



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.16646 of 1999 (O&M)

Pronounced on: 13.01.2025

Bimla Sharma

.... Petitioner

Versus

The State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Raman B. Garg, Advocate and
Mr. Mayank Garg, Advocate for the petitioner.

Mr. Harish Rathi, Sr. DAG, Haryana.

TRIBHUVAN DAHIYA, J.

The petition has been filed *inter alia* seeking a writ of *mandamus* directing the respondents to grant the petitioner following service benefits; (i) increment under Rule 7 of the Haryana Civil Services (Revised Scale of Pay) Rules, 1980 (hereinafter referred to as 'the 1980 Rules') with effect from 02.04.1979, (ii) additional increment on account of promotion to the post of S.S. Mistress under Rule 4.4. (c) (i) of the Punjab Civil Services Rules (Volume I) Part I, as applicable to the State of Haryana (hereinafter referred to as 'the PCS Rules'), and (iii) refixation of pay with effect from 01.04.1985 under Rule 4.14 (2) of the PCS Rules, and all other consequential benefits.

2. Facts of the case in brief are:

2.1. The petitioner joined the respondent Department as a Junior Basic Training (JBT) Teacher on regular basis on 14.12.1961. She was



promoted as S.S. Mistress on officiating basis vide order dated 28.01.1985, and superannuated from service as such on 31.07.1997. During service, she acquired higher qualification of B.A. Part-I on 13.06.1972. She, thereupon, approached this Court by filing CWP No.6187 of 1995 seeking higher pay scale of ₹220-400 on account of higher qualification. Pursuant to the direction issued by this Court, the respondents vide order dated 02.04.1997, Annexure P-4, granted JST/Master's grade to her in terms of the joint Punjab Government letter, dated 23.07.1957, with effect from 13.06.1972.

2.2. It has been averred that while granting JST grade vide the aforesaid office order, the petitioner's pay was fixed without granting her the benefit of next increment on 02.04.1979, as admissible under Rule 7 of the 1980 Rules.

2.3. The claim for increment under Rule 7 is based upon specific averments in the petition that the pay of petitioner's juniors, who were getting lower pay prior to 1979 as compared to the petitioner, as also that of the petitioner, was fixed at ₹660 in the revised pay scale of ₹525-1050 under the 1980 Rules. Therefore, the petitioner becomes entitled to next increment with effect from 02.04.1979. The averments to that effect contained in para 7 of the petition, which have not been denied by the respondents, are as under:

That some instances of the juniors of the petitioner are given as under:

Sr. No.	Name	Date of joining as J.B.T.	Date of conferring pay scale of Rs. 220-400 having qualified B.A.I
1.	Sh. Daya Nand	27.4.1968	24.9.1974
2.	Smt. Indra Khatri	15.7.1969	30.6.1974
3.	Zile Singh	1.5.1968	15.6.1974
4.	Sh. Jai Pal Singh	10.12.1968	20.11.1974
5.	Sh. Ram Kanwar Sharma	25.5.1968	20.11.1974



These juniors were getting pay at Rs.252/- prior to 1.4.1979 in pay scale of Rs.220-400, whereas the petitioner was granted pay at stage of Rs.260/- prior to 1.4.1979. All the aforesaid juniors as well as the petitioner were fixed at Rs.660/- in the revised pay scale of Rs.525-1050 under the Revised Pay Rules, 1980.

2.4. The petitioner's second claim for grant of one increment on account of promotion as S.S. Mistress under Rule 4.4. (c) (i) of the PCS Rules is based on the premise that the promotional post entailed higher responsibilities as she was required to teach higher classes, i.e., class sixth to tenth. Accordingly, in terms of the law laid down in *Veena Kumari v. State of Haryana*, 2000(4) SCT 1038, she becomes entitled to the benefit.

2.5. Regarding the third claim of refixation of pay under Rule 4.14 (2) of the PCS Rules, it was stated that in terms thereof the petitioner was entitled to grant of annual increment on 01.04.1985 as the same was advantageous to her, and also the consequent refixation of pay. Had she continued working as JBT Teacher in the then existing grade prior to promotion, and had she been promoted after two months and three days, she would have been entitled to this annual increment with effect from 01.04.1985. The same, accordingly, cannot be taken away on account of promotion as S.S. Mistress with effect from 28.01.1985.

2.6. The petitioner submitted a representation claiming the benefit of increment under Rule 7 of the 1980 Rules, another increment on promotion to the post of S.S. Mistress under Rule 4.4. (c) (i) of the PCS Rules being a post of higher responsibilities, and also for the refixation of pay under Rule 4.14 (2), which was not acceded to.

3. In this factual background, learned counsel for the petitioner has submitted that the petitioner is entitled to all the three claims. The first claim

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is admissible on account of undisputed facts on record that the petitioner's juniors were getting lower pay than her prior to the appointed day in terms of the 1980 Rules, and were fixed in the same pay as the petitioner in the revised pay scale as well. Therefore, the benefit in terms of Rule 7 of the 1980 Rules cannot be denied to her. He further contends that the second claim is also admissible to the petitioner since after promotion as S.S. Mistress, she had been performing higher responsibilities of teaching higher classes, i.e., class sixth to tenth, and Rule 4.4 of the PCS Rules clearly provides for one more increment on account of higher responsibilities in service. The law in this regard is settled by Division Bench of this Court vide judgment rendered in *Veena Kumari* case (*supra*). Lastly, learned counsel has contended that the third claim also cannot be denied to the petitioner in terms of Rule 4.14 (2) of the PCS Rules, which is essentially meant for the situation she was placed in at the time of promotion as S.S. Mistress, as her due date of increment was 01.04.1985 and the promotion was given to her with effect from 28.01.1985. Therefore, the re-fixation of pay by including the due increment would be advantageous to her, and could not have been denied.

4. Learned State counsel, on the contrary, has referred to the written statement filed on behalf of the respondents to contend that none of the claims is allowable to the petitioner. The benefit of increment under Rule 7 of the 1980 Rules was admissible only to those teachers who were working in the same cadre. The petitioner had been granted the higher scale of ₹220-400 with effect from 13.06.1972 as a personal measure on acquiring higher qualification of B.A. Part-I. Her pay was fixed at ₹660 in the revised pay

scale of ₹525-1050 under Rule 6 of the 1980 Rules with next date of



increment as 01.04.1985. The benefit of one increment on refixation of pay on 02.04.1979 was only admissible in case an employee was junior in the same cadre and *vis-a-vis* a senior employee his/her pay had been fixed at the same stage as that of the senior employee in the revised pay scale. This was not the case with the petitioner, as she had not been drawing salary in the pay scale meant for the cadre. She had been granted pay scale of the post other than the cadre she was working in as a personal measure on acquiring higher qualification. The petitioner is not entitled to the second claim as well since she was already drawing higher pay scale meant for the promotional post. He further contends that the third claim can also not be accepted. The petitioner was not entitled to the benefit under the provisions of Rule 4.14 (2) of the PCS Rules, as she had been drawing higher pay scale than her substantive post; the refixation was not required under the Rules as she had been promoted in the same scale of pay. Accordingly, her next date of increment and her pay was to be fixed under Rule 4.14 (2).

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

6. The admitted facts on record are, the petitioner joined as JBT Teacher on 14.12.1961 and was granted JST grade, which was equivalent to Master's grade of ₹220-400, with effect from 13.06.1972 on acquiring higher qualification of B.A. Part-I in terms of Government letter dated 23.07.1957. She was later promoted as S.S. Mistress with effect from 28.01.1985. The pay scales for the post were revised by the government vide the 1980 Rules with effect from 01.04.1979. Prior to the revision, the petitioner's juniors were also getting JST grade having qualification of B.A. Part-I, and were drawing monthly pay at the rate of ₹252, whereas the



petitioner was drawing at the rate of ₹260. After the revision of pay scales both, the petitioner as well as her juniors, were fixed at ₹660 in the pay scale of ₹525-1050.

7. In the *first claim*, the petitioner has claimed entitlement to next date of increment in the revised pay scale from 02.04.1979 in terms of Rule 7 (1) of the 1980 Rules, which reads as under:

7. Date of Increment in the Revised Scale.—

(1) The date of next increment of a Government employee whose pay has been fixed in accordance with rule 6 with effect from 1st April 1979, shall be 1st April 1980.

Further more where the pay of a Government employee on the appointed day in the revised scale is fixed at the same stage as the one fixed for another Government employee in the same cadre drawing pay at a lower stage than his pay in the existing same scale (provided it is not at the minimum of the revised scale of pay), the date of his next increment in the revised scale would be the day following the appointed day.

(2) and (3) xxx

7.1. Since there is no dispute that prior to the appointed day, 01.04.1979, the petitioner's juniors were drawing pay at a lower stage than her in the JST grade. After revision, on the appointed day, her pay in the revised pay scale came at the same stage, viz., ₹660 as that of her juniors. Accordingly, in terms of Rule 7 (1) of the 1980 Rules, she becomes entitled to next increment in the revised pay scale from the day following the appointed day, i.e., 02.04.1979. In view of clear stipulation in the provision, there is no basis to deny the benefit, as done by the respondents on the plea that she had been granted pay scale of higher post as a personal measure on attaining higher qualification. This is because as per the admitted facts on



record, all the petitioner's juniors who were drawing lesser pay on the appointed day, were also drawing salary in the higher JST grade while working on the cadre post as JBT Teacher.

7.2. Under similar circumstances, this Court vide judgment, dated 17.07.2024, passed in CWP No.15291 of 2010 titled *Jarnail Singh v. State of Haryana and others*, along with connected petitions, has also taken a similar view by holding as under:

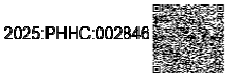
6.1. The increment has been sought to be withdrawn on the ground that it was meant to be given to an employee who was actually working in the existing scale of pay, and it was required to be given on fixation of pay of a senior employee when his pay was equal to that of his junior. Accordingly, it was not admissible to the petitioner since the Master grade had been given to him as a personal measure. The reasoning is flawed since the Rule makes no such distinction. Further, it has been specifically averred by the petitioner in para 8 of the petition that his juniors with similar qualifications, as those of his, in the same cadre were getting lesser pay than him; on revision of pay scales with effect from 01.04.1979, these juniors were brought at par with the petitioner. There is no denial to these factual averments. Therefore, as per Rule 7 of the 1980 Rules, the petitioner was entitled to one additional increment with effect from 02.04.1979, and the same had been rightly given by the respondents.

8. The *second claim* relates to grant of additional increment to the petitioner under Rule 4.4. (c) (i) of the PCS Rules, which reads as under:

Fixation of Initial Pay

4.4. The initial substantive pay of a Government employee who is appointed substantively to a post on a time-scale of pay is regulated as follows:-

(a) and (b) xxx



- (c) (i) Notwithstanding anything contained in these rules, where a Government employee holding a post in a temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above his pay drawn by him in the lower post provided it is certified by the Head of the Department or Head of Office where he is appointing authority in respect of Class III & IV Government employee in which the Government employee was holding the lower post that he would have continued to officiate in the lower post but for his promotion/appointment to the higher post.
- (ii) The provisions of sub-rule (2) of rule 4.14 shall also be applicable in any case where the initial pay is fixed under this clause. In cases, where a Government employee is, immediately before his promotion or appointment to a higher post, drawing pay at the maximum of the time scale of the lower post, his initial pay in the time scale of the higher post shall be fixed in the same manner as provided in sub-clause (i) above.

Explanation – xxx xxx

Note 1. to 10. xxx xxx

8.1. The increment has been claimed on being promoted as S.S. Mistress from JBT Teacher on the ground that the post entailed higher responsibilities as the petitioner was required to teach higher classes, and despite being in the same pay scale prior to promotion, she would be entitled to additional increment in terms of the law laid down in *Veena Kumari* case (*supra*). This argument by learned counsel for the petitioner is not sustainable since the view taken by this Court in *Veena Kumari* case (*supra*) is contrary to the one taken by the Supreme Court in *State of Haryana and another v. Partap Singh and others*, 2006 (10) SCC 251, wherein similar judgments of this Court as rendered in *Veena Kumari* case were set aside by



holding that benefit of promotional/higher pay scale is to be granted only once. In case pay scale for the promotional post has been granted to an employee while working at a lower post, he/she is not entitled to the benefit on actual promotion to higher cadre. The ratio of law laid down is reflected in para 10 of the judgment which is as under:

10. Here in the present case, the difference is that the respondents are getting the higher pay scale i.e. Masters' pay scale on acquiring higher educational qualification though in fact they were not promoted to the post of Masters. In Ashok Kumar Banerjee functional pay of Assistant Engineer in the pay scale of Rs.2000-3500 was granted to incumbent on completion of 15 years of service. In identical situation, the Court declined to grant refixation of pay as per FR 22(I)(a)(1) and same is the position in the present case. When the respondents were already getting the functional pay of Masters while working as JBT teachers, now they have been promoted in the pay scale of Masters. Therefore, they cannot get another fixation of pay which would amount to double benefit to the persons who are already working as Masters. Judicial fiat cannot create anomalous position against the statute. Hence, we allow all these appeals and set aside the impugned judgments of the Punjab and Haryana High Court. However, whatever benefits, if any, received by the respondents would not be recovered and they will not be entitled to fixation under Rule 4.4 of the Rules. No order as to costs.

9. The *third claim* pertains to the benefit of refixation of pay under Rule 4.14 of the PCS Rules, which reads as under:

Pay of Officiating Government Employees

4.13. xxx xxx

4.14.(1) Subject to the provisions of Rules 4.13 and 4.16 a Government employee who is appointed to officiate in a post shall draw the presumptive pay of that post.

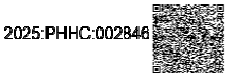
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(2) On an enhancement in the substantive pay, as a result of increment or otherwise, the pay of such Government employee shall be re-fixed under sub-rule (1) from the date of such enhancement as if he was appointed to officiate in that post on that date where such re-fixation is to his advantage.

9.1. Rule 4.14 relates to pay fixation of officiating government employees. Sub-rule (2) requires that in case substantive pay has been enhanced as a result of increment or otherwise, the pay of such employee shall be re-fixed under sub-rule (1) from the date of such enhancement. It is on the premise that the employee would be presumed to have been appointed to officiate on that post on the date of re-fixation, provided it was to his advantage. The petitioner, however, has not been officiating on any post, and was only given the higher JST grade based upon higher qualification. There is no dispute about re-fixation of pay on grant of subsequent promotion to her on the post of S.S. Mistress. Further, there is no enhancement of her substantive pay, since she has already been held not entitled to the increment under Rule 4.4 (c) (i) of the PCS Rules, as discussed hereinabove. Therefore, reliance placed upon Rule 4.14 (2) to claim the benefit, is misconceived. The claim, accordingly, stands rejected.

10. In view of the discussion, the first claim of the petitioner is accepted, and she is held entitled to increment under Rule 7 of the 1980 Rules with effect from 02.04.1979, with all consequential benefits. The respondents are directed to release the same along with arrears of salary and/or pensionary benefits, as the case may be, within four weeks of receiving a certified copy of this order. She will, however, be entitled to arrears only from thirty-eight months prior to filing of the petition which shall be given with interest at the rate of six per cent per annum from the due date to actual payment. The remaining two claims regarding additional



increment on account of promotion to the post of S.S. Mistress under Rule 4.4 (c) (i), and refixation of pay under Rule 4.14 (2) of the PCS Rules, are declined.

11. The petition, accordingly, stands disposed of in the aforesaid terms.

12. Pending miscellaneous application(s), if any, stand(s) disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

13.01.2025
Maninder

Whether speaking/reasoned : Yes
Whether reportable : Yes