2025:PHHC:004553

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

251 **CWP-11381-2024**
Date of Decision: 08.01.2025

PARMOD SHARMA AND OTHERS **…Petitioner(s)**

Versus

EXECUTIVE COUNCIL, HARYANA SCHOOL SHIKSHA PARIYOJNA PARISHAD AND OTHERS
…Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Tejpal Singh Dhull, Advocate
for the petitioners.

Mr. Kanwal Goyal, Advocate with
Ms. Sheena Dahiya, Advocate
for respondents/Parishad(HSSPP).

Mr. K. K. Chahal, Addl. A. G., Haryana.

TRIBHUVAN DAHIYA, J. (Oral)

This petition has been filed, *inter alia*, seeking a writ of *certiorari* quashing the order dated 02.02.2024, Annexure P-6, whereby the petitioners' claim for grant of pay as per the 7th Pay Commission's recommendations has been rejected, and to set aside condition 4(a) of their letters of appointment dated 10.09.2019, Annexure P-3, stipulating that the salary/emoluments would be paid as per recommendations of the 6th Pay Commission. Further, a writ of *mandamus* has been sought directing the respondents to give pay and allowances to them as per the 7th Pay Commission's recommendations which are being paid to other employees of the Haryana School Shiksha Pariyojna Parishad (for short, 'the Parishad') as per letter dated 11.05.2018, Annexure P-2, with effect from 01.01.2016.

2. Facts of the case in brief are, the Parishad is a registered Society set up in the State of Haryana. It is funded both by the Government of India and the State Government in the ratio of 60:40, for implementing the centrally sponsored programme of 'Samagra Shiksha'. The services of its employees are regulated by the 'Haryana School Shiksha Pariyojna Parishad Service Bye-Laws, 2013' (for short, 'the Service Bye-laws'). As per mode of recruitment prescribed under Bye-law 9, recruitment to service is to be made by direct recruitment on contract basis or by deputation of an official possessing the prescribed qualifications and already in the service of any State Government, Government of India/Government Undertaking/Societies. Most of the employees in the Parishad have been recruited on contract basis who have to sign an agreement of service as specified in Appendix-C. Pay, leave and other matters have been prescribed under Bye-law 12, both for (i) the existing employees, viz., the ones who were already in service when the Service Bye-laws were enforced, and (ii) the fresh appointees, viz., the ones appointed after the enforcement of the Service Bye-laws, which is as under:

> **Pay, Leave and other matters**
>
> **12(1) Pay**
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> The details of fixed contractual remuneration, existing emoluments and scale of pay/pay band including grade pay and entry level pay applicable to both existing as well as new entrants, has been specified in Appendix-A. Contractual employee shall be given the regular pay band and grade pay after completion of five and ten years of satisfactory service as under:
>
> **In case of existing employees:**
>
> (a) Those who have not completed five years service on the enforcement of these bye-laws will be given entry level pay of the pay band on Government

pattern plus grade pay along with 5% uniform annual increment of the pay plus grade pay. No Dearness Allowance and House Rent Allowance shall be admissible. In the eventuality of pay being reduced in the above manner, suitable increase will be made in the entry level pay as applicable to the said post, at the level of present contractual emoluments or next stage, as the case may be, till the completion of five years of service so as to ensure that the employee is not put to any disadvantage.

(b) Those who have completed five years satisfactory service on the enforcement of these bye-laws will be given entry level pay of the pay band on Government pattern plus grade pay plus Dearness Allowance admissible from time to time. No House Rent Allowance shall be admissible. These employees shall be given 3% annual increase of pay plus grade pay.

(c) Those who have completed ten years satisfactory service on the enforcement of these bye-laws will be given House Rent Allowance (HRA) and other allowances, if any, as admissible on government pattern, in addition to pay including grade pay already getting as at (b) above.

In case of fresh appointee after the enforcement of these bye-laws:

(i) Entry level pay of the pay band on government pattern plus grade pay with an uniform annual increase of 5% of the pay plus grade pay for a period of five years shall be admissible. Dearness Allowances and House Rent Allowance shall not be admissible.

(ii) After completion of five years of satisfactory service, entry level pay of the pay band on government pattern plus grade pay plus Dearness Allowance admissible from time to time along with 3% annual increase of the pay plus grade pay. No House Rent Allowance shall be admissible.

(iii) After completion of ten years of satisfactory service, House Rent Allowance and other allowances, if any, as admissible on government pattern shall be admissible, in addition to pay including grade pay already getting as at (ii) above….

(2) (3) (4) xxx xxx xxx

2.1. All the employees recruited in the Parishad are being paid salary in terms of the Service Bye-laws. Initially, the pay of contractual employees was fixed on government pattern, as per Bye-law 12, when the State Government's employees were getting salary as per recommendations of the 6th Pay Commission. After recommendations of the 7th Pay Commission for the Government employees, the Parishad sought concurrence from the Finance Department to give salary to each category of their employees as per these recommendations. The proposal to revise pay scale of contractual employees of the Parishad under the Service Bye-laws 2013, was placed for consideration before the Executive Council (EC) in its 44th meeting held on 18.08.2017. After the EC approval, the matter was placed before the General Council in its 7th meeting held on 19.12.2017, which was also approved. Thereafter, with concurrence of the Finance Department, the pay scale of certain categories of employees in the Parishad was revised vide order dated 11.05.2018 which included the posts held by the petitioners herein, viz., Assistant Block Resource Coordinators (ABRCs) and Block Resource Persons (BRPs). The pay matrixes were revised as per the 7th Pay Commission's recommendations with a stipulation that the same would be applicable to employees covered under Bye-law 12(1)(b) as on 01.01.2016 which refers to pay of the 'existing employees' who have completed five years of satisfactory service on the enforcement of Service Bye-laws.

2.2. The respondents issued an advertisement, dated 15.06.2019, for filling up posts of ABRCs and BRPs in the Parishad on contract basis. It was clearly mentioned therein that the incumbent would be appointed in the pay band/grade pay of PB-II (9300-34800 plus GP 4200) ₹12090+4200=16290 per month for the post of ABRCs; and in pay band/grade pay of PB-II (9300-34800 plus GP 4600) ₹13860+4600=18460 per month for the post of BRPs. The petitioners applied for these posts in response to this advertisement and were appointed on contract basis. The appointment letter of petitioner no.13, for the post of ABRC, and that of petitioner no.18 for the post of BRP, dated 10.09.2019, have been appended to the petition as Annexure P-3; para 4(a) of these letters stipulate that they are to be paid monthly contractual emoluments in Pay Band-II of ₹12090+4200GP=16290 and ₹13860+4600GP=18460, respectively, as per Bye-law 12. Similar appointment letters with such stipulation were statedly issued to other petitioners as well.

2.3. The petitioners joined services as ABRCs and BRPs by accepting the appointment on these terms, and have been working there ever since. After rendering about four years of service, they have alleged discrimination on the basis of office order dated 11.05.2018 passed by the Parishad, whereby the pay scales of certain categories of employees, including those of ABRCs and BRPs, were revised as per recommendations of the 7th Pay Commission. It is claimed that the petitioners are also entitled to the same pay scales as they are similarly placed ABRCs and BRPs. The claim was, however, rejected vide the impugned order dated 02.02.2024. With these facts, they approached this Court by filing the instant petition.

3. In this factual background, learned counsel for the petitioners has contended that they are being discriminated against as they have not been paid pay and emoluments equivalent to their counterparts working on the same posts in the Parishad. On the principle of 'equal pay for equal work', they are entitled to the same pay as is being paid to other ABRCs and BRPs. The condition in their letters of appointment restricting their emoluments as per the 6th Pay Commission's recommendations in Pay Band-II, is arbitrary and liable to be set aside. The petitioners started agitating for their rights right after joining service, and the first representation seeking the benefits was submitted by them on 15.07.2020, Annexure P-4. However, the respondents finally rejected their case only now vide the impugned order dated 02.02.2024, and their claim is not time barred. In the alternative, the arrears payable to the petitioners on account of revision of pay can be restricted to thirty-eight months prior to filing of the petition, but they should not be non-suited on account of delay as this is a recurring cause of action to them.

4. *Per contra*, learned counsel for the respondents have contended that the petitioners are contractual employees of the Parishad working as ABRCs and BRPs, and are entitled to emoluments only in terms of the Service Bye-laws. Besides, there is a condition in their letters of appointment itself that emoluments would be paid in Pay Band-II as per the 6th Pay Commission's recommendations in terms of Bye-law 12. The condition cannot be challenged at this belated stage as the same was accepted at the time of joining service, and the petitioners have been drawing pay and emoluments in terms therewith all these years. They are, accordingly, estopped from

challenging the same condition by filing the instant petition. The Parishad has not practiced any discrimination against the petitioners, as the order dated 11.05.2018, revising pay scales/pay matrixes has been made applicable to the employees covered under Bye-law 12(1)(b) of the Service Bye-laws. Meaning thereby, only the employees who have completed five years of satisfactory service are to be given the revised pay after 01.01.2016. The order also stipulates that the arrears on account of pay fixation for the period from 01.01.2016 to 31.03.2018 would be released only on receipts of funds from the State Government and the Government of India. This order is not under challenge, nor are the petitioners covered under Bye-law 12(1)(b). And the impugned order grants them the same benefit on attaining parity, as it mentions that the benefit of Dearness Allowance (DA) and 7th Pay Commission's recommendations would be given to the petitioners also after completion of five years of satisfactory service as per the Service Bye-laws. Accordingly, the office order, dated 11.05.2018, is not discriminatory to the petitioners, and has been issued keeping in view the financial implications of revision of pay scales in the Parishad.

5. Submissions made by the learned counsel for the parties have been considered and case file has been perused.

6. As per undisputed facts on record, the petitioners were appointed in the Parishad as ABRCs and BRPs on contract basis vide appointment letters, dated 10.09.2019, with a clear stipulation that they would be paid emoluments as per the 6th Pay Commission's recommendations in terms of Bye-law 12 of the Service Bye-laws. Accepting the terms and conditions the petitioners joined service when the Service Bye-laws were already in force. Bye-law 12 prescribes that pay and emoluments of the existing as well as the

new entrants in service of the Parishad shall be as specified in Appendix-A, which is as per the 6th Pay Commission's recommendations.

6.1. In case of *existing employees* Bye-law 12(1)(a) prescribes that the ones who were already in service at the time of enforcement of the Service Bye-laws and had not completed five years of satisfactory service, would be given entry level pay of the pay band on Government pattern plus grade pay along with five per cent uniform annual increase of the pay plus grade pay. Bye-law 12(1)(b) prescribes that the existing employees who have completed five years of satisfactory service on the enforcement of Service Bye-laws, will be given entry level pay of the pay band on Government pattern plus grade pay plus DA admissible from time to time with three per cent annual increase of pay plus grade pay. Further, Bye-law 12(1)(c) is to the effect that after completing ten years satisfactory service on the enforcement of these bye-laws, the existing employees are to be given House Rent Allowance (HRA) and other allowances in addition to the pay already being given under Bye-law 12(1)(b). It needs mention that at the time of enforcement of Service Bye-laws, the government employees were being given salary as per recommendations of the 6th Pay Commission, and the pay of contractual employees in the Parishad was also decided keeping that in view.

6.2. On similar lines the pay structure has been provided for the new/fresh appointees as well. As per Bye-law 12(1) (i) and (ii), *fresh appointees* are to be paid entry level pay of the pay band plus grade pay on Government pattern, with uniform annual increase of five per cent of pay plus grade pay for a period of five years. Only after completion of five years satisfactory service, the entry level pay of the pay band on government pattern plus grade pay plus DA admissible from time to time along with three per cent annual increase of the pay plus grade pay becomes payable to them. Undisputedly, the petitioners had not completed five years of satisfactory service in the Parishad at the time of passing of the impugned order. Further, clause (iii) of the Bye-law provides that after completing ten years satisfactory service the fresh appointees are entitled to House Rent Allowance (HRA) and other allowances in addition to pay being given after completing five years' service.

6.3. It is therefore apparent that under Bye-law 12 the Parishad employees have been classified in two categories, viz., existing employees and fresh appointees, and both have been treated equally so far as pay scales are concerned. Initial pay for both the categories of employees having less than five years service has been prescribed in the minimum of scale on Government pattern from the date of enforcement of the Service Bye-laws or from the date of joining service whichever is later. After five years and ten years of service higher pay and emoluments on uniform pattern have been given to both the categories. Therefore, equal pay has been prescribed for the employees across the board depending upon the length of service rendered, irrespective of the fact they have joined service prior to or after the enforcement of Bye-laws. This ensures that all the employees get the benefits uniformly after rendering equal duration of service.

6.4. To refer to the facts of the case at hand, after revision of pay scales by the Government as per recommendations of the 7th Pay Commission, the Parishad, keeping in view its financial constraints, revised the pay and emoluments of the employees, including ABRCs and BRPs, in the light of 7th Pay Commission's recommendations vide order dated 11.05.2018. The revised pay was made applicable only to those 'existing employees' who had completed five years satisfactory service when the Service Bye-laws were enforced. Since the petitioners, who are 'fresh appointees', were neither in service on the date of enforcement of the Service Bye-laws, nor had they completed five years satisfactory service at the time of passing of the impugned order rejecting their case for grant of pay as per the 7th Pay Commission's recommendations, they could not claim parity with the 'existing employees' who had completed five years of satisfactory service on the date of issuance of the order dated 11.05.2018, prescribing higher pay for them. Accordingly, the respondents cannot be accused of practicing any discrimination against them on this count. Especially so, when they have themselves undertaken to give the benefit of pay and emoluments as per the 7th Pay Commission's recommendations to the petitioners on completion of five years satisfactory service, in line with the decision to give the benefit to the 'existing employees' with five years of service vide order dated 11.05.2018.

7. However, there is no denying the fact that by now the petitioners have completed five years of service as 'fresh appointees' and in terms of the undertaking aforementioned have become entitled to the enhanced pay and allowances, as given to the 'existing employees' vide letter dated 11.05.2018, from the date of completing five years.

8. The petition is, accordingly, disposed of by directing the respondents to release same benefits as given to the 'existing employees' vide letter dated 11.05.2018, to the petitioners from the date of completing five years in service, within four weeks of receiving a certified copy of the order;

thereafter they will be entitled to interest on the delayed payment at the rate of nine per cent per annum till actual payment.

(TRIBHUVAN DAHIYA)
JUDGE

08.01.2025
Ad

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