

STATE OF HARYANA AND ORS.

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v.

SUMITRA DEVI AND ORS.

NOVEMBER 6, 2003

[V.N. KHARE, C.J. AND S.B. SINHA, J.]

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Service Law :

Pay Scale—JBT teachers in State of Haryana—Claim for higher pay scale on acquiring higher qualification—Government order dated 9.3.1990 retracting from earlier principle and issuing a clarification that teachers to be paid scale of pay of the post to which they are appointed and mere possession/acquiring higher qualification will not entitle them automatically to claim higher pay scale—JBT teachers in State of Haryana having B.Ed./B.T. qualification prior to their appointment as JBT teachers challenging the said Government Order—Held, it is not a case where petitioners acquired higher qualification prior to 9.3.1990 while in service as teachers or masters—Circular dated 9.3.1990 clearly states that a higher scale of pay would not be admissible to them despite holding a higher qualification having been appointed on a lower post—Petitioners already had higher qualification prior to their appointment as JBT teachers, and as such were not entitled to higher scale of pay—Supreme Court also in its earlier decisions has held that even holders of such offices would not automatically be entitled, on acquisition of a higher qualification, to higher scale of pay—Besides, an order contrary to a statute or Rules cannot be passed under Article 142 of the Constitution—Composite Punjab Government Finance Department Circular No. 5056—FR-11/57 dated 23.7.1957—Haryana Government order dated 9.3.1990—Constitution of India—Article 142.

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State of Haryana and Anr. v. Kamal Singh Saharwat and Ors., [1999] 8 SCC 44 and Wazir Singh v. State of Haryana, [1995] Supp. 3 SCC 697, relied on.

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Rattan Singh and Ors. v. State of Haryana, [1994] 3 Recent Service Judgment 220 and Chaman Lal v. State of Haryana, [1987] 3 SCC 11, referred to.

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4861 of 1998.

From the Judgment and Order dated 13.2.97 of the Patna High Court in C.W.P.No. 16208 of 1996.

Neeraj Kumar Jain and Ms. Kavita Wadia for the Appellants.

B Alok Sangwan, Dr. Sushil Balwada, Anil Hooda, Dr.G.S. Sangwan and Mrs. Santosh Singh for the Respondents.

The following Order of the Court was delivered :

C The respondents herein were appointed on *ad hoc* basis as JBT teachers on various dated in the year 1982-1983 in the school run by the State of Haryana. Their qualification is JBT and Prabhakar, which they acquired prior to joining as JBT teacher. In the year 1957, the State of Punjab issued a Circular on 23rd July, 1957 directing that higher pay scale shall be granted to a particular class of teachers on acquiring the particular educational qualification. It is alleged that this Circular was made applicable to the State of Haryana also. Subsequently, on 5th September, 1979, State of Haryana issued an Order which provided for the grant of higher pay scale on acquisition of higher qualification which was superseded by Government Order dated 9th March, 1990 which runs as follows:

E “8. In the present revision of pay scale of government employees teaching personnel of the Education Department (hereinafter called the ‘policy of the Government’ in unequivocal terms the Government have expressed their intention to retract from the earlier principle that teachers acquiring the B.T. or B.Ed degree would be entitled to the higher grade with effect from the respective dates of their acquiring that qualification. Relevant portions in the policy of Government dated 9.3.1990 read as follows:

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G “I am directed to refer to composite Punjab Government Finance Department Circular No. 5056-FR-11/57 dated 23.7.1957 on the subject noted above, which contains the details regarding the revision of the pay scales of various categories of subordinate services (including teachers) done on the recommendations made by the Pay Revisions Committee, then appointed to examine this matter. While evolving revised pay scale in respect of different categories of teachers in the Education Department, in para 3 of the above-mentioned circular

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two broad categories namely, category A and category B of teachers were mentioned, *inter alia* laying down the requirements of academic qualifications in their cases. It would not have been intended by the Government that on their acquisition of high academic qualification, various categories of teachers in the lower grades shall automatically be placed in the different higher grade commensurate with their academic qualification. Normally, pay scales of various categories of posts in any Department are sanctioned keeping in view the minimum qualifications required for each category of posts, besides the duties prescribed for them. Similarly, the teaching posts are sanctioned for various educational institutions keeping in view the subjects and classes, the incumbents of these posts are required to teach and for that specific qualifications are prescribed in the service rule as well as at the time of recruitment. For example, if a B.A., B. Ed. pass candidate with the qualifications of Matric JBT also applied for the post of Matric JBT and is taken into service on the basis of higher qualification, he/she cannot claim the grade of Master/Mistress, but will get the sanctioned scale of pay of teacher meant for Matric JBT. Similarly, if a Matric JBT teacher improves his qualification during the course of service and acquire degree of B.A., B.Ed or of language teacher i.e. O.T. Giani or Prabhakar, he cannot claim the scale of Master i.e. B.A., B.Ed or of language teacher unless he is appointed as Master against the post of Master and language teacher against the post of language teacher for which the minimum qualifications are B.A., B.Ed and O.T. (Giani or Prabhakar) respectively.

2. As the instructions contained in paragraph 3 of the above-mentioned letter dated 23.7.1957 did not bring out the above-mentioned intentions of the Government in unambiguous terms, it has resulted in different interpretations i.e. automatic grant of higher scales of pay on the basis of qualifications irrespective of number of posts available in the Department in that category..... it was never the intention of the State Government to undertake the continuing heavy financial burden that has devolved on it because of the faculty framing of the above - mentioned instructions.

(3 to 5 omitted)

6. In order to remove the confusion being created by misconstruing the intention of the Government the whole matter has been reconsidered by the State Government. As a result of the

A reconsideration, the Governor of Haryana is pleased to clarify that the teachers of the Education Department are not entitled to be placed in the higher scales of pay in terms of para 2 of the Punjab Government Letter No. 5056-FR-11/57/6600 dated 23.7.1957 or any subsequent letters/notifications issued by the Haryana Government referred to in the preceding paras, which letters already become inoperative on their improving/acquiring higher qualifications during the course of their service automatically. The masters/teachers in the Education Department will be placed in the scales of pay of their respective categories to which they are appointed against the sanctioned posts and mere possession/acquiring of higher qualifications will not entitle them automatically to claim higher pay scales.”

(emphasis supplied)

D In the year 1996 the respondents filed a writ petition in the Punjab & Haryana High Court contending that as they possessed qualification of B.A. or B.Ed. or both, they are entitled to a higher scale of pay in terms of the aforementioned 1979 circular and the State be directed to give them the scale of pay admissible to Hindi teacher. The High Court relying upon a decision in *Rattan Singh and Ors. v. State of Haryana*, [1994] Vol. 3 Recent Service Judgment 220 allowed the petition and issued a direction to the appellant herein to accord pay scale of Hindi teacher to the respondents. It is against the said judgment that the appellant is before us in appeal by way of special leave petition.

F The learned counsel appearing on behalf of the appellant *inter alia* submitted that the view taken by the High Court is erroneous and deserves to be set aside having regard to the decision of this Court in *State of Haryana and Anr. v. Kamal Singh Saharawat and Ors.*, [1993] 3 SCC 44. The learned counsel appearing on behalf of the respondent, on the other hand, placing reliance on the decision in *Wazir Singh v. State of Haryana* [1995] Suppl. 3 SCC 697 urged that the view taken by the High Court is correct.

G In *Wazir Singh* (supra) the writ petitioner therein prayed for a grant of higher scale of pay as they had acquired higher qualifications while working as teachers. This Court having regard to the aforementioned circular dated 9th March, 1990 came to the conclusion that a higher scale of pay is not automatically admissible as the State had altered their earlier policy. Keeping in view the changed situation this Court did not follow its earlier decision in H *Chaman Lal v. State of Haryana* [1987] 3 SCC 11. However, having regard

to the concession made by the learned counsel for the State of Haryana, this Court directed, 'all those who have acquired B.T./B.Ed before 9.3.1990 would be entitled to get higher scales of pay in terms of para 2 of the composite Punjab Government letter dated 23.7.1957. In *Kamal Singh Saharawat* (supra) a Bench of this Court considered the decision rendered in *Wazir Singh* (supra) and a large number of other decisions and came to the conclusion, 'thus it is seen, that there is no judgment of this Court holding that Teachers acquiring postgraduate qualifications or qualifications prescribed for the post of Lecturers would automatically be entitled to scales of pay applicable to the Lecturers on acquiring such qualifications without being appointed as Lecturers in accordance with the rules.' The respondents herein were appointed after 1957. They were appointed in the posts of masters and minimum qualification was matriculate. They have acquired the degree or diploma much prior to their appointment as would appear from the following chart set out at page C.

Name appointment	Date of Adhoc regularization	Date of Prabhakar	Year of passing
Sumitra Devi	26.10.1983	1.11.1986	1975
Sumitra Devi	26.10.1983	1.11.1986	1980
Chandra Wati	01.09.1982	1.11.1986	1978
Krishna	19.08.1983	1.11.1986	1977
Shakuntala Devi	01.09.1982	1.11.1986	1975
Chaman Devi	22.10.1983	1.11.1986	1978

It is, therefore, not a case where the petitioner had acquired a qualification prior to 9th March, 1990 while acting as teachers of masters. The circular letter dated 9th March, 1990 clearly states that a higher scale of pay would not be admissible to them despite holding a higher qualification having appointed on a lower post such a higher scale of pay was admissible only to such teacher/masters who had enhanced their educational qualification during the course of service. The petitioner, therefore, were not entitled to higher scale of pay. The learned counsel for the respondents submitted that keeping in view the fact that persons having similar qualification are getting higher scales of pay and as such this Court should not interfere with the impugned judgment. The submission of the learned counsel cannot be accepted for more than one reason. As the persons who have been granted higher

- A scales of pay enhanced their qualification while holding their offices they had been allowed to continue to get a higher scale of pay in view of the concession made by the learned counsel appearing on behalf of the State. This Court both in *Wazir Singh* (supra) and *Kamal Singh Saharwat* (supra) as indicated hereinbefore in no uncertain terms held that even such holders of such offices would not automatically be entitled, on acquisition of a highest qualification as higher scale of pay. The petitioners, as noticed, already had higher qualification and thus not entitled to benefit of any circular whatsoever. Unfortunately, this aspect of the matter have not been taken into consideration by the High Court. Further more, even an order cannot be passed under Article 142 of the Constitution of India which will be contrary to the Statute or statute of the Rule.

Thus in this view of the matter that any teacher who was granted this pay scale was only those JBT teachers who were entitled to have a higher pay scale if they acquired qualification during the period of their service not prior to joining of the service.

For the aforesaid reason, the appeal deserves to be allowed and the impugned judgment is to be set aside.

There shall be no order as to costs.

E R.P.

Appeal allowed.