

STATE OF HARYANA AND ANR.

v.

DHARAM SINGH & ORS.
(Civil Appeal No. 753 of 2009)

FEBRUARY 6, 2009

**[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]**

Service Law – Claim of respondents for entitlement to promotional increments – Directions given by High Court to consider the claim – Challenged – Held: High Court came to an abrupt conclusion regarding entitlement relying on an earlier decision without indicating as to how the factual scenario was similar – Matter remitted to High Court to decide the matter afresh.

The respondents filed writ petition claiming entitlement to promotional increments on the basis that they were working as J.B.T. teachers and were promoted to the post of Headmaster on the basis on seniority-cum-merit. High Court allowed the petition.

In appeal to this Court, it was contended that the directions given by High Court to consider the case of the respondents for grant of increment had no legal basis.

Disposing of the appeal, the Court

HELD:1. The High Court came to an abrupt conclusion regarding entitlement relying on an earlier decision without indicating as to how the factual scenario was similar. [Para 7] [982-B]

2. In the aforesaid background, the matter is remitted to the High Court to consider the applicability and relevance of *Pratap Singh's* case to the facts of the present

A case and to decide the matter afresh. [Para 8] [982-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 753 of 2009.

B From the Judgment/Order dated 5.12.2000 in CWP No. 663/1999 passed by the High Court of Punjab and Haryana at Chandigarh.

Manjit Singh, AAG. and T.V. George for the Appellant.

C Balbir Singh Gupta for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J.1. Leave granted.

D 2. Challenge in this appeal is to the order passed by a Division Bench of the Punjab and Haryana High Court allowing the writ petition filed by the respondents. The High Court relied on an earlier decision rendered by it in Civil Writ Petition No.15157 of 1998.

E 3. In support of the appeal learned counsel for the appellant submitted that the directions given by the High Court to consider the case of the respondents for grant of one increment on account of promotion to the next higher rank has no legal basis. It is pointed out that the respondents claim was for promotional increments. The writ petitioners claimed promotional increments on the basis that they were working as J.B.T. teachers and were promoted to the post of Headmaster on the basis of seniority-cum-merit. They have already received the same higher pay scale of the Headmaster as a personal measure, prior to being promoted and without performing the dues of higher responsibility at that stage. Strong reliance was placed on a decision of this Court in *State of Haryana and Anr. v. Partap Singh and Ors.* (2006 (10) SCC 251).

H 4. The ratio in that decision is as follows:

“The respondents were already getting the functional pay of Masters while working as JBT teachers. Because of regular promotion order being issued for the post of Masters, it only amounted to regularization of the pay scale which they were already drawing i.e. pay scale of Masters. Thus, granting of one more increment because of regularization of the respondents by promoting them to the post of Masters, would not entitle them to the double benefit; though they have already got one increment on acquiring the higher educational qualifications and now on regular promotion being given in the Masters’ pay scale in which they were already working, they cannot claim another benefit. Under Rule 4.4 it could have been possible to grant them fixation if they were continuing in the old scale of JBT teachers and on their promotion to the post of Master, then certainly they would have been entitled to fixation of pay giving them the initial pay the stage of timescale next above their substantive pay in respect of the old post. But they are already fixed in the pay scale of higher post of Master which though legitimately they were not entitled to because of the change in the policy but they continued in the higher pay scale despite the change in the policy and the Government did not take any further steps to put the house in proper order. Be that as it may, since the respondents were drawing the higher pay scale on acquiring of higher educational qualifications i.e. the Master’s pay scale, and now only regular orders have been passed, promoting them as Master, there is no question of again fixing them next above their substantive pay in respect of the old post. They are not holding the old post any more and they were not drawing the salary of JBT teachers i.e. the old post. Therefore, there is no question of granting them the initial pay the stage of timescale next above their substantive pay in respect of the old post. Judicial fiat cannot create anomalous position against the statute.”

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A 5. Learned counsel for the respondent on the other hand submitted that *Pratap Singh's* case (supra) has no relevance and it is factually distinguishable.

6. The factual scenario has been spelt out above.

B 7. The High Court came to an abrupt conclusion regarding entitlement relying on an earlier decision without indicating as to how the factual scenario was similar.

C 8. In the aforesaid background, we deem it fit to remit the matter to the High Court to consider the applicability and relevance of *Pratap Singh's* case (supra) to the facts of the present case and to decide the matter afresh.

D 9. We request the High Court to dispose of the matter as early as practicable. The appeal is disposed of accordingly.

B.B.B.

Appeal disposed of.