
(2001) 07 P&H CK 0084
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1872 of 1999

Jaspal Kaur

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 12-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Punjab School Education Board (Matriculation Examination) Rules, 1988 — Rule 15

Citation : (2001) 07 P&H CK 0084

Hon'ble Judges : Swatanter Kumar, J;A.S. Gill, J

Bench : Division Bench

Advocate : S.S. Swaich, for the Appellant; Gurminder Singh, DAG, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—The petitioner, who was appointed as a Librarian in Senior Secondary School. Hathur, District Ludhiana, on 13.3.1991, and is presently working as such, has approached this Court under Articles 226/227 of the Constitution of India praying that parity be ordered to be maintained between the teaching staff and the librarians and they be granted the same pay scale, status and promotional channels with all consequential reliefs.

2. The petitioner had done her graduation from Pan-jab University, Chandigarh, in the year 1983 and thereupon she did one year diploma in Library Science in the year 1985 from Punjab University, Patiala. She did her M.A. in Punjabi from Panjab University, Chandigarh in the year 1988 and there after passed B.Ed. Examination from Panjabi University, Patiala in the year 1989. Thereafter she was appointed as Librarian in the pay scale of Rs. 1200-2130/- (revised pay scale of Rs. 4020-6200). The submission of the petitioner is that she had been performing her duties to the satisfaction of all concerned. During the course of her duties she inter-acts with the students and even takes the library class of the students which had been duly prescribed for in the time table. While placing

reliance on Rule 15 of the Punjab School Education Board (Matriculation Examination) Rules, 1988, it is contended that under Clause (a) of Rule 15.2, the Library Science is one of the subjects in which the Board can hold examination. In nutshell the case of the petitioner is that she is performing the duties similar to the teachers and as such the petitioner is entitled to all the benefits including the promotional avenues available to the teachers in their cadre.

3. Upon notice, the respondents filed reply and contended that the petitioner was appointed as a Librarian as she satisfied the prescribed qualifications. It was specifically disputed that the duties of a Librarian are in any manner alike to the duties and responsibilities of the teacher. In fact she had no experience as a teacher and, thus cannot be treated as part of teaching cadre and given consequential benefits including that of promotion in that cadre. The Board had not prescribed Library Science as a paper in the prescribed syllabus and in the time table the subject has been indicated only with an object that students could go to the library, read the books as a matter of habit and during a particular hour. According to the respondents there are no basis, whatsoever, for treating the petitioner as a part of teaching cadre which is a distinct and different cadre. However, it is conceded that there are no further promotions for a Librarian within the existing rules.

4. From the above narrated facts it is clear that the main controversy revolves on the issue whether the Librarians are discharging duties, functions and responsibilities, similar if not identical to that of teaches. The respondents have specifically disputed and there is no document on record to support the contention of the petitioner which could justify any parity with teaching cadre either of facts or on law. For the purposes of claiming parity in status, pay and cadre, the petitioner must satisfy the well settled conditions. The petitioner has not been able to show any rule under which the Librarians are treated as part of the teaching cadre nor there are any other instructions issued by the State. Even in common parlance it will not be appropriate to treat Librarians as part of the teaching cadre. It is a matter of fact and, thus, must be established as such. Ingredients cannot be inferred or gathered from attending circumstances. The onus is upon the petition to establish as a matter of fact that duties, responsibilities and functions of the Librarians are identical or similar to that of the teachers.

5. The petitioner was admittedly appointed as a Librarian in a distinct and different pay scale than that of the teacher. She accepted the said appointment of her own accord and free will, fully being aware that the post of Librarian is not part of the teaching cadre and normal promotional avenues could not be available to her. The petitioner herself has annexed the instructions issued by the District Education Officer on 3.6.1998 as Annexure P/5 to the writ petition. These instructions indicate the various functions which a Librarian is required to discharge and the same are as under :-

i) To ensure the purchase of approved books only, in the Schools.

- ii) To arrange for Exhibitions of Books in the Schools.
- iii) To establish Library Clubs in the Schools, iv) To arrange for higher competitions in Library.
- v) To include Library period in the School Time-Table.

The above said instructions even by implication do not suggest that the Librarian was required to teach to the students Library Science as a subject. The intent and purpose of these instructions is primarily to ensure that interest of the students is created in going to the library and for selecting the appropriate books. Such instructions can no way be interpreted to contend that it provides for regular teaching of the students by the Librarian, that too to the extent that such activity should squarely fall within the expression "teaching of regular courses".

6. We must also notice at this stage that the petitioner was appointed as a Librarian in the year 1991 when she had admittedly passed M.A. B.Ed. She was qualified to be considered as a teacher. At that time it was her choice to take up the job of Librarian. She either did not apply to be appointed to the teacher cadre or was obviously not selected. The petitioner now cannot be permitted to achieve indirectly what otherwise is not permissible under the rules even directly. Once a post is not part of the cadre, on the basis of presumption and conjectures or attendant circumstances, the same cannot be included as part of the cadre. The learned counsel for the petitioner placed reliance upon the judgment of Hon'ble Supreme Court of India in the case of Anil Ratan Sarkar and Others Vs. State of West Bengal and Others, to contend that where Laboratory Assistants who were redesignated as Laboratory Instructors were treated as leaching staff and were required to be given the pay scales prescribed for Physical Instructors. This case is of no help to the petitioner because in that case the Court on the basis of the documents and annual report published by the Education Department itself had come to the conclusion that the Laboratory Instructors were at parity with Physical Instructors who were being treated as part of the teaching cadre. In the present case we have already noticed that no document much less any rule or instructions of the Government have been placed on record to draw such an inference or conclusion.

7. It is commonly conceded case before us that the post of Librarian is not a feeding cadre to any promotional post. In other words, there would be absolute stagnation to the post of Librarians. This further establishes the basic fact that the post of Librarian has never been treated as a part of the regular teaching cadre. We cannot help but to note that it will not meet the ends of fair administration of service that a person who is appointed as a Librarian would retire as such, irrespective of the employee's sincere, efficient and excellent contribution during his service. It will be of no consolation that the employee would get his due increments within the pay scale/revised pay scale. There should be some kind of incentive provided by the employer to an employee to

maintain interest and sincerity in discharge of his duties. It is even in the interest of the State to provide better service conditions and at least some promotional avenues to encourage the employee to ensure better performance, it would help in serving the larger interests of the State and the Public. In this regard we would make reference to the judgment of the Supreme Court in the case of *Rughunath Prasad v. The Secretary, Home (Police) Department, Government of Bihar and Ors.*, JT 1988(1) Supreme Court 22.

8. Inclusion of a post to a particular cadre or clubbing of two different cadres, is primarily a function of the State while exercising its power of subordinate legislation. Terms and conditions of service are to be prescribed by the State and not by the Court. The Court normally would not step into the realm of legislative functioning and leave it to the State to act in the fairer interests of public. It is for the State to provide equilibrium between what it demands from its employees and what it gives to them in return. Thus, we will leave it for the State to consider this aspect in its appropriate prospective.

9. In view of the above discussion, we find no merit for granting relief to the petitioner as claimed in the writ petition and dismiss the same, however, with a pious hope that the State would take steps for providing some promotional avenues to the class of the petitioner in the larger interests of service welfare.

10. Petition dismissed.