
(1993) 10 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 11995 of 1989

Joga Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 13-10-1993

Acts Referred:

Constitution of India, 1950 — Article 14

Punjab Educational Service Class-III (School Cadre) Rules, 1955 — Rule 10

Citation : (1994) 2 ILR (P&H) 126

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : R.K. Chopra, for the Appellant; Ashok Aggarwal, Addl. A.G. and S.K. Bhanot, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

V.K. Jhanji, J.—By this judgment, I propose to dispose of Civil Writ Petitions No. 11905 of 1989, 11667 of 1989 and 4515 of 1986.

2. Petitioners in all these writ petitions are teachers in various schools in the State of Punjab. Their services are governed by Punjab Educational

Services Class III School Cadre Rules, 1955, which were in force with effect from 30th May, 1987. Rule 10 states that ""members of the service

will be entitled to such scales of pay as may be authorised by the Government from time to time, as contained in Appendix ""A"" against each post"".

Appendix ""A"" is appendix to the Rules. Appendix "A" gives the description of the pay scales as well as designation of the post. Vide instructions

dated 23rd July, 1957 (hereinafter referred to as 1957 instructions), the Government of Punjab (hereinafter referred to as the Government) revised

the pay scales of the teachers working in the State Education Department. According to the 1957 instructions, they were put into two categories.

Teachers according to their qualifications were placed in two categories, i.e. category "A" and "B". The same reads as under:

CATEGORY "A"

B.A./B.Sc./B.Com/B.Sc. (Agriculture)/and B.T./Diploma in Physical Education/
Diploma in Senior Basic Training.

CATEGORY "B"

Group I : Matric with Basic Training (including JTs).

Group II : J.Ts. (including Assistant Mistress with B.A./Inter/; Matric plus J.A.V. Training).

Group III : (i) Shastries.

(ii) Gianies, Prabhakars, Drawing Masters and Craftsmen Certificate holders.

(iii) Munshi Fazil.

(iv) S.Ts. including S.Vs with training in Physical Education or Agriculture.

Group IV : Untrained teachers with qualifications like B.Com. B.Sc. (Agriculture), etc.

Teachers who had the qualifications as mentioned in category "A", but were working against the posts in category "B", were aggrieved of not

being given the pay scales meant for teachers falling in category "A". They approached this Court by way of civil Writ petitions. The matter was

finally decided in the Apex Court in a case reported as State of Punjab and Another Vs. Kirpal Singh Bhatia and Others, . While interpreting the

1957 instructions, the Apex Court held that the teachers would be entitled to the pay scales according to their qualifications. The teachers

according to their qualifications were placed in two broad categories, "A" and "B". Thus, those who had degrees of B.A. B.T./B.Ed. became

entitled to scales of pay according to category "A". The scale of pay was made effective either from the date the teachers would pass the

examination of B.T. or its equivalent or from 1st May, 1957, whichever was later. In pursuance of judgment of the Apex Court in Kirpal Singh

Bhatia's case (supra), many more teachers working in various schools in the State of Punjab approached this Court by way of writ petitions. In

almost, all these writ petitions, the following reliefs were allowed:

(i) The Petitioners and other members of their Class (unadjusted B.A. B.T./B.Ed. teachers) shall be appointed to the posts of Masters in the

regular cadre to the extent of 25 per cent quota reserved for them for each year in accordance with the memorandum dated November 7, 1958

(Annexure "B" to the writ petition) and after adjusting them in the cadre their salary and inter se seniority shall be fixed along with the other

members of the service in accordance with the service rules, without affecting the rights of the members of the Service who have already been

promoted;

(ii) The Petitioners are entitled to the higher grade of Masters, Rs. 110--250 from the day they acquired the B.T. or B.Ed. degree or with effect

from May 1, 1957 whichever is later, and

(iii) The Petitioners shall be paid the arrears of pay in the higher grade for a period upto three years and two months prior to the filing of their

respective writ petitions in accordance with their entitlement.

3. Subsequently, the JBT teachers who were having qualifications of Gyani or Prabhakar, or its equivalent, also approached this Court by filing

writ petitions, contending therein that they are also entitled to the pay scales meant for teachers falling in Group-III of category "B". Their

contention was accepted and they were held so entitled by this Court in judgment reported as Labh Singh Garcha and Ors. v. The State of Punjab

etc. 1970 SLWR 476.

4. The teachers possessing qualification of F.A. and B.A. in addition to qualification meant for J.B.T. teachers, also approached this Court with the

grievance that they should be granted the pay scale meant for Group II of category "B". Relying upon the 1957 instructions and the judgment of

the Apex Court in Kirpal Singh Bhatia's case (supra), they were held entitled to the relief prayed for, by this Court in Nasib Kaur v. State of

Punjab 1988 (4) S.L.R. 301. Petitioners therein were held entitled to be brought into the status of category "B" of Group-II from the date they

acquired the intermediate qualifications. The Government filed a SLP against this judgment, but the same was dismissed in limine. The Government

accepted the Kothari Commission report in regard to scales of pay. On the basis of this report, pay scales of teachers were revised with effect

from 1st November, 1966. The main feature of revision was linking of pay to qualification. On acceptance of Kothari Commission report, the pay

scales were revised and the Government had been giving the benefit in pay

scales as and when higher qualifications were acquired by the teachers.

This state of affairs continued right upto 19th February, 1979, on which date, the Secretary to Government, Education Department, issued an

order (hereinafter referred to as the 1979 order) in which it was stated that 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/responsibilities attached thereto.

Persons recruited/appointed against any specific category of posts are entitled to the pay scale prescribed thereof. It further states that as the

instructions contained in paragraph 3 of letter dated 23rd July, 1957 did not bring out the intention of the Government in unambiguous terms, it

resulted in different interpretations, i.e. automatic grant of higher scales of pay on the basis of qualifications irrespective of the number of posts

available in the department in that category. In a number of cases, some teachers who were denied such higher grants on their acquiring higher

qualifications, sought redress even through judicial pronouncements. Although the Government had to grant the higher scales of pay in such cases in

view of the present working of the instructions contained in para 3 of letter dated 23rd July, 1957, yet it was never its intention to undertake the

continuing unintended and heavy financial burden that developed on it because of faulty framing of 1957 instructions. The Government thus, sought

to do away with the 1957 instructions,--vide 1979 order as stated in paragraph 3 of that letter, which reads as under:

In order to ensure that these unintended and large financial implications do not continue existing in future, the whole matter has been reconsidered

by the state Government. As a result of the reconsideration, the Governor of Punjab is pleased to order that henceforth teachers of the Education

Department shall not become entitled to be placed in the higher scales of pay in terms of para 3 of the Punjab Government letter No. 5058-ER-

57/5600, dated 23rd July, 1957, automatically on their improving/acquiring higher qualifications during the course of their service. The master and

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 post and mere possession/acquisition of higher qualifications prescribed for other categories of posts will not entitle them automatically

to claim higher pay scales. However, in order to avoid discrimination between teachers who have already been allowed higher scales of pay on account of having improved their Qualifications and those who have not yet been allowed this benefit, even though they also possess higher qualifications, it is decided that all teachers in the Education Department who have improved their qualifications before the issue of this letter, may be allowed the benefit of higher scales of pay on the basis of their qualifications. This benefit shall not be allowed to those who are appointed or improve their qualifications after the issue of this letter.

5. The Government relying on 1979 order, refused to grant benefits, in terms of 1957 instructions, to all those categories of teachers who joined after 19th February, 1979 or improved their qualifications after that date. Because of action of the Government in not giving benefits to those who joined after 19th February, 1979, the teachers, therefore, made various representations to the Government, but all their efforts to get the required relief proved futile. Petitioners have now approached this Court by way of present writ petitions.

6. The grievance made in the writ petitions is primarily one, i.e. (the teachers are entitled to the benefit in terms of 1957 instructions, meaning thereby that as and when they acquired the qualification meant for teachers falling in categories "A" and "B", they would be entitled to the same benefits as were given to the teachers mentioned in the aforementioned order, irrespective of the fact that they joined service on or after 19th February, 1979, or had improved their qualifications after 19th February, 1979.

7. Mr. R.K. Chopra, Advocate, counsel for the Petitioners, has read in extenso the judgment in Kirpal Singh Bhatia's case (supra) and some other cases which in turn had relied upon Kirpal Singh Bhatia's case. He has also made reference to a judgment of the Supreme Court in Chaman Lal and Others Vs. State of Haryana, , for the proposition that action of the Government cannot be sustained because the Government cannot discriminate between the teachers who had acquired qualifications before issuance of 1979 order or after that, particularly when they are working on the same post, possessing same qualifications and performing same functions.

8. In reply, Mr. Ashok Aggarwal, Additional Advocate General, Punjab, appearing for the State, contended that the Government never intended

to link the pay scales to qualifications, but respecting the interpretation made by the Apex Court of the 1957 instructions, the benefit was given to the teachers according to their placement in different categories. He, however, contended that because of financial implications on the Government involved, it issued 1979 order, thereby making it very clear that henceforth the pay scales will not be linked to the qualifications and each teacher would get the pay according to the post against which he/she is working irrespective of the fact that what qualification the teacher had at the time of joining service or had acquired after joining service. The precise submission was that on the acquisition of higher qualifications, there is no automatic entitlement of higher pay scales.

9. The primary issue raised in these writ petitions, thus, is the effect of 1979 order in regard to teachers who had acquired qualifications at the time of joining service or had acquired the same after 19th February, 1979. When 1957 instructions were issued, it applied to all teachers working in various schools in the State of Punjab, which at that time also included Haryana. On bifurcation of States and on coming up of separate State of Haryana, the State of Haryana issued a letter dated 5th September, 1979,--vide which it sought to take away the benefits as given to the teachers under the 1957 instructions. By letter dated 5th September, 1979, all those teachers in the State of Haryana who had acquired B.A./B.T. qualifications on or before 5th September, 1979, were held entitled to higher pay scales with effect from 1st September, 1979 only, and those who had acquired this qualifications after 5th September, 1979, were not held entitled to these pay scales. This order was challenged by some teachers of Haryana State in this Court. This Court held that letter dated 5th September, 1979 on its coming into operation, has taken away the benefit of 1957 instructions. The order of this Court was taken in appeal to the Apex Court in Chaman Lal's case (supra). The Apex Court while interpreting letter/order dated 5th September, 1979 and also Kothari Commission report, held that the Government never intended to retract from the principle that teachers acquiring the B.T. or B.Ed, would be entitled to higher grade with effect from the respective dates of their acquiring that qualification. The 1957 instructions issued to grant pay scales to those who acquired qualifications between 1968 and 1979 as one time relaxation

was indeed, held superfluous. Thus, the Apex Court reiterated the principle in regard to linking of pay to qualification. Likewise, to the teachers in the State of Punjab, who had been appointed before 19th February, 1979, but were regularised after 19th February, 1979, the Government did not intend to give benefits to them under 1957 instructions. Those teachers approached this Court in various writ petitions. One of the writ petitions was decided by a Division Bench of this Court in *Rajinder Kumari v. State of Punjab* 1988 (4) S.L.R. 297. In the case before the Division Bench, teachers were appointed on ad hoc basis for the period from May 16, 1977 to October 1, 1980, when they were put on regular basis. Their writ petitions were allowed and they were held entitled to be brought into Group-II of category "B" and in consequence thereof, the Government was directed to grant higher scales applicable to that category. As contended by the counsel for the Petitioners, the SLP preferred against the judgment in *Rajinder Kumari's* case (supra) was dismissed by the Apex Court. Thus, the Government in pursuance of this judgment, gave benefits to all those teachers who though were appointed on ad hoc basis before 19th February, 1979, yet had become regular after that date. The only distinction in this case was that the qualification they improved was before 19th February, 1979. As already noticed, the services of the Petitioners are governed by the Punjab Educational Service Class III School Cadre Rules. Under Rule 10, the members of the Service are entitled to such scales as are authorised by the Government from time to time. The question, thus, arises as to whether it is open to the Government to fix employees in different scales of pay when they are similarly circumstanced and are performing the same functions. If 1979 order is held to be valid, it would result in anomalous situation, e.g., a person appointed against a post meant for J.B.T. teachers and possessing qualification of B.Ed., but joined before 19th February, 1979, would be placed in category "A", but a person having the same qualification and working on the same post, but joined on or after 19th February, 1979, would be given the pay scale meant for teachers falling in Group-I of category "B". The resultant effect would be that the two teachers, working against the same very post, having same very qualification and performing the same functions, would be drawing two different pay scales. This would not only be violative of Article 14 of the Constitution of India, but would also offend Rule 10 of the

Rules because the Government cannot discriminate, in the matter of pay scales, amongst the teachers belonging to the same cadre on the ground

that some of the teachers have joined or have acquired higher qualification before 19th February, 1979 and some of them have acquired or have

joined service after 19th February, 1979. If the contention of learned Counsel for the State is accepted, that would result in a situation as just was

described. The Apex Court in Chaman Lal's case (supra) on the question of linking of pay to qualification, had held that ""the rule had been well-

established and consistently acted upon. Nor was it open to the Government to act upon the principle in some cases and depart from it in other

cases."" Thus, if 1979 order is viewed in the light of judgment in Chaman Lal's case (supra) and also considering that the State had been accepting

the principle of linking of pay to qualifications consistently from 1957 onwards and also in regard to giving of benefits to those teachers who joined

on ad hoc basis before 19th February, 1979 but became members of the service after that date, I have no hesitation in holding that irrespective of

1979 order, the Petitioners would be entitled to the pay scales according to their qualifications and placement in category "A" or "B" irrespective

of the posts they are holding.

10. For the reasons recorded above, these writ petitions are allowed with no order as to costs. The Petitioners shall be entitled to pay scales

according to qualifications possessed by them, irrespective of the fact that they joined service before 19th February, 1979 or acquired higher

qualification after the said date or joined after 19th February, 1979, having higher qualification at the time of joining or having acquired subsequent

thereto. Their pay scales shall be fixed from the date they acquired their qualifications, or from the date of joining, whichever is later, but shall be

paid the arrears of pay in the higher grade for a period upto three years and two months, or less, as the case may be, prior to the filing of

respective writ petitions, in accordance with their entitlement. They shall, of course be not entitled to any interest on the arrears of pay etc.