

(2003) 04 P&H CK 0136
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2840 of 1982

Om Parkash and Others	Vs	APPELLANT
The State of Punjab and Others		RESPONDENT

Date of Decision : 30-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2003) 135 PLR 276

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : Amit Chopra, for the Appellant; H.S. Sran, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

S.S. Nijjar, J.—have heard the learned counsel for the parties at length and perused the record of the case.

2. Can the juniors be paid a higher salary than the seniors in the same cadre possessing the same qualifications and performing same duties, is the significant question of law, which has been raised by the petitioners in the present petition filed under Articles 226/227 of the Constitution of India. They seek a writ of mandamus directing the respondents to grant them the benefit of two advance increments on account of higher responsibility at the time of their appointment/promotion as Centre Head Teacher from the post of J.B.T. Teacher.

3. The petitioners were initially appointed as J.B.T. teachers in the Punjab Education Department on different dates. They were confirmed J.B.T. teachers. The seniority of the members of the service is maintained at district level. The petitioners belong to the cadre J.B.T. teachers of Bhathinda District. Before 1978, there was only one Directorate known as Director of Public Instructions, Punjab, Chandigarh, (hereinafter referred to as "the D.P.I."). From 1978, separate Directorate known as Director Public Instructions (Schools) and Director of Public Instructions (Primary) Education were created. It was decided that J.B.T.

teachers working in the Government Primary Schools would be in the Administrative Control of the Director Public Instructions (Primary). The separation of Directorate was necessitated to give chances of promotion to the J.B.T. teachers working in the Punjab Education Department as earlier, there was no avenue of the promotion of the J.B.T. teachers. After the separation of the cadres, a decision was taken that all the Government Primary schools would be under the Head Teachers. The post of Centre Head Teacher as well as the post of Block Primary Education Officers were also created. The posts of Head Teacher, Centre Head Teacher and the Block Primary Education Officer, were to be filled by promotion from the J.B.T. teachers. The J.B.T. teachers would be promoted as Head Teachers, who in turn, would be promoted as Centre Head Teacher to be further promoted as Block Primary Education Officer. As noticed earlier, these posts were only created in the year 1978. The petitioners being senior J.B.T. teachers, were directly promoted as Centre Head Teachers without being promoted as Head Teachers. The Junior J.B.T. teachers were first promoted as Head Teachers and, thereafter, they were promoted as Center Head Teachers. The decision of the respondents to promote the senior J.B.T. teachers directly to the post of Centre Head Teachers without being promoted on the post of Head Teachers, was never challenged by the junior J.B.T. teachers. They accepted their promotion on the post of Head Teachers. The petitioners rely on Rule 4.4. of the Punjab Civil Services Vol. I Part-I, (hereinafter referred to as "the Rules"), in support of the submission that they are entitled to higher pay than their juniors. This rule provides that when an employee assumes duty or duties or responsibility of greater importance, the employee will draw his initial pay in the stage of the time scale next above his substantive pay in respect of the old post. In other words, the employee were entitled to one advance increment. When the petitioners were promoted as Centre Head Teachers from the post of J.B.T. teaches, they were already getting the basic pay more than that of the starting basic pay of the Center Head Teacher. Therefore, they were given the benefit of one increment in view of Rule 4.4 of the Rules. For the same reason, the junior J.B.T. teachers who were promoted as Head Teachers, were also granted one advance increment. Subsequently, the junior teachers were promoted as centre Head Teachers. Again, they were granted one advance increment. Hence, the junior J.B.T. "teachers were granted two advance increments on the post of centre Head Teachers and the seniors were drawing only one increment on the same post.

4. The claims made by the petitioners have been controverted by the respondents. The factual position has not been controverted. It is, however, sought to be explained that the posts of Head Teaches did not exist prior to the establishment of Primary Directorate. The senior most J.B.T. teachers were promoted directly to the post of Block Primary Education Officer or Centre Head Teacher. It was not possible to promote these seniors on the post of Head Teachers before promoting them as Centre Head Teachers. All these posts have been created together. The promotions were made to all these categories at the

same time. Senior most J.B.T. teachers were promoted as Block Primary Education Officers and Centre Head Teachers. The junior J.B.T. teachers were promoted as Head Teachers. It is admitted that the grant of higher pay-scales of the J.B.T. teachers on the posts of higher responsibility were governed by Rule 4.4 of the Rules alongwith the relevant service Rules. It is also pleaded that the posts of J.B.T. teachers and Head Teachers, respectively, were declared of relative higher responsibility with effect from 01.04.1982 vide D.P.I. order dated 23.5.1983. It is also stated that the post of Head Teacher was declared to be of relative higher responsibility than the J.B.T. teacher and the post of centre Head Teacher of relative higher responsibility than the post of Head Teacher with effect from 01.04.1982 vide order of the D.P.I.(P) letter No.3/11-82-S (S-I)-I dated 25.5.83. Therefore, the employees working on the post of Head Teacher and Centre Head Teacher were not entitled to the benefit of one advance increment under Rule 4.4 of the Rules. It is further stated that the petitioner cannot claim benefit of one increment as they have never worked against the post of Head Teacher. Merely because the juniors are getting higher pay, has no affect on the seniority of the teachers, who were directly promoted on the post of Centre Head Teacher.

5. Mr. Chopra submits that the action of the respondents is clearly arbitrary, violative of Rule 4.4 of the Rules and discriminatory. On the other hand, Mr. Saran, has submitted that the junior teachers have been granted two increments due to the peculiar situation, which was prevailing at the time. The petitioners never actually worked on the post of Head Teacher. Therefore, they could not have been given the first increment which have been given to the junior J.B.T. teachers.

6. I have considered the submissions made by the learned counsel for the parties.

7. It is settled proposition of law that a post carrying higher responsibility would carry a higher salary. It is also settled beyond cavil that a senior employee shouldering higher responsibility, belonging to the same cadre, cannot be paid a salary lessor to his junior. It is not disputed that the J.B.T. teachers, who have been now promoted to the post of centre Head Teaches by being first promoted on the post of Head Teacher, are enjoying the benefit of two advance increments. This discrepancy cannot be justified on the ground of fortuitous circumstances. The salary of the members of the cadre has to be fixed under Rule 4.4 of the Rules, which is as follows:-

"4.4. The initial substantive pay of a Government employee who is appointed substantively to a post on a time-scale of pay is regulated as follows:-

(a) If he holds a lien on a permanent post, other than a tenure post, or would hold a lien on such a post had his lien not been suspended:-

(i) When appointment to the new post involves the assumption of duties or responsibilities of greater importance (as interpreted for the purposes of rule 4.13) then these attaching to such permanent post, he will draw as initial pay the

stage of the time-scale next above his substantive pay in respect of the old post:

(ii) When appointment to the new post does not involve such assumption, he will draw as initial pay the stage of the time-scale which is equal to his substantive pay in respect of the old post, or if there is no such stage, the stage next below that pay plus personal pay equal to the difference; and in either case will continue to draw that pay until such time as he would have received an increment in the time-scale of the old post or for the period after which an increment is earned in the time-scale of the new post, whichever is less. But if the minimum of the time-scale of the new post is higher than his substantive pay in respect of the old post, he will draw that minimum as initial pay;

(iii) When appointment to the new post is made on his own request under Rule 3.17 (a) and maximum pay in the time-scale of that post is less than his substantive pay in respect of the old post, he will draw that maximum as initial pay".

8. A perusal of the above shows that when a person is appointed on a higher post with higher responsibility, he is entitled to step up in his pay by way of an additional increment. This is so because he may already be enjoying a salary which is more than the basic pay of the next higher post. In such circumstances, the increments have to be given to step up the pay on the higher post.

9. Mr. Chopra has rightly relied on a judgment of the Supreme Court in the case of Union of India v. P. Jagdish 1997(2) S.C.T. 664. The question which came up for hearing before the Supreme Court in the aforesaid case, was as follows:-

"Whether the respondents can claim for stepping up of their pay in the promoted cadre of Head Clerks when their juniors who were later promoted were fixed up at a higher slab in the cadre of head Clerks taking into account the special pay which they are drawing in the lower category of Senior Clerks".

10. Answering the aforesaid question, the Supreme Court has held as follows:-

"So far as the second question is concerned, it depends upon the applicability of the principle of stepping up. admittedly, the respondents have been promoted earlier to the category of head Clerks and some of their juniors, who were continuing as Senior Clerks against the identified posts carrying special pay of Rs.35/- per month on being promoted to the post of Head Clerks later than the respondents got their pay fixed at a higher level than the respondents. Under the provisions of Fundamental Rules to remove the anomaly of a Government servant promoted or appointed to a higher post earlier drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to the higher post, the principle of stepping up of the pay is applied. In such cases, the pay of the senior officer in the higher post is required to be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up is required to be done with effect from the date of promotion or appointment of the junior

officer....".

11. The aforesaid ratio of law is fully applicable to the facts and circumstances of this case.

12. The petitioners are entitled to be given benefit of two advance increments from the date persons junior to them were promoted on the post of Centre Head Teachers and the same was granted to the juniors. Since the petitioners had already been granted one advance increment, they were entitled to one additional increment to make a total of two additional increments from the date, persons junior to them have been promoted on the post of Centre Head Teachers. It is, however, made clear that the aforesaid observations would not be applicable in the case of persons, who have been granted advance increments on the ground of some special circumstances such as additional qualifications etc. The respondents are directed to refix the pay of the petitioners after granting them the benefit of second additional increment. The consequential monetary benefits be paid to the petitioners within a period of three months from the date of receipt of certified copy of this order.

13. The writ petition is allowed but without any costs.