

(2016) 03 P&H CK 0061
In the Punjab And Haryana At Chandigarh
Case No : LPA Nos. 1277 and 1278 of 2015

Punjabi University Patiala and Others	Vs	APPELLANT
Jasbir Singh and Others		RESPONDENT

Date of Decision : 02-03-2016

Acts Referred:

Citation : (2016) 03 P&H CK 0061

Hon'ble Judges : Rajive Bhalla and Amol Rattan Singh, JJ.

Bench : Division Bench

Advocate : Vishal Khatri, Advocate for Vipul Jindal, Advocate, for the Appellant;
D.S. Patwalia, Sr. Advocate and B.S. Patwalia, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Amol Rattan Singh, J.—1. These two appeals have been filed by the appellant University against the judgment of the learned Single Judge, dated 11.05.2015, allowing CWP No. 3874 of 2010 and CWP No. 20522 of 2013. The facts were taken by the Single Bench from CWP No. 3874 of 2010, the issue being the same in both cases.

The three respondents (two in LPA No. 1277 of 2015 and one in LPA No. 1278 of 2015), are working as Sports Coaches in different disciplines, i.e. athletics, basketball and hockey, having been recruited as such in the year 1983. The two respondents in LPA No. 1277 of 2015 have also obtained a degree of Ph.d. in the subject of Physical Education.

2. At the time of their entry into service, they were given a pay scale of Rs. 800-1400 and thereafter, after the recommendations of the Pay Commission, the petitioners were granted in 1996, the revised pay scale of Rs. 2200-4000 w.e.f. 01.01.1986. This pay scale was the same that was granted to Lecturers with effect from the said date, though granted to the petitioners more than ten years later.

Thereafter, on 24.01.2000, the pay scale of the petitioners was revised to Rs.

8000-13500 w.e.f. 01.01.1996, which was again the same pay scale as was being given to Lecturers.

As seen from the writ petitions filed before the learned Single Judge and the reply thereto, filed by the University, these facts have not been specifically denied.

3. The pay scales of Lecturers were thereafter revised w.e.f. 01.01.2006 and that cadre was granted a pay scale of Rs. 37400-67000+ Additional Grade Pay (AGP) of Rs. 9000. This scale has not been granted to the petitioners, by which they are essentially aggrieved.

In addition, they had also prayed in the writ petition before the learned Single Judge, that they be given the Senior Scale as was admissible to Lecturers w.e.f. 1991, selection grade w.e.f. 1998 and the higher scale of Professors w.e.f. 2006, alongwith the interest thereupon.

They had further prayed that a writ of mandamus be issued directing the University to create at least one promotional avenue for Sports Coaches. The contention was that though there was a single avenue of promotion to the post of Assistant Director, Sports, there were only two such posts available in the University, thereby causing complete stagnation in the cadre. In this regard, they had placed reliance upon the case of Dr.(Ms.) O.Z. Hussain v. Union of India , 1990 (Supp.) SCC 688.

4. In the written statement filed by the appellant University, it had taken a preliminary objection to the effect that the petitioners are from a non-teaching Department, i.e. the Sports Department and as such, cannot claim parity with Lecturers of the Department of Physical Education, which is a teaching Department. Hence, there was no equivalence between the petitioners and the said Lecturers.

Other than that, various judgments of the Apex Court had been cited, holding that fixation of pay scales, keeping in view the nature of jobs and works performed by different cadres and categories of employees, was the prerogative of the employer and of experts who had gone into the issue of equivalence of jobs and nature of work and that Courts should not normally interfere in the same.

It has further been stated in the reply that the petitioners, at the time of joining service, were well aware that they were being appointed as Sports Coaches and as such, no mis-representation having been made to them, even a writ of mandamus would not lie to compel creation of promotional avenues.

5. On merits, the reply reiterated the contentions made in the preliminary objections, including the fact that the case law relied upon in the writ petition, with regard to treating Coaches as a teaching faculty and thereby granting higher scales, were all judgments pertaining to the State of Haryana, wherein the State had issued specific instructions for the equation of posts of Sports Coaches with

those of Directors of Physical Education, which instructions had been accepted by the Kurukshetra University.

On the other hand, the appellant University in these appeals, being a wholly autonomous body, had not declared any such equivalence of Sports Coaches, with Lecturers of the Department of Physical Education.

6. The reply to the writ petition further stated that the grant of UGC scales to the petitioners at different times, at par with Lecturers, were only a measure personal to them and not a part of the Career Advancement Scheme (of the UGC) which, in any case, was not applicable to the Sports Department, it being a non-teaching Department.

As regards the two respondents herein possessing Ph.d. Degrees, the stand of the University, before the learned Single Judge, was that the said degree did not create any equitable rights in the petitioners, for them to claim equivalence with Lecturers.

7. The respondents herein (in LPA No. 1277 of 2015), had also filed a replication to the aforesaid reply before the learned Single Judge, stating therein that they were performing the same duties as are being performed by Lecturers in the Department of Physical Education and are also holding regular theory classes, as well as practical classes, in the University. In support thereof they had annexed a certificate from the Head of the Department of Physical Education of the University, dated 19.05.2005, stating therein that Dr. Jasbir Singh (respondent No. 1 in LPA No. 1277 of 2015) was regularly taking both theory and practical classes, of students of M.A. (Physical Education), since July 2001, till the date of the issuance of the certificate.

It had also been stated by the respondents, in their replication, that they were also setting examination papers and were marking papers for other Universities, as well as the appellant University. Documents pertaining to respondent No. 1 (in LPA No. 1277 of 2015 only) performing such duties, had also been annexed.

8. Further, the stand taken in the replication filed by the respondents, was that initially there existed only one Department in the University, i.e. the Department of Physical Education, where they were all working, which was re-named as the Department of Physical Education and Sports, in the year 2001.

Thereafter, in the year 2005, the said Department was bifurcated into two Departments, the Department of Sports and the Department of Physical Education.

It was further contended that the reliance placed by the appellant University, on the judgment in *State of Madhya Pradesh v. Ramesh Chander Bajpai*, (2009) 13 SCC 635, was mis-placed as it dealt with a case of Physical Training Instructors, who were not governed by the UGC guidelines.

It had further been stated that the claim of the petitioners was not to equate

them with Lecturers in Physical Education Department, but to be treated as Lecturers, as they performed the same work and consequently, were entitled to the same pay scales.

9. The learned Single Judge, after hearing the parties, allowed the writ petition vide the impugned judgment, mainly relying upon a Division Bench judgment of this Court in *M.M. Bhardwaj and others v. The State of Haryana* and another (CWP No. 3353 of 2001) in which, relying upon the observations made by a Single Judge of this Court in *Murari Lal Saini v. The State of Haryana and others* (CWP No. 11641 of 1998) (which in turn relied upon the judgment of the Supreme Court in *P.S. Ramamohna Rao v. A.P. Agricultural University and another* (, AIR 1997 SC 3433)), it was held that the sports Coaches of the Kurukshetra University, would have to be treated in the category of teachers.

Hence, applying the ratio of the Division Bench judgment, to the respondents herein, the learned Single Judge, vide the impugned judgment, held that the Sports Coaches of the appellant University cannot be treated as non-teaching staff, so as to deny them the pay scales of Lecturers.

It was further held in the impugned judgment, that the University itself having granted the same scales as Lecturers to the respondents, twice over, w.e.f. 01.01.1986 and again w.e.f. on 01.01.1996, it could not now deny them the same (equated) pay scales, there being actually no change in their duties subsequently.

10. Consequently, a direction was issued to grant the petitioners the scale of Rs. 37000-67000 + AGP of Rs. 9000, w.e.f. 01.01.2006, with consequential benefits.

No directions were given with regard to the prayer for creation of further avenues of promotion, or with regard to the grant of higher pay scales as were sought w.e.f. 1991 and 1998.

11. Aggrieved by the aforesaid judgment, the appellant Punjabi University has filed the present appeals, stating that after the replication was filed by the petitioners, an additional affidavit had been filed by the University (before the learned Single Judge), taking a stand that after the bifurcation of the Department of Physical Education (thereby also creating an additional Department of Sports), w.e.f. 20.05.2005, distinct and separate duties have been assigned to Sports Coaches that are different from Lecturers in Physical Education.

The additional duties performed by the Lecturers, it has been stated, are teaching in class rooms in addition to imparting training in a game, as also of providing guidance to students in order to obtain post-graduate, M.Phil and Doctorate degrees. Other than that, it is stated that Lecturers are also required to perform administrative duties of being incharge of the library, sports stores, departmental laboratories and computer laboratories, from time to time.

It is stated that none of these duties are assigned to Sports Coaches, who also

do not teach any classes.

Hence, further reiterating the grounds already taken before the learned Single Judge, it has been prayed that the appeals be allowed and the writ petitions filed by the respondents herein, be dismissed.

12. After hearing arguments on behalf of counsel for the appellants (the Vice-Chancellor being appellant No. 2), as also for the respondents, who were on caveat, we had pronounced dismissal of both these appeals. However, when the matter was being dictated by us, in Chambers, we found that, contrary to what we had perceived from the arguments, the Sports Coaches in the University had not always been treated at par with Lecturers. Consequently, after noticing the above fact, we had passed the following order:--

"The respondents in LPA No. 1277 of 2015 were employed with the University in 1983; however, they were first given parity of pay scales with the Lecturers only in 1996, though w.e.f. 01.01.1986 and thereafter, in 1999, w.e.f. 01.01.1996. As per the reply filed by the University, to the writ petitions filed by the respondents before the learned Single Judge, parity was granted as a personal measure to the respondents and not as a result of any parity of such pay scales, as had existed over a period of time.

Further, it is the specific stand of the University in the said reply, that in the year 2005, the Department of Sports and Physical Education has been bifurcated into two Departments, after which theory classes are only taken by Lecturers in the Department of Physical Education, whereas Sports Coaches are training the students in the playing fields etc. Thus, even the contention that the respondents are still taking theory classes in addition to coaching the students in different sports, does not seem to be an averment made on the basis of facts, on behalf of the respondents. It, therefore, implies a distinct and different nature of duties between Sports Coaches and Lecturers of the University.

In view of the above, we recall the order of dismissal dated 05.11.2015 and order that these appeals to be put up for rehearing on 27.11.2015. Counsel for the appellants, as also counsel for the caveators, be informed of the date of rehearing."

13. Thereafter, the matter came up for rehearing on various dates, during the course of which respondent No. 1 (in LPA No. 1277 of 2015) filed an affidavit dated 27.01.2016, stating therein that the Universities' stand that the Sports Coaches are not entitled to selection grade and future avenues on parity with Lecturers, is wholly misconceived, inasmuch as, he (respondent No. 1-Dr. Jasbir Singh), "has been not only teaching students in the field but has also been regularly taking classes of Sessions" Work, Personal Contact Programme of two years B.Ed. (DE)".

To substantiate the said averment, respondent No. 1 annexed a certificate from the Professor and Head, Distance Education Department, Punjabi University,

Patiala, to the effect that he (Dr. Jasbir Singh), Athletics Coach in the Sports Department, has taught classes of games and sports subject during "PCP of Sessions" Work of two years B.Ed. Course" run by the department during the Sessions 2012-13, 2013-14 and 2014-15. An identical certificate in respect of the 2nd respondent in LPA No. 1277 of 2015, i.e. Dr. Manmohan Singh, Basketball Coach, has also been annexed with the said affidavit of respondent No. 1.

An experience certificate issued by Professor Tajinder Kaur, Head of the Distance Education Department of the appellant University, dated 29.08.2011, has also been annexed with the affidavit of respondent No. 1, in which it is stated that Dr. Jasbir Singh took 8 classes (periods) and conducted 2 examinations, between 28.06.2011 to 08.07.2011 for Batch-1 and an identical number of classes and examinations, during the same period, for Batch-2.

He also conducted 9 periods and 2 examinations for Batch-1 during the period 12.07.2011 to 22.07.2011.

14. To counter the aforesaid affidavit, the Registrar of the appellant University filed an additional affidavit dated 11.02.2016, stating therein that as regards the respondents conducting regular classes of Sessions" Work and the Personal Contact Programme, of the two year B.Ed. (DE) course, it was conducted in four batches and that 7 classes are allotted in every batch for games and sports practical. The affidavit of the Registrar further states that the Department of Distance Education of the University invites two coaches every year for conducting the practical paper and that each coach takes approximately 14 classes in one session, with both coaches working as internal examiners, turn by turn, during examinations. Accordingly, the respondents were also invited to take classes for different sessions (by the Department of Distance Education), and they were paid according to University norms for the same, with Dr. Jasbir Singh having been paid Rs. 28,000/- for the classes during the said sessions and Dr. Man Mohan Singh having been paid Rs. 14,500/-.

In other words, it is stated in the Registrars" affidavit, that for the classes conducted by the respondents in the Department of Distance Education of the University, they were paid extra remuneration and further, that extra work was done not in the parent department of the respondents but in a separate department of the University, as additional work.

15. The affidavit further states that the Syndicate of the University had taken a decision on 12.06.2014, that coaches" working in the University Directorate of Sports and availing of the UGC scales of Rs. 15,600/- 39,100/- +6000 GP and who also fulfilled the eligibility condition for the next scale as prescribed by the UGC, would be covered by the Career Advancement Schemes framed by the UGC. Thus, the benefit of the senior/selection grade with effect from the date of their eligibility has already been granted to the respondents, alongwith arrears, which in the case of Dr. Jasbir Singh amounted to Rs. 19,92,095/- for the period

01.01.1994 to 30.04.2015. Similarly, Dr. Man Mohan Singh had also paid arrears amounting to Rs. 16,90,945/- and the respondent in LPA No. 1278 of 2015, Shri Bhupinder Singh, had been paid arrears of Rs. 10,60,923/-, also w.e.f. 01.01.1994.

Therefore, it is further stated in the affidavit, that the surviving dispute is only with regard to the difference in the annual grade pay, ranging from Rs. 1000/- to Rs. 2000/-, which, according to the appellants, was justified, as there is no complete equivalence between the respondents who are in a non-teaching department and the Lecturers in the teaching faculty.

16. Hence, the stand of the University remains the same, that Lecturers and Sports Coaches cannot be equated with each other but as per eligibility prescribed by the UGC, they are getting their due in the form of higher pay scales under the Career Advancement Scheme.

17. Mr. Vishal Khatri, learned counsel for the appellant-University submitted that from the aforementioned affidavit filed by University, it is clear that the respondents are not actually teaching any classes in their own department which work is being done by lecturers in physical education and any teaching work that is done by the respondents, is in the department of distance education of the University, for which they are paid extra remuneration. Hence, the scales recommended by the UGC under the Career Advancement Scheme admittedly being only for the teaching faculty, the respondents cannot claim such scales as a matter of right. In fact they have already been granted higher scales in terms of the eligibility conditions laid down by the UGC and, as such, nothing further is due to them.

He relied upon a judgment of hon^{ble} the Supreme Court in State of Madhya Pradesh and others v. Ramesh Chandra Bajpai, , (2009) 13 SCC 635, wherein, while dealing with the case of a physical training instructor in a Government Ayurvedic Colleges, who also claimed parity of pay with teachers who have been granted the UGC scales, it was held that while considering the relevant rules of Government of Madhya Pradesh, pertaining to the service of the physical training instructors, working in the Government of Madhya Pradesh, it was held that the post of teacher not finding any mention in the rules, it could not, per se, be held that physical training instructors are to be equated with teachers.

The following passages from the said judgment may be cited in this regard:--

"11. A comparison of the provisions of the 1987 Rules and 1990 Rules clearly establish that they not only deal with different classes of employees but the educational qualifications and scales of pay prescribed for the posts enumerated in Schedules of two sets of Rules are entirely different. While the 1987 Rules regulate recruitment to Class III Ministerial and Non- Ministerial posts in various colleges imparting education in Indian System of Medicine including Ayurveda, the 1990 rules regulate recruitment to different posts in the Educational Service (Collegiate Branch) including that of Sports Officer.

12. The post of "teacher" does not find place either in the 1987 Rules or in the 1990 Rules. We have made a mention of this fact only because the respondent has claimed parity in the matter of pay scale with teachers.

13. In paragraph 6 of the impugned order, the Division Bench of the High Court observed that the rules governing and regulating the service of respondent make a distinction between Physical Training Instructor and teacher in the matter of status and pay scale, but proceeded to sustain the direction given by the learned single judge mainly on the premise that the orders passed in the cases of other Physical Training Instructors have not been assailed.

The Division Bench also relied upon the ratio of judgment of this Court in Ramamohana Rao (supra) case and observed that the nature and duties of the Physical Training Instructors are at par with those of teachers.

14. In our view, the approach adopted by the learned Single Judge and Division Bench is clearly erroneous.

It is well settled that the doctrine of equal pay for equal work can be invoked only when the employees are similarly situated. Similarity in the designation or nature or quantum of work is not determinative of equality in the matter of pay scales. The Court has to consider the factors like the source and mode of recruitment/appointment, qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. In other words, the equality clause can be invoked in the matter of pay scales only when there is wholesale identity between the holders of two posts."

18. Mr. Vishal Khatri, learned counsel appearing for the appellants further submitted that the judgment relied upon by the respondents before the learned Single Judge, in the case of M.M. Bhardwaj and others (CWP No. 3353 of 2001, decided on 28.07.2002), also eventually relied upon by the judgment of the Supreme Court in P.S. Ramamohana Rao v. A.P. Agricultural University and another, , (1997) 8 SCC 350.

That judgment having been considered subsequently in Ramesh Chander Bajpais" case (supra), cannot be held to apply to the case of the respondents, in view of the fact that it is the specific statement of the University that the respondents are not part of the teaching faculty, as they are not performing any teaching duties specifically after the bifurcations of the department in 2005.

19. Learned counsel further submitted that the University being an autonomous body created by statute, the decision to equate or not to equate any category of employees with the teaching faculty, eventually lay with the Syndicate and Senate of the University and, as such, even the reliance upon the Division Bench judgment in M.M. Bhardwajs" case (supra) was wholly erroneous and as such the learned Single Judge also erred in placing reliance on the Division Bench judgment in M.M. Bhardwajs" case (supra).

In that case, the Government of Haryana had already directed that sports

coaches would be treated on par with the teaching faculty, which decision had been accepted by the Kurukshetra University. Hence, retraction from that position subsequently, by the University, was struck down by the Division Bench. Thus, as per learned counsel, the two situations are wholly different and as such, Ramesh Chander Bajpais" case (supra) cannot be used as a parameter to make it applicable to the case of the respondents.

20. Mr. D.S. Patwalia, learned senior counsel appearing for the caveators/respondents in both these petitions, however, submitted that the respondents being Doctorate degree holders, who are undoubtedly performing teaching work, even if in the distance education department, cannot be held to be non-teachers as, firstly, up-to the year 2005, they were teaching classes even in their own department, as is obvious from Annexure P-15, which is a certificate issued by the Head of the Department of Physical Department of the University, on 19.05.2005, to the effect that respondent No. 1 was taking both theory and practical classes of M.A. Physical Education, regularly since July 2001. He submitted that it is not denied that the other two respondents were also doing similar work, till the bifurcation of the department and, thereafter, also have been teaching in the department of distance education as also even in the department of physical education though that is denied by the University.

Mr. Patwalia further pointed to a certificate issued by the Registrar of the appellant-University, dated 27.05.2005 (Annexure P-17), stating therein that respondent No. 1 had also performed the duties of Reader-cum-Joint Director, Sports from 16.09.2003 to 25.06.2004, along with his duties as an Athletics Coach. Hence, learned senior counsel submitted that the contention of the University, that Lecturers are performing administrative functions whereas the respondents are not, is factually incorrect.

21. Yet further, learned counsel pointed to a decision of the Syndicate of the Guru Nanak Dev University, Amritsar, dated 20.05.1989 (Annexure P-8), whereby Assistant Directors, Directors Physical Education and Coaches of that University were also granted the same scales as Lecturers w.e.f. 01.01.1986, which scale was also granted to the respondents herein, though at a later stage. He further submitted that the Himachal Pradesh University has also granted the status of teachers to Sports Coaches, as can be seen from a notification dated 11.03.1989 (Annexure P-9).

Still further, he relied upon a decision of the Government of India (Ministry of Human Resource Development), dated 24.09.1992 (Annexure P-12), whereby sports coaches in various Union Territories, including Delhi, were held to be teachers.

He further submitted that the respondents are imparting training and are teaching students in an activity integral to scholarship and University teaching, i.e. sports, and as such, they cannot be given step-motherly treatment as has been done, especially after the University itself recognized that fact on its own,

further recognizing the qualifications held by the respondents, consequently granting them scales equivalent to lecturers, w.e.f. 01.01.1986 first, and then w.e.f. 01.01.1996.

22. Mr. Patwalia also referred to a judgment of the Supreme Court in Dr.(Ms.) O.Z. Hussain v. Union of India , (1990) Supp. SCC 688, wherein it was held that it was essential to provide promotional avenues to persons in public service so as to ensure that they do not stagnate and thereby the efficiency is not decreased.

23. In rebuttal, learned counsel for the appellants again reiterated that decisions by different Governments and Universities could not be binding upon the appellant-University, it being a wholly independent institution governed by his own Act and the statutes and ordinances framed thereunder.

24. Having considered the arguments on both sides, we find no reason to reverse the judgment of the learned Single Judge, allowing the two writ petitions filed by the respondents in these two appeals.

Undoubtedly, a decision to grant or not to grant a certain status or service conditions to employees is the prerogative of an employer, especially in the case of a premier educational body such as a University, which is a wholly independent institution. However, at the same time, arbitrary decisions by public bodies obviously cannot be sustained.

We are in agreement with the principle behind the argument of learned counsel for the appellant, that simply because other institutions and Governments have taken a particular decision, the appellant University is obviously not bound to do the same. However, we find no rationale in the decision taken by the University, to not grant the respondents the status of teachers, thereby bringing them at par with Lecturers of the Department of Physical Education, and consequently, making the scales applicable to that cadre equally applicable to the cadre of sports coaches.

As already noticed, two of the three respondents are Phd. degree holders and are obviously highly qualified, with the respondent in LPA No. 1278 of 2015 also being a Master of Philosophy (M. Phil) degree holder, in Physical Education.

Undoubtedly, they were granted equivalent pay scales to those of Lecturers, first w.e.f. 01.01.1986 and then, upon revision of pay scales, w.e.f. 01.01.1996. Obviously, the University was fully aware that they were highly qualified persons, who were also performing teaching work and at least in the case of respondent No. 1, even had large administrative responsibilities.

25. Other than that, we are in agreement with the argument raised by learned senior counsel for the respondents, that sports coaches, especially highly qualified one, cannot be termed to be non-teachers, as they impart instructions in all aspects of the games that they teach, to their students. Further, they admittedly also being capable of taking theory classes and having actually done so, cannot be denied the continuation of equivalence of scales as teachers, just

because the University bifurcated the Department of Physical Education into two w.e.f. 2005, thereby creating a department of sports separate from the department of physical education. That bifurcation neither took away the qualifications, nor the abilities, of the respondents and equally importantly, it does not negate the fact that they are still imparting training and instructions, in other words they are teaching, various sports in the University, other than being fully qualified to hold the post of Lecturers.

26. We may state here that a country of one billion plus population is sadly lacking in promoting sports to its full potential, partly on account of the fact that those who teach the sports, are not given their due, thus discouraging sportsmen and coaches from pursuing such careers.

27. That aspect apart, we are also fully aware that Courts should refrain from entering the filed of "prescription" of pay scales as has been laid down time and again in various pronouncements. One reference can be made to the case of State of U.P. v. J.P. Chaurasia , AIR 1989 SC 19. That principle has been reiterated many times over.

However, we may say that in the present case, in our opinion, the ratio of those judgments would not apply, in view of the fact that the appellant-University itself had granted such equivalence of pay scales to the respondents, twice over, and since, on principle, we have held that sports coaches, especially those with the qualifications possessed by the respondents, seen with the duties that they were performing, cannot be held to be non-teaching faculty.

Thus, once we have held that they are a part of the teaching faculty and have to be included in the definition of teachers, as has also been down by various other Universities and Governments, including the Guru Nanak Dev University, Himachal Pradesh University, the Delhi Administration and the Government of Haryana (obviously recognizing that ground reality), the respondents would necessarily be entitled to the same pay scales as are paid to Lecturers of the appellant-University.

Hence, we find no reason to reverse the judgment of learned Single Judge. Consequently, these appeals are dismissed but with no orders as to costs.