

(2003) 01 P&H CK 0115
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 737 of 1987

Ram Kishan Shastri

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 29-01-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2003) 133 PLR 760

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

Bench : Single Bench

Advocate : R.K. Malik, for the Appellant; Ritu Bahri, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

S.S. Nijjar, J.—The petitioner joined the service of Education Department, Haryana on 1.10.1957. He belongs to Classical Vernacular (Men) State Cadre. This Cadre consists of Hindi, Punjabi, Drawing, S.V. and Sanskrit teachers. They are all born on a common seniority list which was circulated on 1.1.1985. The petitioner on entry into service possessed the qualification of Matric and S.T.C. On 4.5.1968, the Haryana Government decided to revise the scales of pay of Sanskrit Teacher possession Shastri qualification with one year O.T. diploma. Scale of Rs. 200-8-300/10-400 was given to 85% of the posts and scale of Rs. 400-2-500 was given to the remaining 15% of the posts. Relying on the aforesaid decision, the petitioner improved his qualifications by passing the examination of Shastri. The petitioner was thereafter granted the Sanskrit Grade with effect from the date of the passing the Shastri qualification. The service conditions of the petitioner are governed by the Punjab Education Class-111 School Cadre Rules, 1955. Under rule 7, the posts in the service are to be filled by direct recruitment, transfer or by promotion. The qualification for vernacular teacher is Shastri S.T.C. or with O.T. certificate. The petitioner already possessed the qualification of S.T.C. with the passing of the Shastri qualification on 15.11.1970, the petitioner became duly qualified for the post of Sanskrit Teacher

w.e.f. 15.11.1970. The petitioner was, therefore, granted the higher scale w.e.f. 15.11.1970, by order dated 23.2.1978. A show-cause notice was issued to the petitioner on 22.10.1986 as to why the Sanskrit Grade in the scale of Rs. 220-400 w.e.f. 15.11.1970 and the provisional selection grade in the scale of Rs. 400-500 w.e.f. 11.1.1974 be not withdrawn from the respective dates. The petitioner gave a detailed reply. The explanation given by the petitioner had been rejected. The Shastri Grade as well as the Selection Grade granted to the petitioner by order dated 23.2.1978 w.e.f. 15.11.1970 and 11.1.1974 respectively has been withdrawn. This action is challenged by the petitioner in the present writ petition under Articles 226/227 of the Constitution of India.

2. It is submitted by Mr. R.K. Malik that the action taken by the respondents is violative of Articles 14 and 16 of the Constitution of India. All the teachers in the C&V Cadre performed the same duties and are borne on the same seniority list. Therefore, two different scales cannot be given to the teachers depending on whether they had the qualification of O.T. at the time of joining the service. The petitioner possessed the requisite qualification for appointment of S.T.C. It is further submitted that the controversy herein has been resolved by the decision of this Court in C.W.P. No. 59 of 1970, decided on 18.1.1971.

3. In the written statement, it is stated that the petitioner acquired the Sanskrit Teacher qualification on 15.11.1970 while he was in service, and therefore, he is not entitled to the Grade of Sanskrit Teacher. It is further stated that in accordance with the instructions contained in letter No. 7/125-71-EIII(4) dated 10.1.74, the grade of Rs. 220/400 is to be given to such Hindi/Sanskrit Teacher who possesses the qualification of Shastri O.T. at the time of their appointment. The petitioner had been inadvertently given the benefit of the higher scale in the selection grade. In any event, the grant of the selection grade was provisional subject to the qualifications being verified. Therefore, it is submitted that the impugned order is valid and deserves to be upheld.

4. Having considered the entire matter, I am of the opinion that by restricting the benefit of the higher grade only to those teachers who had the OT qualification on joining the department would create an irrational distinction between the teachers who otherwise form one class. As soon as the teacher obtains the higher qualification, he would be entitled to be placed in the higher grade from the date of acquiring the higher qualification. This view of mine would also find support from a Division Bench judgment of this Court in the case of Subhash Kumari v. The State of Haryana and Ors. 1986 (2) S.L.R. 406. In that case the Haryana Government sought to justify the benefit of the higher grade only to those teachers who had acquired the higher qualifications during service. The benefit was denied to those teachers who possessed the higher qualifications at the time of entry into the service. The Division Bench rejected the justification given by the State of Haryana in the following words:-

"8. From the perusal of Rule 7 *ibid*, it is manifest that one of the methods for recruitment to the Master's cadre is by promotion from the lower grade of

teachers serving in the Education Department. Under Sub-rule (ii) the appointing authority has been invested with the power to determine in what manner any vacancy which occurs or is likely to occur in the service has to be filled. In exercise of these powers, respondent No. 2 issued instructions reserving the quota of 33% of vacancies to be filled by promotion of the teachers who constitute a lower grade of the service. However, while prescribing this quota for promotion, respondent No. 2 has added a condition that only those teachers who acquired higher qualifications prescribed for the post of Master while in service were eligible for promotion to the Masters cadre. This has resulted in the creation of the classes within the category of teachers. Teachers, who possessed the B.A. and B.Ed./B.T. degree at the time of joining the service as teachers were grouped in one category and the teachers who did not possess these qualifications at the time of joining service as teachers and who had acquired the qualifications of B.A., B.Ed./B.T. during the course of these services have been put in a separate category. Admittedly, both of these categories belong to the same grade of teachers. Such a sub-classification within a class smacks of arbitrariness and is discriminatory. It has not been shown that this sub-classification is based on any intelligible differentia. It has no nexus with the object to be achieved, viz., excellence of education. The teachers who possess the higher qualifications at the time of joining service are not in any way intellectually or professionally inferior to those teachers who attained these qualifications while in service of the Government. Rather former because of their experience and maturity may be able to teach better. The only justification for this discrimination, which can be spelled out from the written statement, is that an incentive was sought to be provided to the in service teachers to improve their qualifications. This is undoubtedly a laudable object, but this benefit cannot be extended to one category of teachers at the cost of the other category of teachers, who possess higher academic qualifications while joining service. It is equally necessary to provide incentive to the latter category of teachers so that no sense of frustration and stagnation is engendered in their minds. It will serve no purpose to encourage one group of teachers and leave the other group dissatisfied and disappointed. The result of impugned decision is that teachers who possessed the degrees of B.A., B.Ed./B.T. at the time of their initial appointment shall never get an opportunity of promotion, because their juniors in service may go on improving their qualifications and continue to be promoted as Masters. This is wholly irrational and arbitrary.

5. The aforesaid judgment was followed by another Division Bench of this Court in the case of Santosh Kumari v. State of Haryana 1997(1) R.S.J. 419. The Division Bench observed as follows:-

"5..... The teachers who possessed the qualification prior to joining service and those possessing thereafter would be classified in different categories which classification would be most arbitrary treating the equals as unequals and havin&jio nexus with the object sought to be achieved....

6. Again in Sh. Rattan Singh and Others Vs. The State of Haryana and Others, , another Division Bench of this Court held that Distinction sought to be made out between the persons appointed as Masters with higher qualifications and those acquiring higher qualification while in service is illusory and unwarranted".

7. In view of the above, I am of the considered opinion that the impugned order, Annexure P-6 dated 4.1.1987 is arbitrary and violative of Articles 14 and 16 of the Constitution of India.

8. Consequently, the writ petition is allowed and the impugned order, Annexure P-6 dated 4.1.1987 withdrawing the grant of higher scale to the petitioner is quashed. No costs.