

(2013) 01 P&H CK 0132

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 1063 of 2012 (O and M)

State of Haryana and others

APPELLANT

Vs

Sudhir Dagar

RESPONDENT

Date of Decision : 11-01-2013

Acts Referred:

Citation : (2013) LabIC 955

Hon'ble Judges : A.K. Sikri, C.J.; Rakesh Kumar Jain, J

Bench : Division Bench

Advocate : B.S. Rana, A.A.G., Haryana, for the Appellant; R.K. Malik with effect from Mr. Mohan Singla, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, C.J.—The respondent herein was appointed as Assistant Professor in the pay scale of Rs. 12000-18300/- on 28.1.2006 vide appointment letter dated 28.1.2006 and he joined the said post on 31.1.2006. His pay was fixed in the said pay scale which he continued to draw till November-2010. In December-2010, the State of Haryana took the decision to revise the pay scales of Teachers with effect from 1.1.2006, accepting the recommendations of the Sixth Central Pay Commission. At that time, the respondent was drawing total emoluments of Rs. 42,156/- in the old pay scale of Rs. 12000-18300/-. The revised pay scale corresponding to this pay scale was Rs. 15600-39100/-. Though the respondent was given this pay scale from 1.1.2006, but was not given actual pay and rather his pay had been fixed notionally. Furthermore, he was denied the Grade Pay of Rs. 8000/-, which was admissible to the Assistant Professors completing 3 years of teaching. Accordingly, the respondent filed the writ petition, which has been allowed by the learned single Judge. Insofar as arrears of pay are concerned, it is noted that in the notification dated 22.1.2010, it was categorically mentioned that arrears for the period from 1.1.2006 to 30.11.2010 would be paid in three installments i.e. 40%, 30% and 30% as per the Government decision. These instructions could not mean that what was to be

paid was only notional. There is no clarification in this behalf. However, the respondent is also given Grade Pay of Rs. 8000/-, holding that after 3 years of teaching experience, he was entitled to be placed in the pay band as per instructions of the AICTE dated 22.1.2010, Clause (xii) whereof reads as under:-

Assistant Professors completing 3 years of teaching in the AGP of Rs. 8000/- shall be eligible subject to other conditions, that may be prescribed by AICTE as applicable, to move to the Pay Band of Rs. 37400-67000 with AGP of Rs. 9000 and to be designated as Assistant Professor.

The defence of the State was that the respondent was not entitled to the aforesaid pay band in terms of Clause (iv), as it could be given only to those who had Ph. D. qualification and those who did not have Ph. D. qualification or Master's degree in the relevant branch were eligible for Grade Pay of Rs. 7000/- only, that too after completion of six years service as Assistant Professor. This contention has not been accepted by the learned single Judge and in the judgment, Clauses (iv) and (xii) of AICTE communication dated 22.1.2010 have been harmonised in the following manner:-

...The obvious contradiction in these clauses can be reconciled only by seeing that the Assistant Professor who was appointed as such and who was not required to have Ph. D at the time of his appointment and who had been placed in a grade pay of Rs. 8,000/- will move to pay band of Rs. 37400-67000/- in terms of (xii). On the other hand, any Assistant Professor who did not have Ph. D in the relevant branch shall be eligible only for Rs. 7,000/- as grade pay after completion of 6 years as Assistant Professor if the appointment is made after 22.1.2010, i.e. after the date of AICTE notification. In this case, by virtue of the decision of the Haryana Government making a revision of scales, the petitioner was entitled to grade pay of Rs. 8,000/- and to such class of persons it will be only clause (xii) which would be applicable and not (iv). This distinction must be understood in the context of how in the new dispensation by the notification of AICTE dated 22.1.2010 there shall be only three distinct categories, namely, Assistant Professor, Associate Professor and Professor. There is also a specific class of incumbent lecturers and incumbent Assistant Professor, who were in the pre-revised scale of 12000-18300/- as per clause (ix), who secure the same benefit as persons in clause (xii). In either case the petitioner is entitled to be placed in the pay band of 37400-67000/- and recovery shall be impermissible.

2. Same argument is advanced before us by the learned counsel for State of Haryana in the present appeal challenging the aforesaid judgment of the learned Single Bench. We have considered the same, but do not find any merit therein.

3. Admittedly, the respondent was appointed in the pay scale of Rs. 12000-18300/- as Assistant Professor on 28.1.2006. It is also an admitted fact that this scale is revised to Rs. 15600-39100/- and the respondent is given this pay scale as well. Pay scale of Rs. 15600-39100/- has the Grade Pay of Rs. 8000/- which is clear from orders dated 3.12.2010, published in the Government

gazette dated 14.12.2010. Thus, when the respondent was appointed as Assistant Professor, he was having the requisite qualification for the said post which was prevalent at that time. Ph. D, as an essential qualification, was prescribed only on 31.3.2011. It would, thus, apply prospectively and therefore, the construction placed by the Single Bench on Clauses (iv) and (xii) of the AICTE notification is perfectly in order. We, thus, do not find any merit in this appeal, which is accordingly dismissed.