

(2013) 02 P&H CK 0035

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 21455 of 2010

Archana Walia

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: Feb. 7, 2013

Citation: (2013) 170 PLR 33

Hon'ble Judges: Rakesh Kumar Garg, J

Bench: Single Bench

Advocate: Ramesh Goyal, for the Appellant; Anil Sharma, Additional Advocate General, Punjab, Mr. H.K. Aurora for Respondent Nos. 4 and 5 and Mr. Anupam Singla, for the Respondent

Final Decision: Allowed

Judgement

Rakesh Kumar Garg, J.

As per the averments made in this petition, the petitioner possesses the qualification of M.A. B. Ed and was appointed as a S.S. Mistress on part-time basis as per the approval vide order dated 24.8.2001 (Annexure P-1) by the Circle Education Officer, Jalandhar-respondent No. 3 in the pay scale of Rs. 5480-8925/- under Delhi pattern grant-in-aid Scheme. It was further stipulated therein that the employee will get the salary on the basis of 32/36 periods work-load at Rs. 5480/- per month with dearness allowance admissible from time to time. (Vide letter dated 22.3.2000 (Annexure P-2) clarification was sought regarding fixation of salary in the revised pay scale of the part time employees mentioning that as per the notification dated 16.1.1998, the revision of pay scale has not been implemented in the case of employees working in the Aided schools and the salary of the part time employee was being fixed in proportionate of the periods as revised in the year 1978 and 1986 of the Class-III Employees and thus, a clarification was sought whether the salary of the part time employee was fixed in the revised scales w.e.f. 1.1.1996). The petitioner was paid the basic pay of Rs. 5480/- and Dearness Allowance total amounting to Rs. 6966/- per month till the month of September, 2001.

Subsequently, the salary of the petitioner was reduced from Rs. 6966/- to Rs. 3961/- per month. The petitioner represented to the respondent Authorities regarding the correction in the salary and also requested that she be granted the salary as per approval granted by the competent Authority. It is her further case that she was assured from time to time that the matter would be looked into and the rectification would be carried out accordingly. It has been specifically averred in the writ petition that the petitioner is teaching the subject of S.S.T. and English above 10th classes and the periods taken by her were at par with the regular Masters/Mistresses. Even her work has been adjudged satisfactorily. It has been further averred that she was being assigned the duties and responsibilities in other matters apart from teaching. It is also the case of the petitioner that earlier the scale of Masters/Mistresses was Rs. 1650- 2950 and the same was revised to Rs. 5280-8925 which was further revised to Rs. 6400-10640 w.e.f. 1.1.1996. It is the further case of the petitioner that though the initial pay of the Masters/Mistresses, who were working in the initial pay scale of Rs. 5480/-, has been fixed at Rs. 14430/- per month w.e.f. 1.1.2006 yet she is being paid the salary of Rs. 3961/- per month. It is further averred that she is also entitled to the initial pay scale and also deserves revised scale and fixed accordingly in proportion to the salary being given to the full time Masters/Mistresses and thus, the order Annexure P-3, whereby the revised pay scale are being denied to the petitioner on the ground that the revised pay scales are not applicable to the part time employees, is liable to be quashed and the petitioner is entitled to the relief, as claimed.

2. Counsel for the petitioner has further placed reliance on a judgment in the case of *Ashok Kumar Sharma v. State of Punjab 2005 (6) SLR 367* wherein a direction was given to the respondents to pay a minimum of the pay scale of a College Lecturer to the employee who worked on part time basis as it was found that he worked at par with the full time lecturer in terms of the delivery of lectures and other responsibilities. It is further argued that even the Hon'ble Supreme Court of India in the case of [Haryana State Adhyapak Sangh and Others Vs. State of Haryana and others](#), held that the pay scale of the teachers of the Government Aided Schools should be revised to bring them at par with the teachers of the Government Schools and the differential amount as a result of such revision in pay scale should be paid in installments.

3. The writ petition has been contested by the respondent-State as well as the Management on the ground that the revised pay scales are applicable only in the case of whole time employees of the Government of Punjab and the same are not applicable to the persons who are not in the whole time employment of the Government of Punjab. So, on the revision of scales, the pay of part time employees cannot be fixed in the revised scales.

4. It has been further stated in the written statement filed on behalf of the State that the salary of the petitioner was reduced as per the Audit objection vide Annexure

R-3 wherein a specific objection has been taken that the approval of the pay scale of Rs. 5480-8925 to the petitioner was contrary to the rules.

5. Further reliance has been placed by the respondent Management stating that the petitioner was bound by her affidavit dated 17.11.2001 wherein she has undertaken that if any recovery is made by the Department in future regarding her pay scale, she will not claim the same. However, it has been stated on behalf of the Management that it receives grant-in-aid towards salary of the petitioner, who is working against an approved part time post and since the State of Punjab has not approved the revised pay scale in the case of the petitioner, the same cannot be paid to her.

6. It may further be noticed that respondent No. 6 has taken a stand that no relief has claimed against it.

7. I have heard learned counsel for the parties and perused the pleadings of the parties and the documents placed on record of the case.

8. Admittedly, the petitioner was appointed as Part Time S.S. Mistress by the Managing Committee and which was further approved by the Department in the fixed pay of Rs. 5480/- on the basis of 32/36 periods workload in proportion to the full time teachers.

9. It is also pertinent to notice here that as per Rule 10(J) of the grant-in-aid rules as applicable, qualified staff employed on a part-time basis was to receive grant-in-aid in proportion to the time spent by them for teaching work. It is further not in dispute that the pay scale of full time Masters/Mistresses, who are working in the pay scale of Rs. 5480-8925, has been revised from time to time and w.e.f. 1.1.2006, the initial pay of such masters/mistresses has been fixed at Rs. 14460/-. Further Rule 10-D of the Delhi Pattern grant-in-aid rules for Privately Managed Schools in the State of Punjab, which is admittedly applicable to the petitioner provides, that number of periods taught by each teacher will be according to the instructions issued by the Department and in case a teacher works for less number of periods than the prescribed number of periods, his grant-in-aid shall be proportionately reduced.

10. Counsel for the respondents could not dispute that now it is well settled that the employees working on the aided posts with the Privately Managed Colleges/Schools are entitled to the same pay scales and benefits as available to their counterparts serving with the State Government employees and in this view of the matter, they cannot be discriminated. In view of the facts as placed on record of the case and the aforesaid settled proposition of law, the petitioner, who is undisputedly working on 32/36 periods basis workload cannot be discriminated against full time employees of the aided schools/colleges (who are getting the revised pay scales) only on the ground that the revised pay scales have not been made applicable to the part time employees working on Government aided posts. No rationale has been put forth for

denying the said benefit of revised pay scale to the petitioner who admittedly is discharging the same duties and responsibilities as being discharged by the full time Government Aided teachers.

11. Herein, this writ petition, there is no dispute that the petitioner is working on 32/36 period basis of the workload and is to be paid proportionately to the employees working in full time pay scale of Rs. 5480-8925. It may also be noticed that in spite of the audit objection vide Annexure R-3 that appointment of the petitioner on the pay scale of Rs. 5480-8925 was contrary to the rules, till date, terms and conditions of her appointment have not been altered. Thus, this Court is of the view that the petitioner is at least entitled to the minimum of the revised pay scale w.e.f. 1.1.2006 as applicable to the full time employees of Govt. Aided Schools in proportion to the workload. Thus, the claim of the petitioner deserves to be accepted. Accordingly, this writ petition is allowed with the observations that the petitioner is entitled to the fixation of minimum of the pay scale corresponding to the revised pay scale of S.S. Mistress in the Government Aided Schools w.e.f. 1.1.2006 in proportion to her workload of the time table as a part time employee. However, the payment of monetary benefits to the petitioner are restricted to 38 months prior to the filing of the writ petition. Respondents No. 1 to 5 are directed to make the calculations as aforesaid and pay the arrears to the petitioner for the said 38 months prior to the date of filing of the writ petition within three months from the date of receipt of certified copy of this judgment.