Sh. Rattan Singh and Others Vs The State of Haryana and Others

Civil Writ Petition No. 15630 of 1993

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 14, 1994

Acts Referred:
Constitution of India, 1950 â€" Article 14, 16, 226, 227, 3

Citation: (1995) 109 PLR 274

Hon'ble Judges: N.K. Sodhi, J; G.S. Singhvi, J

Bench: Division Bench

Advocate: Manohar Lall, C.M. Gupta, Sailender Singh and Ravi Verma, for the Appellant; Ritu Bahri, AAG, for the Respondent

Final Decision: Allowed

Judgement

G.S. Singhvi, J.
Practice adopted by various State Governments, and Government of Haryana is no exception to this practice, to grant

relief only to those persons who approach the Court of law leads to avoidable litigation in the Courts. Those running Governments are wholly

unmindful of indirect loss to the public exchequer caused due to this unsavoury practice. They do not realise the magnitude of injury which is

suffered by the Society on account of filing of Court cases in relation to a subject matter which already stands decided not only by the High Courts

but also by the highest judicial institution of the Country. Each petition/plaint presented in the Court consumes substantial amount of papers and the

biggest source from which the paper is manufactured is forest wood. Consumption of papers in the Courts indirectly contributes to the

consumption of forest and all must remember that future generation will not pardon us for our failure to protect the environment and ecology. These

few words are as a reminder to those actively involved in the running of the Government of the State that once a judgment is rendered by a Court

of law and particularly the High Court of the State and such judgment acquires finality, principles laid-down in that judgment should be applied

unanimously to all persons similarly situated. Time has come when we must give a decent burial to the theory of litigious perseverance.

2. This is a clear illustration of the failure of the administrative authorities to give relief to similarly situated persons even after two judgments by the

Apex Court and a host of other judgments by this Court on the point of entitlement of higher scale to the teachers on their acquiring

additional/higher qualifications.

3. Since a common point is required to be determined in all these petitions, we are disposing all of them by a common order.

4. For the purpose of this decision, it is sufficient to make reference to the facts of Civil Writ Petition No. 15630 of 1993. Petitioners joined

service as Teachers in the Education Department and they acquired higher qualifications while in service. Petitioners have pleaded that with effect

from the date of acquisition of higher qualifications, they are entitled to the benefit of revised grade with effect from 1.1.1986. They have made

reference to the decisions of the Supreme Court and of this Court in Chaman Lal and Ors. v. State of Haryana 1987 (4) SLR 4; Punjab Higher

Qualified Teachers Union v. State of Punjab 1988 (1) S.L.R. 768; Jetha Singh and Ors. v. State of Punjab and Anr. 1988 (4) S.L.R. 300; Nasib

Kaur and Ors. v. State of Punjab and Anr. 1988 (4) S.L.R. 301; Civil Writ Petition No. 9999 of 1989, Meugh Raj and Ors. v. State of Haryana

and Anr., decided on 26.11.1991; Civil Writ Petition No. 9568 of 1993, Ram Parkash and Ors. v. State of Haryana and Anr., 6 decided on July

19,1994; Civil Writ Petition No. 16289 of 1993, Shakuntla Devi and Ors. v. State of Haryana and Ors., 7 decided on July 5,1994 and Civil Writ

Petition No. 4639 of 1993, Mohiuda Kathuria v. State of Haryana. 8 decided on 13.1.1994. Petitioners have also stated that in compliance of the

order passed by this Court on 26.11.1991 in Megh Raj and Ors. v. State of Haryana, the Director of Primary Education, Haryana, has issued

order on 12.2.1993 and has given benefit to the petitioners in those cases.

5. In reply, the respondents have raised an objection of delay. Respondents pleaded that for claiming the relief on the basis of circular letters dated

23.7.1957 writ petition has been filed in 1993 i.e. after a lapse of 36 years and as such, the Court should non-suit the petitioners. On merits, it has

been stated that Circular dated 23.7.1957 is of no avail to the petitioners as against the Government of Haryana because the State of Haryana

itself came into existence with effect from 1.11.1966. It has further been stated that Government of Haryana revised the pay scale of its employees

with effect from 1.12.1967 and once again with effect from 1.4.1979. A further revision has been effected with effect from 1.1.1986. A reference

has also been made to the letter of the Government dated 9.3.1990 which contemplates the grant of master grade to those appointed with the

qualifications of B.A. B.Ed. In the context of this circular, it has been stated that the petitioners have acquired these qualifications after joining the

Government service and, therefore, they are not entitled to the higher grade which is admissible to the persons appointed with the higher

qualifications. In respect of orders passed by this Court in other petitions, respondents have pleaded that reply could not be filed in other cases

and, therefore, Government could not submit its defence before the Court. A reference has been made to an order passed by the Apex Court on

the decision of this Court in Civil Writ Petition No. 484 of 1986, O.P. Arya v. State of Haryana. A further statement has been made that in Civil

Writ Petition No. 7435 of 1993 itself has not been given by this Court.

6. Learned Assistant Advocate General (Haryana) reiterated the preliminary objection to the entertainability of the writ petition by arguing that the

writ petitions have been filed after a long delay. Learned counsel argued that the petitioners have slept over their rights and, therefore, they are not

entitled to any relief from this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. She relied on order dated

24.11.1993 passed in Civil Writ Petition No. 7435 of 1993. Learned counsel for the petitioners argued that when this Court has accepted the

claim of similarly situated persons, relief should not be denied to the petitioners merely because they have approached this Court after passage of

some time.

7. Delay and laches are twin grounds evolved by Courts for denying relief to a person who approaches it after a lapse of considerable time for

issue of a writ under Article 226 of the Constitution of India. The rule that the Court will not give relief to a person who has filed a petition after a

lapse of long time is a rule evolved by the Courts. It is not a legislative instrument like the Limitation Act which prevents the Courts from granting

relief in a given case. Rather, it is a rule of self imposed limitation innovated by the Courts for not issuing orders which would unsettle the settled

things or where a third party would be adversely affected due to the issue of writ after a long delay. This rule which forms part of the Judge-made

law cannot, however, be applied to each and every case for non-suiting a petitioner irrespective of the nature of claim and the circumstances which

have contributed to the delay in filing of the petition. What we wish to emphasize is that no strait-jacket formula or wooden rule can be applied for

declining or not declining the relief to a petitioner, who has approached the High Court for appropriate relief under Article 226 of the Constitution

of India. In case and every case the Court shall have to scrutinise the relevant facts for determining as to whether it will be appropriate to exercise

jurisdiction in favour of a person who has approached it after a long lapse of time. In a given case Court may decline relief to a person only on the

ground that he has approached it after a passage of few months counted from the date of a cruel of cause of action. In another case it may give

relief to a person who has filed a petition even after lapse of many years. Primary consideration, which must weigh in the mind of the Court while

adjudicating upon a objection of delay or laches, is as to whether the petitioner has been grossly negligent in pursuing his remedy and whether the

delay has resulted in a situation where rights of others have been settled and it would be inequitable to unsettle those rights.

8. In so far as these cases are concerned, we find that between the years 1987 to 1994, the Supreme Court as well as this Court has given relief to

a large number of similarly situated persons. As a welfare State it was expected of the respondent-State of Haryana to apply those decisions to all

similarly situated persons without compelling them to knock the doors of the Courts. Teachers belonging to School Cadre do not fall in the

category of affluent persons. Ordinarily they are expected to devote themselves in the process of national building. They are to inculcate a spirit of

sacrifice in the younger generations of the Country and, therefore, if the petitioners who belong to the class of teachers have patiently waited for

appropriate action by the Government to give relief to them on the basis of the judgment rendered by the Apex Court and by this Court, it is not

possible to hold that they have been negligent in pursuing their cause. Moreover, it is not the case of the respondents that right of third parties have

accrued and such rights would be unsettled by grant of relief to the petitioners. In this view of the matter, we are not prepared to accept the

objection of the learned Assistant Advocate General that the petitioners should be non-suited only on the ground that they have approached the

Court after many years.

9. Another reason why the preliminary objection raised by the learned Assistant Advocate General merits rejection is that the respondents cannot

be allowed to take advantage of their action/omission to give effect to the judgment of the Apex Court in their true spirit. Doctrine of equality

enshrined under Articles 14 and 16 of the Constitution of India is binding on the State and its agencies. The State has to take active steps for

creating a situation where real equality can be enjoyed by the citizens. The concept of fairness in the State action forms part of the doctrine of

equality. It is, therefore, imperative for the State to be fair to all its citizens. Instead of being fair to one of the lowest paid class of its employees,

the State has tried to take shelter of hyper-technical objection of delay. We refuse to be swayed by the hallow sought to be created by the State

that grant of higher pay scale to the petitioners would put the State to a lot of financial burden. This spacious plea cannot be used to frustrate one

of the basic rights available to the citizens of this Country.

10. After having disposed of the preliminary objection raised by the learned Assistant Advocate General, we may refer to the decisions of the

Apex Court and of this Court. In Chaman Lal and Ors. v. State of Haryana"s case (Supra), the Supreme Court held:

This order of the Government is now sought to be interpreted and it has been so interpreted by the High Court of Punjab and Haryana in the

judgment under appeal that those teachers who had acquired the B.T. or B.Ed, qualification subsequent to December 1, 1967 (the date on which

the 1968 order came into force) and before September 5, 1979 would be entitled to the higher grade but with effect from September 5, 1979 only

and that those who acquired the qualification subsequent to September 5,1979 would not be entitled to the higher grade. According to the

judgment of the High Court under appeal, the 1968 order did away with the principle of the 1957 order that teachers acquiring B.T. or B.Ed,

qualification should get the higher grade and that a concession was shown in 1979 enabling the teachers who acquired the B.T. or B.Ed,

qualification between 1968 and 1979 to get the higher scale from 1979. In our opinion this is plainly to ignore all the events that took place

between 1957 and 1980. The principle that pay should be linked to qualification was accepted by the Punjab Government in 1957 and when

Kirpal Singh Bhatia''s case was argued in the High Court and in the Supreme Court there was not the slightest whisper that the principle had been

departed from in the 1968 order. In fact the 1968 order expressly stated that the Government had accepted the Kothari Commission''s report in

regard to scales of pay and as already pointed out by us the main features of the Kothari Commission''s report in regard to pay was the linking of

pay to qualification. That was apparently the reason why no such argument was advanced in Kirpal Singh Bhatia''s case. Even subsequently when

several writ petitions were disposed of by the High Court of Punjab and Haryana and when the Government issued consequential orders, it was

never suggested that the 1968 order was a retraction from the principle of qualification linked pay. The 1968 order must be read in the light of the

1957 order and the report of the Kothari Commission which was accepted. If so read there can be no doubt that the Government never intended

to retract from the principle that teachers acquiring B.T. or B.Ed, would be entitled to the higher grade with effect from the respective dates of their

acquiring that qualifications. The 1979 order was indeed superfluous. There was no need for any special sanction for the grant of Master''s grade

to unadjusted JBT teachers who had passed B.A., B.Ed. That was already the position which obtained both as a result of the 1957 and 1958

(1968 ? Ed) orders and the several judgments of the Court. We do not think that the Punjab and Haryana High Court was justified in departing

from the rule in the judgment under appeal. The rule had been well established and consistently acted upon. Nor was it open to the Government to

act upon the principle in some cases and depart from it in other cases.

(Emphasis laid)

11. In Punjab Higher Qualified Teachers Union and Ors. v. State of Punjab (Supra) the Apex Court made reference to its own decision in

Chaman Lal''s case as well as State of Punjab v. Kirpal Singh Bhatia''s case and some of the judgments of this Court and then held :

We must accordingly uphold the contention of the petitioners that they are entitled to higher pay on acquiring or improving their academic

qualification. It is regrettable"" that despite clear pronouncements made by this Court as well as the High Court in a long line of decisions starting

with Kirpal Singh Bhatia''s case, there is no redressal of the wrong done to JBT Teachers belonging to Category B Group II although they had

acquired B.A., B.T./B.A., B.Ed, qualifications. Quite recently, in Chaman Lal and Others Vs. State of Haryana, , Chinnappa Reddy, J. has

considered the question in some depth. The learned Judge repelled the contention of the State Government of Haryana based on its order dated

5th September, 1979 which was sought to be interpreted to mean that the Teachers who had acquired the B.T. or B.Ed. qualification subsequent

to 1st December, 1967, the date on which the 1968 order came into force and before 5th September 1979, would be entitled to the higher grade

but w.e.f 5th September, 1979 only and that those who acquired the qualification subsequent to that date would not be entitled to the higher grade.

According to the High Court in that case, the 1968 order did away with the principle of the 1957 order that Teachers who acquired B.T. or B.Ed,

qualification should get the higher grade and that a concession was shown In 1979 enabling the Teachers who acquired the B.T. or B.Ed,

qualification between 1968 and 1979 to get the higher scale from 1979"".

12. In Jetha Singh and Ors. v. State of Punjab and another''s case (Supra) and Nasib Kaur and Ors. v. State of Punjab and another''s case

(Supra), this Court followed the Supreme Court judgments and upheld the claim of the petitioners to the grant of higher pay scale. The same has

been reiterated in the unreported judgments given in Meugh Raj and Ors. v. State of Haryana and another''s case (Supra); Ram Parkash v. State

of Haryana''s case (Supra) and Mohindu Kathuria v. State of Haryana (Supra).

13. Circular dated 9.3.1990 issued by the Government of Haryana, in our opinion, cannot be used to deny relief to the petitioners. A careful

perusal of that circular shows that the issue of the same is nothing but an attempt to frustrate the rights of the existing teachers to get higher pay

from the date they acquired higher qualifications. 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. A similar situation was considered by the

Supreme Court in P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, . In that case petitioners, who were holding the posts

of Professors were denied higher pay scale because they did not possess a particular qualification. While upholding their claim for grant of higher

pay scale according to the principle of equal pay for equal work, the Supreme Court observed:

The principle "equal pay for equal work" is deductible from Articles 14,16 and 39(d) and may be properly applied to the case of unequal scales

of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same

employer. Randhir Singh Vs. Union of India (UOI) and Others, .

Even though the three petitioners were respectively folding the post of Professor in animal Pathology, Animal Genetics and Veterinary Parasitology

all attached to Indian Veterinary Research Institute (IVRI) from 1963, 1970 and 1970 respectively, when the pay-scale for the post of Professor

on the recommendation of the University Grants Commission underwent an upward revision to Rs.1100-1600, the ICAR instead of straightaway

granting the scale to the petitioners, the holders of the posts of Professor, proceeded to issue an advertisement on May 21,1974 inviting fresh

applications for the post of Professor in the three subjects in which the petitioners were already holding the post of Professor and simultaneously

appointed some others in different subjects and disciplines as Professors and gave them the revised scale while the petitioners were left to languish

in the old scale. This was a glaring example of discriminatory treatment accorded to old experienced and highly qualified hands with an evil eye and

unequal hand and the guarantee of equality in all its pervasive character must enable Supreme Court to remove discrimination and to restore fair

play in action. The classification of existing incumbents as being distinct and separate from newly recruited hands with flimsy change in essential

qualification would be wholly irrational and arbitrary.

(Underlining is ours).

15. In our considered opinion, there is no justification for denying the relief to the petitioners.

16. Consequently, the writ petitions are allowed. Respondents are directed to give relief to the petitioners by fixing their pay in the higher scale

from the date they acquired the requisite qualifications. However, the petitioners shall not be entitled to interest.