
the impugned notifications cannot be sustained. These are, consequently, quashed.

(19) The writ petitions are allowed with costs.

R.N.R.

Before G.S. Singhvi & Nirmal Singh, JJ

SMT. PUSHPA DEVI..Petitioner

versus

STATE OF HARYANA & OTHERS..Respondents

C.W.P. No. 6645 OF 2000

25th May, 2000

Haryana Aided Schools (Security of Service) Act, 1971—Haryana Aided Schools (Security of Service) Rules, 1974-Rls.2h, 5, 6, and 10—Circular, dated 23rd July, 1957 issued by the Government of Haryana—Appointment as JBT teacher in a private aided school—Claim for grant of higher pay scale on the basis of higher qualifications—Rejection of—Neither the 1971 Act nor the 1974 Rules provide for grant of higher pay scale to the teachers of the privately managed schools on their acquiring the higher qualification—No rationale or justification to grant higher pay scale to a JBT teacher prescribed for a different/higher post—The Supreme Court & the High Court granting higher pay scales in some cases after relying upon the circulars/instructions and without examining the recruitment and pay rules—These decisions cannot be treated as laying down a proposition of law—Petitioner not entitled to the benefit of higher pay scale—Writ dismissed.

Held, that the reasons assigned by the Director of Secondary Education, Haryana for declining petitioner's prayer for grant of higher grade can neither be termed as arbitrary nor extraneous nor it can be said that the petitioner has been discriminated. The Circular dated 23rd July, 1957 was in existence when Legislature of Haryana enacted the 1971 Act and the State Government had framed the 1974 Rules. If the Legislature and its delegate wanted to confer the benefit of higher pay scale/grade to the teachers of the private aided schools who possessed qualifications higher than those prescribed for the post at the time of recruitment or who acquired such qualifications after joining the service then they would have incorporated the Circular dated 23rd July, 1957 either in the 1971 Act or in the 1974 Rules. However, the fact of the

matter is that neither the 1971 Act nor the 1974 Rules provide for grant of higher pay scale to the teachers employed in the private aided schools simply because he/she possessed higher qualifications at the time of recruitment or acquired such qualification after joining the service. Therefore, the reasons assigned by the Director of Secondary Education, Haryana for rejecting the petitioner's claim are neither arbitrary nor the order passed by him is vitiated by an error of law justifying interference by the High Court.

(Para 10)

Further held, that by directing the payment of the salary in the higher pay scale prescribed for a post other than the post of J.B.T. Teacher, the Court cannot make addition to the cadre strength or bring about amendment in the statutory rules regulating recruitment to the higher post nor can the Court amend the Pay Rules framed by the Governor in exercise of his powers under proviso to Article 309. That would amount to an unjustified encroachment in the field which is earmarked for the executive. This would also amount to unwarranted usurpation of the power vesting in the Governor of the State under proviso to Article 309 of the Constitution of India.

(Para 12)

Further held, that neither the Supreme Court nor this Court had examined the issue relating to the grant of higher pay scales to the teachers of different categories w.e.f. the date of acquiring higher qualification in the context of the relevant recruitment rules and pay rules. Rather, in all the cases, the Supreme Court and this Court proceeded on the assumption that the instructions contained in the circular dated 23rd July, 1957 held the field even after the promulgation of recruitment rules and pay rules. Therefore, these decisions cannot be treated as laying down a proposition of law that the benefit of higher pay scale can be claimed by a teacher from the date of acquisition of higher qualification irrespective of the fact that he/she was recruited on a particular post carrying a particular pay scale and the higher pay scale has been prescribed for a different post forming part of a different cadre.

(Para 24)

V.B. Aggarwal, Counsel, for the Petitioner.

ORDER

G.S. SINGHVI, J.

(1) This is a petition for quashing of the order dated 3rd June, 1999 (Annexure P-5) passed by the Director, Secondary Education,

Haryana (respondent No. 2) declining the petitioner's prayer for grant of higher grade in accordance with the instructions issued by the Government of Punjab,—*vide* Circular Letter No. 5058-RF-II-57/5600(Annexure P-3).

(2) The factual matrix of the case lie in a narrow compass. After acquiring the qualification of B.A. (1975) and B.Ed. (1976), the petitioner joined as J.B.T. Teacher in Jain Girls High School, Karnal (respondent No.3). In 1998, she filed Civil Writ Petition No. 13013 of 1998 for issuance of a mandamus to the respondents to pay salary in the higher grade in accordance with the instructions contained in Annexure P-3. The same was disposed of by a Division Bench on 19th August, 1998 with a direction that representation made by her for grant of higher grade shall be decided within four months. In compliance of the Courts order, respondent No. 2 passed the impugned order. The relevant extract of that order is reproduced below:

“I have gone through the case and found that representation of the petitioner was received in the Directorate through District Education Officer, Karnal during the month of February, 1999. The petitioner joined on the post of JBT Teacher on 12th November, 1980 and acquired B.Ed. qualification on 23rd June, 1976. Thus, it is clear that she had acquired the higher qualification before joining the service. The claim of the petitioner is mainly based on the letter issued by the composite Punjab govt. dated 23rd July, 1957. The case was considered and it has been found that the letter dated 23rd July, 1957 issued by the Punjab Govt. was applicable in respect of the teachers working in the Govt. Schools and whereas the same not meant for the teachers working in the privately managed aided schools. Moreover, the services of the teachers working in the privately managed aided schools are governed by Haryana Aided Schools (Security of Service) Rules, 1974. According to the said Rules, there is no provision for the grant of higher grade on acquiring higher qualifications to the teachers serving in privately managed aided schools. It is also mentioned that according to letter dated 23rd July, 1957 referred above the higher grade was to be given to the Govt. Schools teacher's who acquired higher qualification after joining the service whereas the petitioner has passed her B.Ed. before joining the service. Hence the petitioner's claim is not justified.

Moreover, the teachers in privately aided schools are appointed and removed from service by their respective management and are governed under the separate Service rules concerning the private institutions i.e. Haryana Aided Schools (Security of Service) Rules, 1974 and employees working in the privately managed aided schools cannot be equated at par with the Govt. employees who are governed under their different service Rules as amended from time to time.

It is also submitted that reference of *Wazir Singh versus State of Haryana* and *O.P. Arya versus State of Haryana* mentioned by the petitioner are not applicable in the facts and circumstances of the present case.

Moreover the teachers working in privately managed aided schools, are already being paid pay scales and dearness allowances at par with their counter-parts working in Govt. Schools. But so far as the granting of higher grade is concerned the same can only be given to the Govt. employees as per instructions dated 23rd July, 1957.

Keeping in view the above position the petitioner is not entitled to higher grade on account of higher qualification and as such her claim is rejected."

(3) Shri V.B. Aggarwal, learned counsel for the petitioner argued that in view of the law laid down by the Supreme Court and this Court, the impugned order may be declared illegal and a writ in the nature of mandamus be issued to the respondents to grant the benefit of higher grade to the petitioner. In support of his argument, learned counsel relied on the judgments of the Supreme Court and of this Court in *State of Haryana and others versus Rai Chand Jain and others*, (1) *Miss Gurjeet Kaur versus State of Haryana and others*, (2) *Santosh Kumari versus State of Haryana* (3) *Champa Devi and others versus The State of Haryana and others*, (4) order dated 7th May, 1996 passed in Civil Writ Petition No. 1137 of 1984 *Subhash Kumari v. The State of Haryana and others* (Annexure P-7) and order dated 18th August, 1998 passed by the Supreme Court in Civil Appeal Nos. 4029-4043 of 1998 *State of Punjab and another v. Narain Dass and Ors.*

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- (1) 1997 (1) Judicial Reports (L&S) 1
 - (2) 1996 (1) RSJ 505
 - (3) 1997 (1)RSJ 419
 - (4) 1998 (1) RSJ 675

(4) We have thoughtfully considered the argument of the learned counsel and have gone through the decisions relied upon by him, but have not felt persuaded to agree with him that the petitioner is entitled to get relief in terms of the prayer made. In the past a number of writ petitions and appeals have been filed in this Court and the Supreme Court for grant of the benefit of higher grade in accordance with the instructions contained in the circular dated 23rd July, 1957. Some of these petitions/appeals have been dismissed while others have been allowed and directions have been given for payment of salary in the higher pay scale on the basis of higher qualifications possessed by the petitioner-appellant. However, before adverting to those decisions, we deem it proper to examine the ambit and scope of Circular dated 23rd July, 1957 and other circulars issued by the Government of Haryana, which constitute the bed-rock of the petitioner's claim. The same reads as under:—

“No. 5068-II/57/5600

From

Shri S.R. Verma, IAS,
Secretary to Government, Punjab,
Finance Department.

To

All Heads of Departments and the High Court, Commissioners of Divisions, District and Sessions Judges and Deputy Commissioners, in the Punjab.

Dated Chandigarh, the 23rd July, 1957.

Sir,

I am directed to state that for some time past the question of the revision of scales of pay of the subordinate services and removing anomalies occasioned by the piecemeal of non-gazetted Government servants in the past, has been engaging the attention of the Government. After carefully considering the recommendations made by the Pay Revision Committee appointed to examine this matter, it has been decided that the existing scales of pay of certain categories of posts should, with effect from the 1st May, 1957, be revised as shown in enclosed statement.

2. It has further been decided to rationalise the scales of pay of certain posts such as Stenographers, Store Keepers, Librarians, and Assistant Librarians, Photographers, Head Clerks and Head Assistants, for which there exists at present multifarious scale of pay varying from office to office, to the following extent.

xxxxx	xxxxx	xxxxx
xxxxx	xxxxx	xxxxx

3. Teachers in the Education Department: it has been decided that all the teachers according to their qualifications should be placed in the following two head categories:

CATEGORY: 'A'

B.A./B.Sc./B.Com./B.Sc.(Agriculture)/and B.T./Diploma in Physical Education/Diploma in Senior Basic Training.

CATEGORY: 'B'

Group I : Matric with Basic Training Training (including JTs)

Group II : J.Ts. (including Assistant Mistress with B.A./Matric Plus J.A.V. Training.

Group III : (i) Shastries.

(ii) Gianies, Prabhakars, Drawing Masters and Craftsmen Certificate Holders.

(iii) Munshi fasil.

(iv) S.Ts. including S.Vs. with training in physical education or Agriculture.

Group IV : Untrained teachers with qualifications like B.Com., B.Sc. (Agriculture) etc.

In addition, there are smaller categories of special posts, such as Head masters/Headmistresses/District Inspectors/Inspectors of Schools, with qualifications of Category 'A' above. Teachers in these categories, regardless of men and women cadres, should carry the following scales of pay:

CATEGORY 'A' :

Rs. 110—3—190—10—250 with a higher start for M.A. or M.Sc. as at present, the existing percentage of posts fixed by Government for the scales of Rs. 110—8—190/10—250 and Rs. 250—10—300 should remain unchanged at 85 per cent and 15 per cent respectively.

CATEGORY 'B' :

Lower :	Rs. 60—80/5—100—5—130
Middle :	Rs. 120—5—175
Upper :	Rs. 140—10—220

With a view to providing incentives, it has been decided that posts falling in these groups should be in the following percentages:

Group :	Lower scales: 85 per cent.
Middle scales :	15 per cent.

15 per cent of teachers in the group should straightway be promoted to the Middle scale by selection based on seniority and merit, while the rest should be given the lower scale.

Group II :

Existing incumbents in this should be allowed to retain their present scale of Rs. 80—5—110/9—190/10—250.

Group III :

Lower scales :	50 per cent
Middle scales :	35 per cent
Upper scales :	15 per cent.

(i) So far as the upper scale is concerned 15 per cent of teachers in this group are already enjoying it and no selection for this scale of pay is immediately required. For further selections in this scale of pay, the choice should be confined to teachers in the Middle scales, the selections to be based on seniority and merit irrespective of educational qualifications.

(ii) 35 per cent of teachers in this group are at present in the

scale of Rs. 104—7—140 which correspond to the proposed middle scale of Rs. 120—5—175. Their pay should be fixed in the later scale according to the principles defined in paragraph 4 below. Further selection to the Middle scale should be by promotion based on merit and seniority irrespective of the educational qualification.

(iii) Shastries should be allowed a starting pay of Rs. 80/- per mensem in the lower scale whereas, Prabhakars/Gianies/Drawing Masters/Arts and Crafts Teachers, a starting pay of Rs. 72/- per mensem in the lower scale.

Group IV:

The present incumbents constituting this group should continue in their existing scale of pay. Further requirement of such untrained teachers should be discouraged.

Similar categories of special posts like: Headmasters/ Headmistresses/District Inspectors and Inspectors of Schools, should continue to be in the existing scale of pay of Rs. 250—10—300. If there will remain any class of teachers not covered by these orders, such cases may be referred to Finance Department for a final decision.

Yours faithfully,

Sd/-

Sant Ram Verma

Secretary to Government, Punjab.”

On September 5, 1979, the Government of Haryana issued the following order:—

“Sanction of the Governor of Haryana is hereby accorded w.e.f. 5th September, 1979 of the grant of Master grade to unadjusted J.B.T. Teachers who have passed B.A., B.Ed., subject to the following conditions:

- (i) That the expenditure involved would be met from the savings of the current year revised sanctioned estimates.
- (ii) That these teachers will not be allowed any seniority in the cadre of masters.

(iii) That it will not form a precedent for future.

(iv) That the award of Master's grade to the concerned teachers would be personal to them."

(5) Thereafter, —*vide* Circular dated 9th March, 1990, the Government of Haryana issued revised instructions in the matter of grant of higher pay scale. The relevant extracts of that Circular is also reproduced below:

"I am directed to refer to composite Punjab Govt. Finance Department circular No. 5056-FIR-11/57, dated the 23rd July, 1957 on the subject noted above, which contains the details regarding the revision of the pay scales of various categories of subordinate services (including teachers) done on the recommendation made by the Pay Revisions Committee, then appointed to examine this matter. While evolving revised pay scales in respect of different categories of teachers in the Education Department, in para 3 of above mentioned circular, two broad categories namely, category 'A' and category 'B' of teachers were mentioned, *inter alia*, laying down the requirements of academic qualifications in their cases. *It would not have been intended by the Government that on their acquisition of High academic qualification, various categories of teachers in the lower grades shall automatically be placed in the different higher grade commensurate with their academic qualification.* Normally, pay scales of various category of posts in any Department are sanctioned keeping in view the minimum qualification required for each category of posts, besides the duties prescribed for them. *Similarly, the teaching posts are sanctioned for various educational institutions keeping in view the subjects and classes, the incumbents of these posts are required to teach and for that specific qualifications are prescribed in the service rules as well at the time of recruitment. For example, if a B.A. B.Ed pass candidate with the qualifications of Matric J.B.T. also applied for the post of Matric J.B.T. and is taken into service on the basis of higher qualification, he/she cannot claim the grade of Master/Mistress but will get the sanctioned scale of pay of teacher meant for Matric J.B.T. Similarly if a Matric J.B.T. teacher improves his qualification during the course of service and acquires degree of B.A. B.Ed. or of language teacher i.e. O.T., Giani or Prabhakar, he cannot claim the scale of Master i.e. B.A. B.Ed. or of language teacher unless*

he is appointed as Master against the post of Master and language teacher against the post of language teacher for which the minimum qualifications are B.A. B.Ed. and O.T. (Giani or Prabhakar) respectively.

2. As the instructions contained in paragraph 3 of the above mentioned letter dated 23rd July, 1957 did not bring out the above mentioned intentions of the Government in unambiguous terms, it has resulted in different interpretations i.e. automatic grant of higher scales of pay on the basis of qualifications irrespective of number of posts available in the Department in that category.....it was never the intention of the State Government to undertake the continuing heavy financial burden that has developed on it because of the faulty framing of the above-mentioned instructions. (3 to 5 omitted)

6. In order to remove the confusion being created by misconstruing the intention of the Government the whole matter has been reconsidered by the State Government. As a result of the reconsideration, the Governor of Haryana is pleased to clarify that the teachers of the Education Department are not entitled to be placed in the higher scales of pay in terms of para 2 of the Punjab Government letter No. 5056-FR-11/57/5600, dated 23rd July, 1957 or any subsequent letters/notifications issued by the Haryana Government referred to in the preceding paras, which letters already become inoperative on their improving/acquiring higher qualifications during the course of their service automatically. The masters/teachers in the Education Department will be placed in the scales of pay of their respective categories to which they are appointed against the sanctioned posts and mere possession/acquiring of higher qualification will not entitle them automatically to claim higher pay scales.”

(6) Recruitment and conditions of service of the persons appointed in the private aided schools are governed by the Haryana Aided Schools (Security of Service) Act, 1971 (for short ‘the 1971 Act’) and the Haryana Aided Schools (Security of Service) Rules, 1974 (for short ‘the 1974 Rules’). Rules 2h, 5, 6 and 10 of the 1974 Rules which have bearing on the adjudication of the petitioner’s claim read as under:

“2(h) “Service” means the service in an aided school;

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5. Appointing authority [Section (4)]. Appointment to the posts of teaching and non-teaching staff in the service shall be made by the Management, and to the posts of other staff in the service shall be made by the Head of the Institution, in consultation with the Management, in the manner provided in rule 7.
6. Qualifications [Section (4)]. No person shall be appointed to the Service unless he is in possession of qualification and experience specified in column 3 of Appendix A to these rules.
10. Scale of pay, dearness allowance and payment of salary [Section (4)].

- (1) The scales of pay of the employees shall be as specified in column 4 of Appendix A to these rules.
- (2) The rates of dearness allowance payable to the employees shall be the same as are admissible from time to time to Government employees."

(7) An analysis of the Rules, reproduced above, shows that service has been defined as service in an aided school. Appointment to the teaching posts in the service is required to be made by the Management from among the persons possessing qualifications and experience specified in column 3 of appendix 'A' attached to the Rules. Rule 10 lays down that the scales of pay of the employees shall be specified in column 4 of Appendix 'A' and the rates of the dearness allowance payable to the employees shall be the same as are admissible to the Government employees. For recruitment to the posts of J.B.T. Teachers, the minimum prescribed qualification is Matric with J.B.T. two years course from any recognised institution in Haryana or its equivalent. The next higher post is that of Master/Mistresses. The minimum qualification prescribed for the purpose of Master/Mistresses is B.A., B.T. or B.A. B.Ed or B.Sc B.T. or B.Sc. B.Ed.

(8) In the light of the above, we have to decided whether the decision of respondent No. 2 to reject the claim of the petitioner for grant of higher grade from the date she acquired the higher qualification i.e. Intermediate, suffers from any illegality warranting interference by this Court.

(9) A careful reading of the impugned order shows that the petitioners claim for grant of higher grade has been rejected on the following grounds :—

- (i) the instructions contained in the circular dated 23rd July, 1957 were applicable to the Teachers employed in the government schools and not to those working in private aided schools;
- (ii) the service of the Teachers employed in privately managed aided schools are governed by the 1974 Rules and there is no provision in those Rules for grant of higher grade on acquiring higher qualifications;
- (iii) as per Circular dated 23rd July, 1957, higher grade was to be given to the Government School Teachers who acquired higher qualifications after joining the service, whereas the petitioner had passed B.A. B.Ed. before joining the service.

(10) In our opinion, the reasons assigned by respondent No. 2 for declining the petitioner's prayer can neither be termed as arbitrary nor extraneous nor it can be said that the petitioner has been discriminated in the matter of grant of higher pay scale. The Circular dated 23rd July, 1957 was in existence when Legislature of Haryana enacted the 1971 Act and the State Government had framed the 1974 Rules. If the Legislature and its delegate wanted to confer the benefit of higher pay scale/grade to the Teachers of the private aided schools who possessed qualifications higher than those prescribed for the post at the time of recruitment or who acquired such qualifications after joining the service then they would have incorporated the Circular dated 23rd July, 1957 either in the 1971 Act or in the 1974 Rules. However, the fact of the matter is that neither the 1971 Act nor the 1974 Rules provide for grant of higher pay scale to the Teachers employed in the private aided schools simply because he/she possessed higher qualifications at the time of recruitment or acquired such qualifications after joining the service. Therefore, we are unable to agree with Shri Aggarwal that the reasons assigned by respondent No. 2 for rejecting the petitioner's claim are arbitrary and the order passed by him is vitiated by an error of law justifying interference by the High Court.

(11) The matter deserves to be examined from another angle. A person holding qualification of Intermediate or B.A. may apply for recruitment as J.B.T. Teacher for which the minimum qualification is Matric and two years J.B.T. course. If he/she does so as per his/her sweet will, he /she then becomes entitled to be paid salary in the pay

scale prescribed for the post of J.B.T. Teacher with qualification of Matric and the required training and continues to be a member of the cadre of J.B.T. Teachers irrespective of his/her acquiring higher qualifications during the course of employment. His/her cadre does not undergo change with the acquisition of higher qualification and he/she does not become a member of another service. Therefore, a person who is appointed as J.B.T. Teacher with higher qualification does not automatically become entitled to be paid salary in the pay scale prescribed for a higher post. If we were to accept the claim of the petitioner for fixation of her pay in the higher pay scale from the date she has passed Intermediate examinations, then an extremely anomalous situation would crop up. Acceptance of the claim of the petitioner and the similarly situated persons would amount to judicial recognition of a situation in which a person is recruited as J.B.T. Teacher pursuant to an advertisement for recruitment of J.B.T. Teachers which may have been issued by the competent authority indicating the minimum qualifications as also the pay scale prescribed for that post, but he will have to be paid salary in the higher pay scale prescribed for a higher post. In other words, the Management will have to fix the salary of a J.B.T. Teacher in the pay scale of a higher post which may neither have been advertised nor against which the appointment may have been made. It would also mean that although a J.B.T. Teacher will be required to teach classes of a particular level, he will be placed at par with Language Teacher, Master/Mistress/Lecturer or a Head Master in the matter of pay scale, even though the latter categories of teachers are required to teach higher classes. Other anomaly which will result due to acceptance of the claim of the petitioner would be that although she had assumed charge of the post of J.B.T. Teacher, she will have to be paid salary of the higher posts against which she did not work. It would also amount to introducing a fiction, namely, that a J.B.T. Teacher becomes a notional member of the cadre of the higher post and he/she will be deemed to have been appointed on a higher post for which he/she never applied. Thus, we do not find any rationale or justification to accept such a claim.

(12) We cannot also ignore the fact that by directing the payment of the salary in the higher pay scale prescribed for a post other than the post of J.B.T. Teacher, the Court cannot make addition to the cadre strength or bring about amendment in the statutory rules regulating recruitment to the higher post nor can the Court amend the Pay Rules framed by the Governor in exercise of his powers under proviso to Article 309. That would amount to an unjustified encroachment in the field which is earmarked for the executive. This would also amount to unwarranted usurpation of the power vesting in

the Governor of the State under proviso to Article 309 of the Constitution of India.

(13) The view which we have expressed herein-above is in tune with the law laid down in *Kanwaljit Kaur vs. State of Punjab and others* (5) In that case, a Division Bench to which one of us was a member made indepth examination of the issue in the light of the recruitment rules, the pay rules and the notifications issued by the State Government from time to time and negatived the claim of the petitioner. Some of the observations made in that decision are extracted below :—

“19. It is thus, clear that with effect from 19th February, 1979 the Government positively changed its policy of granting higher pay scale from the date of acquisition of higher qualification by serving teachers and, therefore, the teachers who were appointed on lower posts after 19th February, 1979 with higher qualifications and those who were already serving and acquired higher qualifications after 19th February, 1979 were not entitled to automatic grant of higher scale. In our opinion, after their Lordships of the Supreme Court in Wazir Singh's case (supra) have explained the scope of their earlier decision in Chaman Lal's case (supra), it has to be held that the circular dated 19th February, 1979 has done away with the policy of linking pay scale with the qualifications and, therefore, notwithstanding the fact that in a large number of cases this court has given the benefit of higher pay scales to the teachers from the date of acquisition of higher qualifications, it is not possible to issue a writ of *mandamus* ignoring the law laid down in Wazir Singh's case (supra). We are also of the opinion that the view taken by the learned Single Judge in C.W.P. No. 11196 of 1986 decided on 30th October, 1993 that denial of higher pay scale to the teachers on the basis of circular dated 19th February, 1979 would bring about an anomalous situation does not represent correct law.

20. *There is another facet of the case which requires close scrutiny. Under the Recruitment Rules, the Service is divided into different categories, consists of a particular number of posts. Such posts are required to be filled up by different methods of recruitment prescribed in the rules and only persons possessing qualifications can complete for*

recruitment to a particular post. Pay Rules which have been enacted in exercise of powers under proviso to Article 309 of the Constitution of India prescribe pay scales for different categories of posts. A person recruited to a particular post gets the pay scale prescribed under the rules for that particular post. An appointing authority can make recruitment only against the specific number of posts. It cannot make recruitment dehors the cadre strength. Of course, in a case, an ex-cadre post may also be filled and a particular pay scale prescribed for such ex-cadre post may be given to the incumbent of that post. However, by grant of higher pay scale to the persons appointed on the lower posts, the Court cannot directly or indirectly increase the strength of the cadre or create ex-cadre posts because such an order would lead to amendment of the Recruitment Rules as well as the pay Rules. It would indirectly mean creation of new cadre consisting of persons getting higher pay while holding lower posts. This absurd situation deserves to be avoided by giving rational and meaningful interpretation to the circular dated 19th February, 1979 as has been done by us in the preceding paragraphs.

21. Before concluding we may take note of the fact that after selection by the departmental selection committee the petitioner was appointed as JBT Teacher in the pay scale of Rs. 480—15—600/20—700/25—850/30—880 with basic pay of Rs. 480.00 plus allowances as sanctioned by the Punjab Government from time to time. Acceptance of the claim of petitioner for higher pay scale would mean modification of her appointment order, which would in turn mean that although physically the petitioner has been recruited as J.B.T. Teacher but notionally she should be deemed to have been appointed to the post of Master because pay scale of Rs. 1600—2925 is prescribed for the post of Master. That would be an unwarranted encroachment on the power of recruitment vesting in the competent authority to make appointment against available vacant post in the cadre of Master and there does not appear to be any legal or constitutional basis for adopting such a course.”

(14) We may now refer some other decisions on the subject including those relied upon by Shri Aggarwal. In *State of Punjab vs. Kirpal Singh Bhatia* (6), their Lordships of the Supreme Court

considered two issues. First of these issues related to the claim of the teachers to be granted the higher grade and the second related to the claim of the teachers for promotion to the posts of Masters to the extent of 25 per cent quota without any limitation about subject combination. Their Lordships noted that the respondents (petitioners before High Court) were teachers in the former State of Pepsu and they became servants of the State of Punjab on the formation of the said State. Their Lordships referred to the circular dated 23rd July, 1957 and held that the High Court was right in making reference to the circular dated 23rd July, 1957 issued by the Secretary to the Government, Punjab laying down therein that the teachers having higher qualifications would henceforth be placed in Category 'A' and the scale of Pay of Rs. 110-250 would be effective either from the date when the teachers would pass the examination of Bachelor of Teaching or its equivalent or 1st May, 1957, whichever is later.

(15) In *Chaman Lal vs. State of Haryana* (7), their Lordships of the Supreme Court interpreted the Haryana Government's orders of the year 1968 and the Circular dated 5th September, 1979 and observed as under :—

“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.”

Their Lordships further observed as under :

“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 feature 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. If so read there can be no doubt that the Government never intended to retract from the principle that teachers acquiring

the B.T., or B.Ed. would be entitled to the higher grade with effect from the respective dates of their acquiring that qualification. The 1979 order was indeed superfluous. There was no need for any special sanction for the grant of Master's grade to unadjusted J.B.T. 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 B.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 rules 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."

(16) In that case, the Apex Court was dealing with the claim made by the teacher's who had acquired the qualifications of B.A. during the course of service and the main thrust of the decision of the Apex Court was based on the government's own conduct of continuing the policy of linking qualifications with the higher pay scales.

(17) In *Punjab Higher Qualified Teachers Union and others v. State of Punjab and others*, (8), their Lordships of the Supreme Court held that discrimination between Graduate teachers with JST/JAV training and Graduate Teachers with or without such training is impermissible as it attempts to create a class within a class without any rational basis. Their Lordships further held that the petitioners were entitled to higher pay on acquiring or improving their academic qualifications. In making these observations, the Apex Court relied on two earlier decisions in Kirpal Singh Bhatia's case and Chaman Lal's case (supra).

(18) In *Nasib Kaur and others v. State of Punjab and others* (9), a Division Bench of this Court upheld the claim of the teachers to be granted higher scale of pay on the basis of higher qualification because the teachers had acquired such qualification prior to 1st November, 1979.

(19) In *Rattan Singh v. State of Haryana* (10), the Court overruled the objection of delay and laches raised on behalf of the respondents and directed that the petitioners be given higher pay scale from the date of their acquiring higher qualifications.

(8) 1988 (1) SLR 768

(9) 1988 (4) SLR 301

(10) 1995 (1) SLR 401

(20) In *Gurjeet Kaur v. State of Haryana and others (supra)*, the Court applied the ration of Rattan Singh's case (*supra*) and directed the respondents to grant the benefit of higher pay scale to the petitioner from the date she joined the service.

(21) In *Champa Devi v. State of Haryana (supra)* another Division Bench held that teachers employed in Privately Managed Government aided schools are entitled to additional increments and interim relief at par with their counter parts working in government schools.

(22) In *State of Haryana v. Rai Chand Jain, (supra)* the Supreme Court held that the teachers who have obtained the B.T. or B.Ed. degree are entitled to higher grade with effect from the respective dates of their acquiring that qualification and not from an earlier date.

(23) In *State of Haryana vs Ravi Bala (11)* their Lordships relied on an earlier decision in *Wazir Singh vs State of Haryana (12)* and held that the teachers, who acquired qualification of B.T./B.Ed. on or after 9th March, 1990 are not automatically entitled to higher scale of pay.

(24) A careful reading of the above mentioned decisions shows that neither the Supreme Court nor this Court had examined the issue relating to the grant of higher pay scales to the teachers of different categories with effect from the date of acquiring higher qualification in the context of the relevant recruitment rules and pay rules. Rather, in all the cases, the Supreme Court and this Court proceeded on the assumption that the instructions contained in the circular dated 23rd July, 1957 held the field even after the promulgation of recruitment rules and pay rules. Therefore, we are of the considered view that these decisions cannot be treated as laying down a proposition of law that the benefit of higher pay scale can be claimed by a teacher from the date of acquisition of higher qualification irrespective of the fact that he/she was recruited on a particular post carrying a particular pay scale and the higher pay scale has been prescribed for a different post forming part of a different cadre. These decisions cannot also be read as laying down a proposition of law that a teacher can claim the benefit of higher grade irrespective of the fact that he/she may not be entitled to be appointed on the post for which the higher pay scale is prescribed.

(11) 1997 (1) SCC 267

(12) 1995 Supp. (3) SCC 697

(25) In our opinion, the petitioner's case is squarely covered by the ratio of *Kanwaljit Kaur's case* (supra) and therefore, relief in terms of the prayer made by her cannot be granted, moreso, because 1974 Rules do not provide for grant of higher scales of pay to the teachers of the privately managed schools on their acquiring the higher qualification.

(26) For the reasons mentioned above, the writ petition is dismissed.

R.N.R.

Before Swatanter Kumar, J

TELU RAM—*Petitioner*

versus

LAND ACQUISITION COLLECTOR & OTHERS—*Respondents*

C.R. No. 1529 of 2000

4th January, 2001

Land Acquisition Act, 1894—Ss. 18 & 31—Acquisition of Land—Acceptance of the awarded amount of compensation without protest—After about two years, claimant making application u/s 18 for enhancement—S. 18(2) provides a period of six weeks limitation for filing a petition u/s 18—Collector has no power to condone the delay or entertain an application beyond the prescribed period of limitation—Collector rightly dismissing the application as barred by time—Having accepted the awarded compensation without protest or prejudice to his right to claim enhancement, the claimant is also debarred from claiming enhancement u/s 18 of the Act.

(Jit Singh v. Land Acquisition Collector, PWD and B&R Branch, Hissar, 1991 (2) Recent Revenue Reports 270 and Dharam Pal v. The Collector, Land Acquisition Urban Development and others, 1987 R.L.R. 249=1987 Recent Revenue Reports 356, held to be per incuriam)

Held, that under second proviso to sub-section (2) of Section 31 of the 1894 Act the Legislature in its wisdom placed a clear bar on an applicant claiming higher compensation u/s 18 of the Act, he had received the amount or any part thereof otherwise than under protest. The award was made on 19th May, 1995. The application u/s 18 was