

Before A. K. Sikri, Chief Justice & Rakesh Kumar Jain, J.J.

HARI DUTT SHARMA AND OTHERS—Appellants

versus

STATE OF PUNJAB AND ANOTHER—Respondents

LPA No. 76 of 2012

March 26, 2013

Letters Patent, 1919 - Cl. X - Service Law - Writ filed by school teachers claiming parity of pay scale on the ground that they have been teaching at the college - Writ dismissed - Letters Patent Appeal filed - Held that - Principle of 'equal pay for equal work' not applicable as there is no parity - Merely because Appellants made to teach at a college gives them no entitlement to be equated with college lecturers specially since Appellants appointed in school cadre as per qualifications prescribed for school teachers and do not possess the essential qualification of passing NET exam - Procedure of appointment in two cadres totally different - Appeal dismissed.

Held, that after having in-depth examination of the matter we are of the opinion that the contentions of the respondents have to prevail and the impugned judgment of the learned Single Judge is without blemish. It is rightly held by the learned Single Judge that merely because the appellants were made to teach in a college, would not mean that they are to be equated with the college lecturers and the principle of 'equal pay for equal work' would apply. These appellants were appointed in a school cadre as per the qualifications which are prescribed for school teachers. The contention of the respondents that the essential qualification of passing NET Exam is not possessed by the appellants, could not be disputed by the appellants. That apart merely because the appellants have higher qualification would not mean that they automatically become entitled to the pay scales of higher post than the post to which they are appointed. Learned Single Judge has pointed out that the Supreme Court in case State of Haryana Vs. Kamal Singh Saharawat 1999(8) SCC 44 has held that there is no law to support

such a proposition that a school teacher could not be given lecturer's scale in a school, merely because he has obtained lecturer's educational qualification, if he had not been appointed to the lecturer's post.

(Para 17)

Further held, that thus, merely because the institute where the appellants are teaching is affiliated with the University and thus gets the status of a college would not mean that the appellants shall also be entitled to the pay scales of lecturers. Further, the contention of the appellants that they fulfill all the qualifications laid down for appointment to the post of Lecturers is not correct. Even otherwise, that cannot be a ground for extending the benefit of 'equal pay for equal work', as the appellants were appointed in school cadre on the basis of the qualifications meant for school cadres and the procedure for appointment of school cadres is totally different from the lecturers. For all other reasons mentioned above we uphold the judgment of the learned Single Judge.

(Para 20)

S.P. Jain, Senior Advocate with V.K. Chaudhary, Advocate and Dhacraj Jain, Advocate, *for the appellants*.

J.S. Puri, Addl. Advocate General, Punjab, *for the respondents*.

Ankit Goel, Advocate for respondent No. 5 in LPA No. 76 of 2012

A.K. SIKRI, CHIEF JUSTICE

(1) As many as eight writ petitions were filed by different Sanskrit Teachers who were teachers at two of the 'Sanskrit Institutes' at Patiala and Nabha. All these petitions were clubbed together and disposed of by a common judgment dated 28.09.2011. Petitioners in three of these petitions have felt aggrieved by the said judgment and therefore, preferred these intra-court appeals.

(2) One writ petition was filed in the year 1989 and the remaining two were filed in the year 1992. Interim orders were passed from time to time granting stay of the transfers of the petitioners (appellants herein) to the schools. These writ petitions were dismissed by the impugned orders dated 28.09.2011. Before we proceed further we would like to note in brief the scope of the writ petitions in all the three appeals:-

**LPA No. 136 of 2012 (arising out of CWP No. 4946 of 1989) &
LPA No. 78 of 2012 (arising out of CWP No. 13763 of 1992).**

Both these writ petitions constitute one category as stated in the impugned judgment. In Civil Writ Petition No. 4946 of 1989, the petitioners who are appellants No. 1 to 6 herein, were all working in the Institute at Nabha claimed parity of salary with teachers working in Colleges. The appellants herein would make pointed reference to the fact that through instructions dated 04.03.1975, Secretary to Government, Punjab Education Department to the Director of Public Instructions, Punjab had sanctioned the en-cadrement of the posts of Pradhana Charya and Acharya of Sanskrit Mahavidyalaya, Nabha in the college cadre in the pay scale of '400-600 and '300-600 respectively. The State of Punjab has filed its counter contending that the appellants had never been appointed from the college cadre but they belonged to the school cadre. The appellants, however, disputed this position by making reference to the letter of Assistant Secretary, Education Department to the Deputy Director, College, Education stating that the appellants were working in the college wing of the Sanskrit Mahavidyalaya ever since it was upgraded as college in the year 1972.

(3) Appellant, namely, Subhash Chander, who was petitioner in Civil Writ Petition No. 13763 of 1992, had been transferred from the school. He also claimed the scale of Lecturer on the principle of '*equal pay for equal work*'. In the written statement filed by the respondents, it was accepted that Sanskrit Mahavidyalaya, Patiala had been affiliated to the Panjab University, Chandigarh and subsequently to the Punjabi University, Patiala but the contention was that mere affiliation of the Examining Body could not automatically raise the status of the institution and of the staff to that of college. The plea of the respondents was that the appellant teaching at Mahavidyalaya belongs to the school cadre and was never considered as College lecturer.

(4) **LPA No.76 of 2012 (arising out of CWP No. 9431 of 1992)** falls in different category.

In Civil Writ Petition No. 9431 of 1992, petitioners No. 1 to 4 were teachers in the Sanskrit Department; petitioners No. 5 to 8 were teachers in the Punjabi Department while petitioners No. 9 to 11 were teachers in the Hindi Department in Mahavidyalaya at Patiala. They sought the relief

to the effect that they should be granted the pay scale of the college Lecturers pre-revised scale of Rs. 700-1600 and they should also be granted the scales of the college lecturers on the principle of 'equal pay for equal work'. It should be noted that even in the written statement filed by the State the stand taken is that Sanskrit Mahavidyalaya, Patiala had been affiliated to the Panjab University, Patiala but would contend that mere affiliation of the examining body could not automatically raise the status of the institution and of the staff as that of a college. All the petitioners teaching at the Mahavidyalaya belong to the school cadre and they had never been considered as College Lecturers.

(5) To put in nut-shell, it is clear that these appellants had raised two grievances, namely:-

i) Though they were teaching in the said two Sanskrit Institutes, which were equivalent to a college, they were transferred to Sanskrit Schools, which was not permissible and they had right to be retained in these two institutes.

ii) These appellants claimed that they were entitled to the scales of pay commensurate with the Lecturers and Professors of colleges since the syllabi for the courses which they were teaching while approved by the Punjabi University of Patiala and the qualifications for teachers are as prescribed by the University.

(6) These appellants have strongly relied upon the suit filed by one Acharya Lekh Ram Dixit (who is one of the petitioners in CWP No. 8765 of 1991). This suit was filed against the State of Punjab when he was sought to be transferred from Sanskrit Mahavidyalaya, Patiala to a school. He prayed for permanent injunction on the ground that the Institute was equivalent to the college and any such transfer would not be permissible. This contention was found justified and the suit was decreed. It was also held that he would be entitled to the scale of Lecturer. This decree had been upheld till the Supreme Court. Before the Writ Court, the appellants also highlighted the histories of the Institutes and the importance thereof in this region.

The Sanskrit Mahavidyalaya Patiala is reported to have come into existence in the Patiala State for imparting education in the classical language of Sanskrit in the year 1860. Later English and Mathematics languages had

been introduced in the year 1862 and in 1870, the Maharaja of Patiala created an Education Department and the Institute was affiliated to the Calcutta University in the year 1874. The Viceroy of India Lord North Brooke laid the foundation stone of Maharaja College Patiala and Lord Rippon inaugurated the college building in the year 1884. The courses offered at the Mahavidyalaya were Shastri, Vishara, Prajana all in Sanskrit and Gyani, Vidwan and Budhiman all in Punjabi. The classes in Sanskrit and Punjabi were separated from the college and moved to the separate institutions in the name of Sanskrit Vidyalaya and Gurmukhi Vidyalaya, Patiala in 1912. These two Vidyalayas were amalgamated in 1963 and a new institution namely the Government Institute of Classical & Modern Indian Language, Patiala was established. The Punjabi University at Patiala laid down the qualification of teaching staff of the affiliated institution for OT and MIL examination. For the Sanskrit+Prabhakar for teaching Prajana and Visharad and for still higher course of Shastri, MA Sanskrit+Shastri+Acharaya were needed.

(7) The Institution at Patiala had been originally affiliated to Panjab University, Chandigarh but w.e.f. 13.06.1969, it was affiliated to the Punjabi University, Patiala. The University's letter to the Institute clearly showed that it was treated as a college and came within the purview of the University. It was again the University that laid down qualification, pay scale and qualification of the teaching staff for the Mahavidyalaya at Patiala. The Senate of the University had made the recommendation with reference to qualifications and pay scales on 25.12.1970 and the State of Punjab itself approved the Mahavidyalaya as a college on 22.06.1972.

(8) However, when the State of Punjab tried to bring the Institute to the level of the school, respondent Shri Lekh Ram Dixit filed the civil suit which had been decreed as pointed out above. It was thus contended that from the said judgment and decree, which was upheld first by this Court in *State of Punjab versus Lekh Ram (1)* and thereafter by the Supreme Court would clearly show that these institutes were treated as that of a college level and it was also held that the teachers had the right to get the salary of the Lecturers in a college and in view of the aforesaid judgment, the appellants were entitled to the relief.

(9) The appellants also submitted that as per the Calendar of the University, for appearing in Shastri Part-I examination, the candidate should have passed Visharad or MA Sanskrit. Visharad was equivalent to MA Sanskrit and Shastri was being treated as superior to MA Sanskrit. Any college teacher or University teacher working elsewhere could not have also taught at the Mahavidyalaya because the medium of instruction for Shastri and Visharad was only Sanskrit. It is further submitted that the circle became complete when the Government of Punjab took note of two leading institutes at Patiala and Nabha to be merged on 04.03.1975 and brought under a newly established Institute of oriental language.

IMPUGNED JUDGMENT

(10) On the basis of the aforesaid factual position which has surfaced on record, the learned Single Judge observed that the State itself had admitted that the Institute of Oriental languages in Patiala had been created as a unique and special institute taking within its fold the Mahavidyalayas at Patiala and Nabha and brought under the administrative control of the Director, Public Instruction (Colleges). It is also an admitted fact that scales of pay were recommended by the University and the Institute itself is affiliated to the University. It will be an anachronism to state that the students would qualify as not coming from schools and pass *Shastries or Gyanis*, which are held as degrees equivalent to Graduate and Post-Graduate levels in languages but the person that teaches such students in such institutes will be treated as persons in school cadre.

(11) The learned Single Judge also noted that curious situation which had arisen in these cases was that in the same institute there were persons brought from the college as well as school cadre. However, in the opinion of the learned Single Judge it was not possible to recognize teachers brought from the school cadre to be accorded lecturer's pay scales automatically merely because some of them had obtained higher qualification. This conclusion was followed by detailed discussion citing various cases law on the principle of 'equal pay equal work' and holding that such a principle was not applicable.

(12) Pertinently the learned Single Judge accepted the prayer, as conceded by the State itself, that institute of oriental language shall be treated as equal to the college as it had come under the control of the Director

of Public Instructions (Colleges) and was affiliated to Punjabi University at Patiala. After giving this finding, the impugned judgment proceeds to make the observations, with which the appellants have the grievances, in the following manner:-

“The immediate fall out shall be what the scales of pay would be to these teachers in this institute and whether teachers from schools could be brought on transfers. This is again on the basis of admission of the State itself that it cannot be done. If it is recognized as college, there is no scope for the Director of Public Instructions (Schools) to have any authority to make transfers from the school cadre to this institute. Wherever, may have happened, such teachers are bound to be repatriated and adjusted against vacancies in various other schools. This shall include even the 7th respondent in CWP No.3365 of 1999, who claims that he has secured a decree. Through this order, he is directed to be transferred back and adjusted in any existing vacancy in some other school.

22. This brings to the most crucial issue to the parity in scales sought by persons, who are working in these institutes as college teachers. As such, all those persons, who have been brought from school cadre and repatriated or liable to repatriation shall have no claim to parity in scales. On the other hand, the persons, who have been appointed at the institutes themselves directly and who possess qualifications as lecturers as prescribed by the University or who have been brought from college cadre from any other college shall alone be entitled to the scales of pay equivalent to that of Lecturers. The scales shall be worked out from the date of their engagement at the institutes and the amounts shall be calculated and be paid to them within 8 weeks from the date of receipt of copy of the order. If amongst the teachers in the institutes, there are teachers who are brought from the school cadre but who have qualified to be Lecturers in a college, with qualification so acquired, the scales could be considered for revision and for retention in the institute itself and placed in the college cadre. Their scales will be revised only from the day when orders are passed for the retention in the institutes and when a decision is taken to treat them as coming within the college cadre. This exercise shall be completed by the Director of Public

Instructions Colleges and the appropriate sanctions shall be issued by the Government for appropriate revision of their scales commensurate with their qualifications and the status as persons belonging to the college cadre, within 8 weeks from the date of receipt of the copy of this order.”

(13) With this background, we proceed to discuss the two issues on which the findings of the learned Single Judge are challenged. It would be prudent to take the second issue first as the outcome thereof will have bearing on the first issue as well.

ii) Whether the appellants admittedly belong to school cadre are entitled to the pay scales of Lecturers of the colleges on the principle of ‘equal pay for equal work’ on the ground that they have been teaching in the colleges?

(14) We have already pointed out the reasons given by the learned Single Judge in support of his conclusion that the principle of ‘equal pay for equal work’ will not be applicable in these cases as the appellants are the persons belonging to school cadre and cannot claim the salary of college teachers.

(15) Learned counsel for the appellants submitted that since these appellants were working in an Institution which was given the status of a college and that position was accepted by the respondents also, the appellants should have been held entitled to the salary of college teachers as they were working in the college. Learned counsel also sought to draw support from inspection report dated 26.10.1960 with regard to the Government Sanskrit Mahavidyalaya, Nabha wherein Professors and Head of Sanskrit Department had stated that it was a lacuna in the system that such persons were getting lesser pay scales whereas other teachers who belong to the University Cadre and were teaching along with these appellants were given higher pay scale of lecturers. He thus made strong recommendations to the Government to remove this lacuna by upgrading the grades in conformity with the grades laid down by the University. He also buttressed the submission by pointing out that all these appellants fulfill the qualifications which were laid down for college teachers. His further argument was that in any case there was no reason to sidestep the decree passed in the case of Shri Lakh Ram Dixit in a civil suit filed by him which had been upheld till the Supreme Court.

(16) Learned counsel for the respondents, in addition to highlighting the reasons given by the learned Single Judge in the impugned order, submitted that the office of the Director of Public Instructions (Colleges) Punjab had passed a speaking order dated 10.07.2012 giving detailed reasons on the basis of which the benefit claimed by these appellants was denied. This order was passed after passing of the impugned order of the learned Single Judge wherein the following aspects are highlighted:-

a) The Director of Public Instructions (Colleges), Punjab or the Principal Secretary to Government of Punjab (Higher Education) had not passed any order to change the cadre of the appellants from school cadre to college cadre.

b) The appellants did not fulfill the conditions prescribed by U.G.C. for the post of college lecturers. The minimum requirement of good academic record 55% (or equivalent grade in a point scale where ever grading system is followed) or an accredited test (State level Eligibility Test) SLET/SET which is the minimum eligibility conditions for the recruitment and appointment of Assistant Professor in Universities/Colleges/Institutes, is not fulfilled by the appellants.

c) The requisite qualification for school teachers and lecturers are entirely different. Their mode of recruitment is also different.

d) The appellants were enjoying all the benefits of ACP/promotion and all other benefits admissible to the teachers of school cadre. Therefore, they cannot claim parity with the college lecturers.

(17) After having in-depth examination of the matter we are of the opinion that the contentions of the respondents have to prevail and the impugned judgment of the learned Single Judge is without blemish. It is rightly held by the learned Single Judge that merely because the appellants were made to teach in a college, would not mean that they are to be equated with the college lecturers and the principle of '*equal pay for equal work*' would apply. These appellants were appointed in a school cadre as per the qualifications which are prescribed for school teachers. The contention of the respondents that the essential qualification of passing NET Exam is not possessed by the appellants, could not be disputed by the appellants. That apart merely because the appellants have higher qualification would not

mean that they automatically become entitled to the pay scales of higher post than the post to which they are appointed. Learned Single Judge has pointed out that the Supreme Court in case *State of Haryana versus Kamal Singh Saharawat (2)*, has held that there is no law to support such a proposition that a school teacher could not be given lecturer's scale in a school, merely because he has obtained lecturer's educational qualification, if he had not been appointed to the lecturer's post.

(18) Other judgments which are discussed by the learned Single Judge laying down the principle of applicability of 'equal pay for equal work' can be charged in the following discussion in the impugned judgment:-

"18. In *State of Haryana Vs. Ram Chander 1997 (5) SCC 253*, the issue was whether teachers teaching in different institutes, where the courses were the same and the students were also required to appear in the same type of examinations, could be denied parity in pay scales in different educational institutes by the only fact that there did exist difference in educational qualification for appointments in different institutes. This, the Court held would surely make a vital difference to deny parity but in that case, the State Government itself had effaced different treatment, while revising the pay scales of its employees on the basis of recommendations of Pay Commission. The justification for such a law is obviously the principle of 'equal pay, equal work' enshrined in the Constitution. This is seen as a constitutional mandate also in some cases where persons doing the same work have secured parity in scales when they were discriminated against, by judicial interventions. An important exception that has come about is, when the Courts do not find themselves equipped with technical expertise to assess the equation of jobs and leave it to expert bodies like Pay Commission to resolve issues wherever anomalies are pointed out. There have been also occasions where the differences in qualifications are found to be justifying the breach from the rule of equal pay for equal work. The obvious other examples that could be cited for making deviation would be instances of persons doing the same work but having different years of experience and there, the seniority rule and the fitment of particular scale depending on seniority would themselves be grounds for pay differentials.

19. The petitioners have referred to a ruling of this Court in *Satbir Singh Vs. The State of haryana and others 2002(2) SCC 354* to support the contention that the ratio in a case must be applied by authorities to similar situations without driving portion to court intervention in every occasion. The judgment in *Satbir Singh* was not approved by the Hon'ble Supreme Court in *Punjab Sate Electricity Board and others vs. Jagjiwan Ram and others (2009) 3 SCC 661* in so far as the law laid down in the said judgment concerned treating the work-charged service as relevant for reckoning the total number of years for grant of ACP Scales. However, other principles stated in the judgment could still be restated, for it is a well known axiom that when there is a final pronouncement of law on the subject, the said principle shall be applied in every other like instances by the State. The parties similarly situated should not be forced to come to Court to apply the very same established principle. This is in the context of the judgment in *Lekh Ram's case*, which had attained finality when the Court directed that the petitioner could not have been transferred to a school from the institute and that he should be paid the scales of pay as a Lecturer. The said principle shall in this case apply to such of those persons, who had been appointed directly in the institutes for managing students in the institute undergoing courses in Shastri, Vishard, Prajana in Sanskrit and Gyani, Vidwan and Budhiman in Punjabi. This will also apply to persons, who had been brought from any other college from the college cadre. In *State of Punjab Vs. Acharya Lekh Ram 1990 1 SCT 267*, Lekh Ram had been appointed as a Lecturer and approved as such. A transfer to a school was not tenable and in the same manner in this case, any of the persons, who had been appointed directly into the institute or persons brought otherwise than from school cadre shall not hereafter be transferred out to any school. It is reiterated that repatriation will apply only to persons, who had been brought from any school from a school cadre. The petitioners have relied on the judgment in *Rampalit Vyakaran Acharya and others Vs. Panjab University, Chandigarh and another AIR 1975 SC 2478* that held that after Vishvesharan institute of Sanskrit and Indological Studies in Hoshiarpur were taken over by the Panjab University, the persons who had obtained degrees of Acharya appointed in the teaching department of the institutes as Pandits need not have any MA degree in order to be entitled to scales of Lecturers and after the services

had been taken over by the University, they were entitled to scales of pay appertaining to Acharayas and as available to them during the relevant period. This was in the context of an admitted withdrawal of benefit by the fact and they did not hold MA degrees in Sanskrit.

20. I have assimilated this principle by recording the fact that the persons that possessed the requisite qualifications as set out by the University to be eligible to fulfill the posts as Lecturers and brought otherwise than from school cadre shall all be entitled to the scales of pay as Lecturers above provided their degrees were equivalent to the Post-Graduate degrees that what was necessary for being Lecturers. Such persons are entitled to be retained in the institutes by the parameters laid down supra.

(19) We are in agreement with the aforesaid pronouncement of law as made applicable to this case by the learned Single Judge.

(20) Thus, merely because the institute where the appellants are teaching is affiliated with the University and thus gets the status of a college would not mean that the appellants shall also be entitled to the pay scales of lecturers. Further, the contention of the appellants that they fulfill all the qualifications laid down for appointment to the post of Lecturers is not correct. Even otherwise, that cannot be a ground for extending the benefit of 'equal pay for equal work', as the appellants were appointed in school cadre on the basis of the qualifications meant for school cadres and the procedure for appointment of school cadres is totally different from the lecturers. For all other reasons mentioned above we uphold the judgment of the learned Single Judge.

Issue No.(i) Whether these school cadre teachers have a right to be retained in two institutes or they can be transferred to school cadre?

Obviously, when it is found that the appellants are school cadre teachers, they would have not any right to remain in two institutes which have now conferred the status of colleges. They can, therefore, always be transferred to school cadres.

Upshot of the discussion is that these appeals are denuded of any merits and the same are accordingly dismissed.

S. Gupta