
intention to express any opinion on the merits of the controversy. Any reflection on merits which may be deducible from the judgment was totally unintended and shall not influence the mind of the Commission, who may be seized of the election dispute. No costs.

R. N. R.

Before V. Ramaswami, CJ, Ujagar Singh and G. R. Majithia, JJ.

BHAGWAN DUTT SHARMA AND OTHERS,—*Petitioners.*

versus

STATE OF HARYANA AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 551 of 1986.

May 12, 1988.

Constitution of India, 1950—Article 226—The teachers in service—Such teachers acquiring higher qualifications—Whether entitled to higher scale of pay—Date of such entitlement—Adjustment against post of Master—Relevancy of.

Held, that the teachers who acquired the B.T. or B.Ed qualification would be entitled to the higher scale of pay as soon as they acquired the qualification irrespective of the dates when they were adjusted against the post of Masters. The adjustment against the posts of Masters was relevant only for the purpose of seniority in the posts of Masters and for the further promotion from that post. So far as the scale of pay was concerned, irrespective of adjustment against the post of Master, a teacher was always held to be entitled to the higher scale of pay from the date of acquisition of the B.T. or B.Ed qualification. The writ petitioners are entitled to the Master's pay from the date they acquired the higher qualifications.

(Para 1).

The case was referred to Larger Bench by Hon'ble Mr. Justice D. V. Sehgal,—vide order dated May 23, 1986 in view of the fact that the common question of Law and similar facts are involved in all the petitions and the decision of the Division Bench of this Court in CWP No. 7553/76 is not in accordance with judgment of the Supreme Court on a similar matter.

Bhagwan Dutt Sharma and others v. State of Haryana and another
(V. Ramaswami, C.J.)

Petition under Article 226 of the Constitution of India praying that a Writ of Certiorari, Mandamus or any other suitable Writ, Direction or Order be issued, directing the respondents:—

- (i) *to produce the complete record of the case;*
- (ii) *a Writ of Mandamus be issued directing the respondents to grant the petitioner their seniority and appointment in the Masters Grade with effect from the date of their passing the B.T./B. Ed. examinations in utter disregard of the conditions regarding subject combination;*
- (iii) *a Writ of Mandamus be issued directing the respondents to fix the pay of the petitioners in the revised scales on the basis of the date of appointment so fixed and to grant them all the consequential benefits by way of fixation of seniority and arrears of salary with interest as compensation, and any other relief to which they may be found entitled to after the decision of the case;*
- (iv) *this Hon'ble Court also pass any other order which it may deem just and fit in the circumstances of the case;*
- (v) *a Writ of Mandamus be issued directing the respondents to pay the arrears with interest as compensation which accrue to the petitioners because of the wrong fixation of pay as mentioned above.*
- (vi) *an interim relief be given to the petitioners during the pendency of this writ petition to draw salary in the pay scale of Rs. 600 calculated on the basis of pay scale approved by the Kothari Commission and adopted by the State Government by Annexure P-6;*
- (vii) *the costs of this petition may also be awarded to the petitioners.*

M. M. Kumar and Pawan Kumar, Advocates, for the Petitioners.

Naubat Singh Pawar, DAG (Hy.), for the Respondents.

ORDER

V. Ramaswami, C.J. (Oral)

(1) This writ petition has been referred for consideration by the Full Bench in view of the fact that the decision of the Division Bench of this Court in C.W.P. No. 7553 of 1976 is not in accordance

with the judgment of the Supreme Court on a similar matter reported in *State of Punjab and another v. Kirpal Singh Bhatia and others* (1). In that decision, the Supreme Court held:—

“The High Court rightly referred to the letter of the Secretary of the Department dated 24th September, 1957 that teachers holding B.A./B.T./B.A./B.Ed. qualifications would, henceforth be placed in category ‘A’.

The High Court rightly came to the conclusion that 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 on 1st May, 1957, whichever is later.”

C.W.P. No. 7553 of 1976 is one of bunch of cases including C.W.P. No. 1220 of 1978, which was disposed of by a common judgment by a Division Bench of this Court. The petitioner in C.W.P. No. 1220 of 1978 took the judgment of this Court in appeal before the Supreme Court and the decision of the Supreme Court is reported in *Chaman Lal and others v. State of Haryana* (2). The judgment of the Division Bench of this Court was reversed and the Supreme Court held, “the teachers who acquired the B.T. or B.Ed. qualification would be entitled to the higher scale of pay as soon as they acquired the qualification irrespective of the dates when they were adjusted against the posts of Masters. The adjustment against the posts of Masters was relevant only for the purpose of seniority in the posts of Masters and for the further purpose of promotion from that post. So far as the scale of pay was concerned, irrespective of adjustment against the post of Master, a teacher was always held to be entitled to the higher scale of pay from the date of the acquisition of the B.T. or B.Ed. qualification. “Ultimately, the Supreme Court allowed the appeal and directed the respondents to give higher grade admissible to Masters to all the teachers who have acquired the B.T. or B.Ed. qualification from the respective dates of their acquiring that qualification. In view of this decision of the Supreme Court the reference will have to be answered in favour of the petitioners and we hold accordingly that the writ petitioners are entitled to the Master’s pay from the date they acquired the qualification.

(1) A.I.R. 1976 S.C. 2459=1975(2) S.L.R. 621.

(2) A.I.R. 1987 S.C. 1621.

Karam Singh v. Superintending Canal Officer and others
(G. R. Majithia, J).

(2) The writ petition is allowed accordingly. However, there will be no order as to costs.

S.C.K.

FULL BENCH

Before V. Ramaswami, CJ, Ujagar Singh and G. R. Majithia, JJ.

KARAM SINGH,—Petitioner.

versus

SUPERINTENDING CANAL OFFICER AND OTHERS,
—Respondents.

Civil Writ Petition No. 5126 of 1986

June 1, 1988.

Northern India Canal and Drainage Act (VIII of 1873)—Section 30 FF(2)—Application for restoration of dismantled water course—Enquiry on such application—Divisional Canal Officer not making complete enquiry himself—Instead of calling for report from Subordinate Officer—Passing order after such enquiry—Opportunities to parties before passing the order—Grant of such opportunity—Validity of the order passed.

Held, that if he chooses to call for a report to facilitate a detailed enquiry, that cannot be said to vitiate the order. Calling for such a report is a part of the enquiry. However, it does not flow from the statute that the Divisional Canal Officer himself could not call for a report from his subordinates. He has to satisfy himself on the basis of some material, that there existed a watercourse which has been demolished or enlarged or obstructed to. Even the Courts whose procedures is regulated by Code of Civil Procedure have been getting the enquiries made by Local Commissioner subject to limitations prescribed by law, and based their judgments on the report of the Local Commissioner. After the enquiry, if the Divisional Canal Officer is prima facie satisfied that the watercourse has been demolished, he issues a notice to the concerned party or parties, and after hearing him/them passes such an order as envisaged by sub-section (2) of section 30-FF of the Northern India Canal and Drainage Act, 1873.

(Para 11).

Held, that the action taken by respondent No. 2 is strictly in conformity with the mandatory provisions of sub-section (2) of Section 30-FF of the Act and no fault can be found with it.

(Para 14).