

CASE NO.:
Appeal (civil) 6992 of 2004

PETITIONER:
STATE OF HARYANA and ANR.

RESPONDENT:
PARTAP SINGH and ORS.

DATE OF JUDGMENT: 22/09/2006

BENCH:
G.P. MATHUR & A.K. MATHUR

JUDGMENT:
JUDGMENT

A.K. Mathur, J.

Leave granted in S.L.P. (C) No. 16359 of 2003.

All these cases involve common question of law and fact, therefore, they are disposed of by this common order.

In all these cases, the basic question involved is whether the respondents herein are entitled to the benefit of Rule 4.4 of the Punjab Civil Services Rules (hereinafter to be referred to as the "Rules"), Volume-1, Part-1 or not?

For convenient disposal of these cases, the brief facts given in C.A. No. 6305 of 2004 State of Haryana & Anr. v. Tarlochan Lal & Ors. are taken into consideration. The writ petitioners were appointed as j.B.T. teachers in the Haryana Education Department. They acquired higher qualifications of B.A./ Inter B.Ed, during the course of their service. A notification was issued on 23.7.1957 to the effect that the teachers who have acquired higher qualifications shall be granted higher grade. The writ petitioners who acquired higher qualifications were given the grade of Social Study Master and subsequently when they were promoted as Social Study Master they were granted one increment on account of discharge of higher responsibility from the date of promotion as Social Study Master and their initial pay in the promotional grade was fixed under Rule 4.4. Subsequently, the State Government decided that grant of increment on account of discharge of higher qualifications could not be granted to the Social Study Masters, the Drawing and Disbursing Officers withdrew the said increments. The claim of the writ petitioners was that since the increment had been granted because they were discharging higher responsibility while teaching higher classes in schools, therefore, under Rule 4.4 of the Rules they were entitled to the said increment and it cannot be withdrawn.

The matter was contested by the State appellants before the High Court and a plea was taken that it is immaterial whether the writ petitioners teach in Class VI or Class X, that does not make any difference, it does not involve discharging of higher responsibility and they were not promoted on administrative posts. It was also pointed out that they had already been granted higher pay scale on acquiring higher qualification and therefore, they are not entitled to one additional increment or pay fixation under Rule 4.4 of the Rules. It was not disputed that before promotion which was subsequently granted to the writ petitioners, they were teaching Class I to Class V and on their acquiring higher qualification, they were given the grade of Masters and they were asked to teach the students of Class VI to Class X. The contention of the writ petitioners before the High Court was that since they were discharging the duties of higher responsibility i.e. for teaching the students of Class VI to Class X, therefore, they were entitled to one additional increment and fixation of pay under Rule 4.4.

It may be relevant to mention here that the circular dated 23.7.1957 was subsequently modified by the State of Haryana vide Notification dated 9.3.1990 and thereby it was clarified in para 6 of the said circular that the benefit which was given in terms of para 2 of 'the Punjab Government letter dated 23.7.1957 or any subsequent letters/ notifications issued by the State Government, 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 qualifications will not entitle them automatically to claim higher pay scales, meaning thereby that after issuance of this notification, acquisition of higher qualification would not entitle the benefit of higher pay scale i.e. Masters' pay scale. In these writ petitions which were filed in 1998 before the High Court, perhaps this circular of the State Government dated 9.3.1990 was not brought to the notice of the Court. Be that as it may, in view of the changed policy of the State of Haryana, the JBT teachers who acquired higher qualifications were not entitled to the higher pay scale of Masters. The State Government did not take any steps in pursuance to this circular. Therefore, by virtue of the earlier circular dated 23.7.1957 those teachers continued in the higher pay scale of masters. Subsequently they were promoted to the post of Masters, they again sought the benefit of one more increment by filing writ petitions. But it was not brought to the notice of the Court that their continuation in the pay scale of Masters was against the policy but they were allowed to continue in the Masters' pay scale and when the regular promotion to the post of Master was made, they claimed re-fixation of pay scale as per Rule 4.4 of the Rules and that too was allowed by the High Court de hors the fact that the earlier circular dated 23.7.1957 has since been clarified by the State Government in the subsequent circular dated 9.3.1990. It was also pointed out by the State Government by filing an affidavit by Shri Dayal Singh Sangwan, Budget Officer (Schools) before this Court that though these writ petitioners were granted pay scale of Masters while working on a lower post of JBT teachers, on acquiring higher qualification of B.A., B.Ed. in terms of the aforesaid circular dated 23.7.1957 but they were not appointed or promoted to the post of Masters. They were of course drawing the pay scale of Masters but no regular promotion was given to them. Now regular promotion having been given, they cannot claim fixation of pay in terms of Rule 4.4 of the Rules because they are already in the same pay scale of Masters. It was also pointed out that this will result in heart burning amongst the direct recruits who have been working as Masters for longer period but would be getting lesser pay than those like the respondents if the impugned judgment is upheld. It was also pointed out that the respondents were already getting the functional pay scale of the promotion post of Masters while working in the cadre of JBT teachers and the pay was also fixed in the higher pay scale and thus on their actual promotion to the post of Masters they are not entitled to re-fix their pay by granting one additional increment. Since the respondents were already getting the functional pay scale of the promotional post from the date of acquiring the qualifications of the promotional post of Masters, therefore, there is no question of granting the benefit of Rule 4.4 of the Rules to the respondents.

Learned counsel for the appellants strenuously submitted that once the respondents while working as JBT teachers having been granted higher pay scale of Masters and now the regular promotion order was issued, it would not be possible to grant them one more increment while fixing their pay in the promotional post of Master. The submission of learned counsel for the appellants appears to be justified. Since the respondents herein were already functioning in the pay scale of Masters and it was nothing but regularisation of their pay which they were not entitled to because of the change in the policy but they were allowed to continue and now when the regular promotion is sought to be given to them they cannot get the double benefit of fixation of pay. As per the rejoinder affidavit filed on behalf of the State Government by Sh. Dayal Singh Sangwan, Budget Officer (Schools) in the Directorate of Secondary Education, Haryana, it appears

that the respondents on acquiring the higher qualifications were granted one additional increment though they were not entitled because by that time the policy has been changed in 1990 but nobody challenged the earlier judgments by which the Court allowed them to continue in the functional pay scale of Masters. Now, because of regular promotion order being issued for the post of Masters, it only amounts to regularisation of the pay scale which they were already drawing i.e. pay scale of Masters. Thus, granting of one more increment because of regularisation of the respondents by promoting them to the post of Masters, would not entitle them the double benefit, though they have already got one increment on acquiring the higher educational qualifications and now on regular promotion being given in the Masters' pay scale in which they were already working, they cannot claim another benefit. Rule 4.4 reads as under:

"4.4. The initial substantive pay of a Government employee who is appointed substantively to a post on a time-scale of pay is regulated as follows:-

(a) If he holds a lien on a permanent post, other than a tenure post, or would hold lien on such a post, had his, lien not been suspended-

(i) when appointment to the new post involves the assumption of duties or responsibilities of greater importance (as interpreted for the purposes of rule 4.13) than these attaching to such permanent post, he will draw as initial pay the stage of the time-scale next above his, substantive pay in respect of the old post;

(ii) when appointment to the new post does not involve such assumption, he will draw as initial pay the stage of the time-scale which is equal to his substantive pay in respect of the old post, or, if there is no such stage, the stage next below that pay plus personal pay equal to the difference, and in either case will continue to draw that pay until such time as he would have received an increment in the time scale of the old post or for the period after which an increment is earned in the time-scale of the new post, whichever is less. But if the minimum of the time-scale of the new post is higher than his substantive pay in respect of the old post he will draw that minimum as initial pay.

(iii) when appointment to the new post is made on his own request under rule 3.17 (a) and maximum pay in the time-scale of that post is less than his substantive pay in respect of the old post, he will draw that maximum as initial pay."

The above rule says that when appointment to the new post involves the assumption of duties or responsibilities of greater importance than those attaching to such permanent post, the incumbent will draw as initial pay the stage of time scale next above his substantive pay in respect of the old post meaning thereby that the promotion which involves responsibilities of greater importance then in that case the incumbent will draw as initial pay the stage of time-scale next above his substantive pay in respect of the old post. That means he will be entitled to one increment in the old post. But in the present case, the respondents are already drawing the pay scale of the post of Master i.e. higher post. As such, where is the question of granting them one increment further now? Under rule 4.4 it could have been possible to grant them fixation if they were continuing in the old scale of JBT teachers and on their promotion to the post of Master, then certainly they would have been entitled to fixation of pay giving them the initial-pay the stage of time scale next above their substantive pay in respect of the old post. But they are already fixed in the pay scale of higher post of Master which though legitimately they were not entitled to because of the change in the policy but they continued in the higher pay scale despite the change in the policy and the Government did not take any further steps to put the house in proper order. Be that as it may, since the respondents were drawing the higher pay scale on acquiring higher educational qualifications, i.e. the Master's pay scale, and now only regular orders have been passed, promoting them as Master, there is no

question of again fixing them next above their substantive pay in respect of the old post. They are not holding the old post any more and they were not drawing the salary of JBT teachers i.e. the old post. Therefore, there is no question of granting them the initial pay the stage of time scale next above their substantive pay in respect of the old post.

In this connection, a reference may be made to the decision of this Court, in the case of State of Haryana & Ors. v. Sumitra Devi & Ors., reported in [2004] 12 SCC 322, wherein the earlier decisions of this Court on similar controversy were reviewed and it was observed in paragraph 5 of the judgment as follows :

"It is, therefore, not a case where the petitioners had acquired a qualification prior to 9.3.1990 while acting as teachers or masters. The circular letter dated 9.3.1990 clearly states that a higher scale of pay would not be admissible to them despite holding a higher qualification having been appointed on a lower post. Such higher scale of pay was admissible only to such teachers/ masters who had enhanced their educational qualification during the course of service. The petitioners, therefore, were not entitled to higher scale of pay. The learned counsel for the respondents submitted that keeping in view the fact that persons having similar qualification are getting higher scales of pay, as such this Court should not interfere with the impugned judgment. The submission of the learned counsel cannot be accepted for more than one reason. As the persons who have been granted higher scales of pay enhanced their qualification while holding their offices they had been allowed to continue to get a higher scale of pay in view of the concession made by the learned counsel appearing on behalf of the State. This Court, both in Wazir Singh and Kamal Singh Saharwat as indicated hereinbefore, in no uncertain terms held that even such holders of such offices would not automatically be entitled to, on acquisition of a higher qualification, a higher scale of pay. The petitioners, as noticed, already had higher qualification and thus not entitled to benefit of any circular whatsoever. Unfortunately, this aspect of the matter has not been taken into consideration by the High Court. Furthermore, even an order cannot be passed under Article 142 of the Constitution which will be contrary to the statute or statutory rules."

In this case, the respondents were in the pay scale of JBT teachers and similar claim was made. This was negated by this Court. Apart from this, there is another direct decision on the similar issue, in the case of Union of India & Ors. v. Ashoke Kumar Banerjee, reported in [1998] 5 SCC 242, wherein Fundamental Rules 22(1)(a)(1) came up for consideration before this Court. In this case, the respondent was a Junior Engineer in the pay scale of Rs. 1640-2900/- and he was granted the pay scale of Assistant Engineer in the pay scale of Rs. 2000-3500/-. The respondent received the same benefit in advance while working as Junior Engineer on completion of 15 years service and not actually functioning as Assistant Engineer. The respondent was held not entitled to further increment & fixation on promotion to the post of Assistant Engineer in the pay scale of Rs. 2000-3500/-. In that context, their Lordships held as follows :

" The respondent having received the same benefit in advance, while working as Junior Engineer and while not actually functioning as an Assistant Engineer, is not entitled to the same benefit of fresh fitment in the scale of Rs.2000-3500 when he is promoted as Assistant Engineer. This is because on actual promotion as Assistant Engineer, he is not being fitted into the "time scale of the higher post" as stated in FR 22 (I) (a) (1). That situation was already over when he got benefit on completion of 15 years. Further, the respondent is a junior officer in the category of Junior Engineers and he has already got the benefit of the FR on completion of 15 years. If he is to be given a second benefit on

the basis of the same FR, then he would be getting more than his seniors, who might have got promoted earlier and might have got benefit of FR 22(1) (a)(1) only once. Such an anomaly is not intended by FR 22(1) (a) (1)."

Here in the present case, the difference is that the respondents are getting the higher pay scale i.e. Master pay scale, on acquiring higher educational qualification though in fact they were not promoted to the post of Masters. In the case of Ashoke Kumar Banerjee (supra) functional pay of Assistant Engineer in the pay scale of Rs. 2000-3500/- was granted to incumbent on completion of 15 years of service. In identical situation, the Court declined to grant re-fixation of pay as per FR 22(1)(a)(1) and same is the position in the present case. When the respondents were already getting the; functional pay of Masters while working as JBT teachers, now they have been promoted in the pay scale of Masters. Therefore, they cannot get another fixation of pay which would amount to double benefit to the persons who are already working as Masters. Judicial fiat cannot create anomalous position against the statute. Hence, we allow all these appeals and set aside the impugned judgments of the Punjab & Haryana High Court. However, whatever benefits, if any, received by the respondents would not be recovered and they will not be entitled to fixation under Rule 4.4 of the Rules. No order as to costs.