

State of Haryana and Another

Vs

Kamal Singh Saharwat and Others

Civil Appeal No. 4304 of 1990 and CA No. 2104 of 1998

(M. Jagannadha Rao, M. Srinivasan JJ)

21.09.1999

JUDGMENT

M. SRINIVASAN, J.:-

I. FACTUAL CANVAS

1. The earliest appeal in this batch was filed by the State of Haryana and the Director of Public Instructions, Haryana. The appeal came to be filed in this Court in somewhat peculiar circumstances. The order of the High Court against which the appeal was filed was passed by a Single Judge of the High Court on 3-12-1988 in CWP No. 7122 of 1988 on the basis of consent of counsel on both sides. The order was in the following terms:

"The parties' counsel agree that this petition is squarely covered by a Full Bench judgment of this Court reported as *Bhagwan Dutt Sharma v. State of Haryana* (ILR (1988) 2 Punj 246 (FB)) There will be an order in terms of the ratio given in that case."

2. The said writ petition was filed in the High Court by the respondents in the appeal. They were working as Teachers/Masters/Mistresses in different schools of Haryana. They had acquired postgraduate qualifications while in service. The relevant particulars were given by them in the writ petition. According to them, the erstwhile State of Punjab had issued a circular on 23-7-1957 raising the pay scales of the Teachers w.e.f. 1-5-1957 and that it was decided that the Teachers would be entitled to pay scales according to qualifications possessed by them irrespective of the post held by them. It was their case that the policy decision of the Punjab Government was adopted by the Haryana Government after it was formed. The latter issued an order directing further revision of the scales of pay of teachers working in government schools in 1968. Reliance was placed by the writ petitioners on the recommendations contained in the Report of the Kothari Commission which has been accepted by the Government. The writ petitioners referred to the judgment of this Court in *Chaman Lal v. State of Haryana* ((1987) 3 SCC 113 : 1987 SCC (L&S) 175 : (1987) 3 ATC 779) and stated that they were entitled to higher scales of pay applicable to Lecturers on the basis of their qualifications as they had become postgraduates. The prayer in the writ petition was for issue of writ of mandamus directing the respondents therein to grant higher pay scales to the petitioners in accordance with Annexures P- 1 and P-2 to the writ petition on the basis of higher qualification and also in view of the judgment of this Court in *Chaman Lal case* ((1987) 3 SCC 113 : 1987 SCC (L&S) 175 : (1987) 3 ATC 779) and also for release of consequential benefits i.e. fixation of pay, arrears etc. along with 12% interest.

3. The writ petition was opposed by the appellants in the appeal. When it was taken up for hearing, the counsel on both sides agreed that the matter was covered by the judgment of a Full Bench of the High Court in *Bhagwan Dutt Sharma case* (ILR (1988) 2 Punj 246 (FB)) Hence the High Court passed the order as stated above.

4. Thereafter the first petitioner in the writ petition filed a petition for contempt to punish the appellants in the appeal for not paying the writ petitioners as per the pay scale applicable to Lecturers. The High Court issued notice on the application for contempt. On receipt of such notice, the Government and the Director of Public Instructions thought it fit to file a petition for special leave in this court along with an application for condonation of delay in presentation of the same. Obviously, the Government assumed that because the High Court has issued notice in the proceedings of contempt, orders would be passed against it in those proceedings and instead of contesting the same, the Government presented the petition for special leave in this Court. The delay was condoned by order dated 17-8-1990 and leave was granted. In the application for stay, this court passed the following order:

"After hearing both counsel, we are of the opinion that there should be no stay of the High Court's orders so far as this petition is concerned. If, however, the State ultimately succeeds, it will be entitled to appropriate relief."

5. Though, this court refused to grant stay, it is admitted before us by counsel on both sides that the petitioner in the contempt petition is the only person to whom higher pay on the scale of pay applicable to Lecturers was being paid and to all other person, salary was paid only on the pay scale applicable to Masters and not Lecturers.

6. The contention of the government in the appeal is that before the High Court, counsel had only admitted that the matter was governed by the judgment of the Full Bench of the High Court in *Bhagwan Dutt Sharma case* (ILR (1988) 2 Punj 246 (FB)) and the said judgment did not hold that the Teachers were entitled to get higher pay on pay scales applicable to Lecturers. Learned counsel submitted that the judgment had only decided that the petitioners in the case before the Full Bench were entitled to Masters' pay from the date they acquired the higher qualifications. According to learned counsel, the judgment of the Full Bench can never be understood to hold that Teachers who had acquired postgraduate qualifications were entitled to the scales of pay applicable to Lecturers.

7. Per contra, learned counsel appearing for the respondent writ petitioners in the appeal contended that the last sentence in the order of the High Court made it clear that the order in the writ petition was in terms of the ratio given in *Bhagwan Dutt Sharma case* (ILR (1988) 2 Punj 246 (FB)) According to learned counsel for the writ petitioners, the ratio in *Bhagwan Dutt Sharma case* (ILR (1988) 2 Punj 246 (FB)) was that the pay of the teachers was linked to their qualifications. It was argued that the principle of pay being linked to qualification as recommended in the Kothari Commission Report was accepted by the Government and implemented in the circular dated 5-1-1968. Hence, the writ petitioners were, according to him, entitled to higher scales of pay applicable to Lecturers as they had acquired postgraduate qualifications which were the qualifications prescribed for Lecturers.

8. Our attention was drawn by counsel on both sides to the government circulars issued from time to time as well as the rules which governed the education service in 1957. Counsel on both sides referred in detail to various judgments of this Court considering the government circulars and the rules.

9. Subsequent to the judgment in CWP No. 7122 of 1988, the High Court had occasion to consider the same question in several other writ petitions filed by similarly placed teachers. By a detailed judgment dated 5-6-1990 in *Bachan Lal Lahori v. State of Haryana* (CWP 770 of 1989 dated 5-6-1990) in CWP No. 770 of 1989, the High Court negated the claim of the Teachers that they were entitled to the pay scales applicable to Lecturers. That judgment was rendered in a batch of cases and SLPs Nos. 1005-06 of 1998 have been filed against the order in CWPs Nos. 374 and 1039 of 1989 which were in that batch. It appears that no appeal has been preferred against the judgment of the High Court in *Bachan Lal case* (CWP 770 of 1989 dated 5-6-1990)

10. In CWP No. 6045 of 1989, the High Court passed an order on 11-7-1991 following the ruling in *Bachan Lal Case* CWP 770 of 1989 dated 5-6-1990 and dismissing the writ petition against which SLP No. 1002 of 1998 has been filed. Against similar judgment dated 15-10-1993 in CWPs Nos. 1119 of 1989 and 11394 of 1988, SLPs Nos. 10080 of 1995 and 1000 of 1998 have been filed.

11. On 2-8-1995, the High Court passed a detailed order in CWP No. 6478 of 1995 (*Tilak Raj Gupta v State of Haryana* (CWP 6478 of 1995 dated 2-8-1995) reiterating the order in *Bachan Lal case* (CWP 770 of 1989 dated 5-6-1990) SLPs Nos. 1003-04 of 1998 have been filed against the said judgement and the judgment in CWP No. 6477 of 1995. Another judgment was rendered on 13-2-1997 in CWP No. 17192 of 1996 following the judgment in *Tilak Raj Gupta case* (CWP 6478 of 1995 dated 2-8-1995) Against that, Civil Appeal No. 2104 of 1998 has been preferred.

12. Just as the first petitioner in CWP no. 7122 of 1988 filed a petition for punishing the government and the officials for contempt, several other Teachers also filed applications for punishing the Government and the officials for contempt. Some of the Teachers filed proceedings for execution of the orders in the writ petitions. The proceedings in contempt were also treated as execution proceedings. All such proceedings were dismissed by orders dated 21-5-1997. Against the said orders, the aggrieved teachers have filed SLPs Nos. 944-51 and 1008-11 of 1998. As the question involved in all these proceedings is the same, they were heard together.

## II. COMMON QUESTION

13. The common question which arises for decision in all these matters is whether the Teachers/Masters/Mistresses working in different schools in the State of Haryana are automatically entitled to the higher scales of pay applicable to Lecturers on and from the date of their acquiring the academic qualifications (post graduation) prescribed for the post of "Lecturer". Some Teachers are respondents in Civil Appeal No. 4304 of 1998 filed by the State of Haryana while several groups of Teachers are petitioners in the SLPs referred to above and appellants in Civil Appeal no. 2104 of 1998. It is better that in the first instance we advert to the relevant rules and circulars in order to answer the question raised.

## III. SERVICE RULES, GOVERNMENT CIRCULARS AND POLICY LETTERS

14. Before the formation of the State of Haryana in 1966, the position of the Teachers in the Schools in Punjab was governed by the Punjab Educational Service Class III School Cadre Rules, 1955. They were framed under Article 309 of the constitution of India by the Governor of Punjab. The expression "service" was defined to mean the Punjab Educational Service, Class III, School Cadre. Rule 10 read that members of the service would be entitled to such scales of pay as may be authorised by the Government from time to time and the scales of pay then in force as specified in Appendix 'A' against each post. Appendix 'A' set out the number of sanctioned posts (permanent

and temporary), scale of pay and the designation of posts. The column setting out the designation of the post referred only to Headmasters, Masters, Science Masters, Agricultural Masters, Language Teachers, Art & Craft Teachers in the Men's Branch and similarly Headmistress, Mistresses, Language Teachers etc. in the Women's Branch. What is to be noted is that Appendix 'A' did not refer to any post designated as Lecturer.

15. It is not in dispute that for the first time in 1963-64, the posts of Lecturers in the school cadre were created when higher secondary schools were established. Before that, there were only three types of schools, namely, primary up to 4<sup>th</sup> class, middle up to 8<sup>th</sup> class and high school up to 10<sup>th</sup> class. When the category of higher secondary schools up to 11<sup>th</sup> class was introduced, the posts of Lecturers were also created. The scales of pay for the posts of Lecturers and the qualifications prescribed for the same were fixed by executive instructions as they were not governed by the Punjab Educational Service Rules referred to above. Till 1-2-1983 there were two scales of pay for Lecturers - one being lower for those who had passed MA/M.Sc. in 3<sup>rd</sup> Division and the other being higher for those who had passed MA./M.Sc. in 1<sup>st</sup> and 2<sup>nd</sup> Divisions. The two scales were later revised from 1-2-1983 when it was decided that only persons with MA/M.Sc/M.Com. in 1<sup>st</sup> or 2<sup>nd</sup> Division would be appointed as Lecturers. With effect from 19-3-1985 it was further decided that only persons with at least 50% marks in MA/M.Sc/M.Com. would be appointed as Lecturers. That is evident from a copy of Letter No. 15/38-05-E-43 dated 1-5-1985 issued by the Director of Secondary Education, Haryana to all sub-divisions in the State (vide p. 69 in Vol. II in CA No. 4304 of 1990). Subsequently, in 1998, the Governor of Haryana framed rules under Article 309 of the Constitution known as "the Haryana State Education Lecturer School Cadre (Group C) Service Rules, 1998" Regulating the recruitment and conditions of service of persons appointed to the Haryana State school education lecturers' school cadre. Thus it is seen that the post of Lecturer was never governed by the Punjab Educational Service Class III School Cadre Rules and was always governed by a separate set of rules. As stated earlier, Appendix 'A' to the Punjab Educational Service Class III School Cadre Rule did not include the post of Lecturer at any time.

16. Strong reliance is placed by the Teachers upon the letter dated 23-7-1957 issued by the Government of Punjab before State Reorganisation. That letter was issued by the Government after considering the recommendations made by the Pay Revision Committee appointed to examine the revision of scales of pay of the subordinate services and removal of anomalies occasioned by the piecemeal revision of scales of pay of certain classes of the non-gazetted government servants. According to the said letter it was decided that the existing scales of pay of certain categories of posts should with effect from 1-5-1957 be revised as shown in the statement enclosed. Para 3 of the letter pertained to teachers in the Education Department.

17. The relevant part of the letter reads thus:

"It has been decided that all Teachers according to their qualifications should be placed in the following two broad categories:

CATEGORY 'A'

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

CATEGORY 'B'

Group I.-Matric with ASIC Training (including JSTs).

Group II.-JSTs. (including Assistant Mistresses with BA inter matric plus JAV Training.

Group III.-(i) Shastries.

- i. Gianis, Prabhakar, Drawing Masters and Craftsman Certificate-holders.
- i. Munshi Fazils.
- ii. STs including SVs with training in Physical Education.

Group IV.-Untrained teachers with qualification like B.Com., B.Sc. (Agriculture) etc.

In addition there are similar categories of special posts, such as Headmasters / Headmistresses / District Inspectors / Inspectoresses of schools, with qualifications of Category 'A' above.

Teachers in these categories, regardless of men and women cadres, should carry the following scale of pay:

Category 'A' - Rs 110-8-190/10-250, with higher start for MA or M.Sc. as at present. The existing percentage of posts fixed by Government for the scale of Rs 110-8-190-10-250 and Rs 250-10-300 should remain unchanged at 85% and 15% respectively.

Category 'B'	Lower	Rs 60-4-80-5-120
	Middle	Rs 120-5-175
	Upper	Rs 140-10-250

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

Group I	Lower scale 85%
	Middle scale 15%

15% of teachers in this group should straightaway be promoted to the middle scale by selection based on seniority and merit, while the rest should be given the lower scale."

18. There is no reference in the letter to the post of Lecturer as there was no such post in the school cadre at that time.

19. With effect from 1-11-1966, the State of Haryana came into existence. Earlier there was an Education Commission popularly known as "the Kothari Commission" at the national level which made recommendations regarding further revision of pay scales of Teachers who were divided into several categories. The basis for classifications adopted by the Commission was academic qualifications. The recommendations of the Kothari commission were mostly accepted by the State of Haryana. The pay scales of Teachers were revised and the decision of the Government was contained in Letter No. 152-Edu.II-8/540 dated 5-1-1968 from the Secretary to Government of

Haryana, Education Department, Chandigarh to the Director of Public Instruction, Haryana, Chandigarh. The letter also fixed the percentage in which various incumbents were to be divided from purposes of higher scale or the lower scale as mentioned in the letter. Column II referred to the category of teachers and Column III set out the revised grades. Sl. No. 1 pertains to JBT/JST/JAV etc. Sl. No. 2 pertains to Masters/Mistresses (trained graduates). Sl. No. 3 relates to Lecturers (postgraduates). The NB reads: "The Lecturers will be given one advance increment as soon as they attain professional training." Sl. No. 4 refers to Headmasters/Headmistresses etc. There is nothing in the said letter to show that the post of Lecturers was included in Appendix `A` to the Punjab Educational Service Rules or that it came to be governed by the said rules. The letter refers merely to revision of scales of pay and does not set out the method of recruitment of conditions of service. There is nothing in the letter to show that the categories of Teachers set out at Sl. No. 1 and Sl. No. 2 were automatically entitled to become Lecturers or entitled to the scales of pay applicable to the Lecturers.

20. It may be mentioned there that there was an earlier letter issued by the Punjab Government on 29-7-1967 revising the pay scales of the teaching personnel of government schools in the State of Punjab w.e.f. 1-11-1966 after consideration of the recommendations made by the Kothari Commission. Though the said letter is not applicable to the Teachers in the present case, reference has been made to the same and reliance has been placed on a decision of this Court in which the said letter was considered. We will advert to the decision later and it is unnecessary for us to dilate any further on the letter of the Punjab Government dated 29-7-1967.

21. Learned counsel appearing for some of the Teachers placed before us policy letters dated 19-2-1979 and 20-9-1979 issued by the Government of Punjab and wanted to draw inference therefrom that the principle of pay being linked to qualification as recommended by the Kothari Commission Report has been implemented in the State of Punjab and the same inference should be drawn with reference to the State of Haryana also. We are unable to accept that contention.

22. Insofar as the State of Haryana is concerned, one other letter has been placed before us by the counsel for the State Government viz. Letter No. 7/2(I)/90-4 FR-I dated, Chandigarh, 9-3-1990 sent by the financial Commissioner & Secretary to Government of Haryana, Finance Department to the Commissioner & Secretary to Government of Haryana, Education Department. That letter makes a reference to the circular letter dated 23-7-1957 issued by the Punjab Government to which we have already adverted in detail. The letter also makes reference to the subsequent letter dated 5-1-1968 which has also been referred to by us earlier. Reference has been made to subsequent Notification No. GSR-20/Const./Art/309/89 dated 29-2-1980 by virtue of which the letter dated 5-1-1968 stood inoperative automatically. It is seen from the said letter that the Haryana Government had revised the pay scales further under Notification No. GSR-20/Const./Art/309/87 dated 29-4-1987 with effect from 1986. Ultimately, the letter clarifies that the teachers in the Education Department in the State of Haryana were not entitled to be placed in the higher scales of pay in terms of para 3 of the Punjab Government letter dated 23-7-1957 or any subsequent letter or notification issued by the Haryana Government referred to therein which had become inoperative. The last sentence in para 6 of the letter reads as follows:

"The master/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 possessing/acquiring of higher qualifications will not entitle them automatically to claim higher pay scales."

23. Thus a perusal of the Educational Service Rules which have been prevailing from 1955 undergoing amendments from time to time and the subsequent government policy letters and circulars show that the Teachers are not entitled to higher scales of pay applicable to the posts of Lecturers automatically on their acquiring postgraduate qualifications or such qualifications as are prescribed for the post of Lecturers. We have already pointed out that the post of Lecturers has throughout been governed by different sets of rules and never by the Punjab Educational Service Class III School Cadre Rules, 1955 or the amendments thereto. Hence, the common question raised in these matters has to be answered in the negative against the Teachers/Masters/Mistresses some of whom are respondents in Civil Appeal No. 4304 of 1990 and the others being petitioners in SLPs and appellants in Civil Appeal No. 2104 of 1998.

#### IV. RULINGS REFERRED TO BY COUNSEL ON BOTH SIDES

24. Some of the judgments cited related to Teachers in the State of Punjab and others related to Teachers in the State of Haryana. We think it better to refer to cases relating to the Teachers in the two States separately. We should not be understood as holding that the position in the state of Punjab is different from the position in the State of Haryana. It may happen to be the same but we do not express any opinion in this case on the situation prevailing in the State of Punjab. We are concerned here only with the Teachers in the state of Haryana. In order to appreciate the ratio of the rulings relied on by counsel on both sides, we refer to the cases relating to the Teachers in the State of Punjab separately and the cases relating to Teachers in the State of Haryana separately.

##### A. Cases relating to teachers in the State of Punjab

25. The earliest case arose with reference to the composite State of Punjab before the Reorganisation. In that case, the government letter dated 23-7-1957 to which we have made reference in extenso earlier was considered. It cannot be disputed that the principle laid down in that case will apply equally to the State of Punjab and the State of Haryana insofar as the interpretation of the government letter dated 23-7-1957 is concerned.

##### i. Kirpal Singh ((1975) 4 SCC 740 : 1975 SCC (L&S) 438)

26. The case was reported as State of Punjab v. Kirpal Singh Bhatia ((1975) 4 SCC 740 : 1975 SCC (L&S) 438) The respondents in that case were Teachers in the former State of Pepsu which merged in the State of Punjab on 1-11-1956. The Teachers claimed revised scales of pay as well as the posts of Masters on the grounds that they had taken degrees in Bachelor of Teaching or its equivalent and that the government letter dated 23-7-1957 entitled them to the posts of Masters to the extent of 25% of the vacancies. The High Court accepted the contention of the Teachers and upheld their claim. The appeal filed by the State of Punjab was dismissed by this Court which agreed with the view taken by the High Court. After referring to the government letter dated 23-7-1957 in detail, this Court referred also to Rules 7 and 10 of the Punjab Educational Service Class III School Cadre Rules, 1955 which provided the method of recruitment and the entitlement to such scales of pay as may be authorised by the Government from time to time. This Court held that the higher scale of pay was effective either from the date when the teachers passed the examination of Bachelor of Training or its equivalent or 1-5-1957 whichever was later. Referring to a letter dated 7-11-1958, this Court observed that the Teachers could not claim vacancies by promotion exceeding 25% and their claim for appointment by promotion had to take into consideration not merely their seniority but also their merit. The Court pointed out that while the earlier letter dated 23-7-1957 fixed the scales of pay on the basis of the academic qualification, the subsequent letter dated 7-11-1958

recognised the right of promotion to the posts of Masters to the extent of 25%.

ii. Gurpal Tuli (1984 Supp SCC 716 : 1985 SCC (L&S) 366)

27. The next case relating to the Punjab schools was Gurpal Tuli v. State of Punjab (1984 Supp SCC 716 : 1985 SCC (L&S) 366) This Court considered the circular letter dated 29-7-1967 issued by the State of Punjab giving effect to the recommendations of the Kothari Commission from 1-11-1966 in respect of teachers in government schools. Para 2 of the circular letter referred to Lecturers in higher secondary schools etc. and it was specified that the number of posts in the Lecturers' grade would be 1571 i.e. 742 posts for the existing school Lecturers and 829 additional posts for other Masters/Mistresses with postgraduate qualifications. The appellants before this Court contended that they were employed as Masters/Mistresses in higher secondary schools run by the Punjab Government and possessed postgraduate qualifications. They claimed that they were entitled to either of the higher grades set forth in para 2 of the said letter dated 29-7-1967 pertaining to Lecturers. This Court negated their contention and observed: (SCC p. 718, para 5)

"From what has gone before it is clear that they can legitimately claim the benefit of those grades only if they are appointed to the posts of Lecturer. And they do not dispute that they are not incumbents of those posts."

The appellants in that case placed reliance on the judgment in State of Punjab v Kirpal Singh Bhatia ((1975) 4 SCC 740 : SCC (L&S) 438 but this Court held that it was of no assistance to the appellants. The contention of the appellants that on the principle of "equal pay for equal work" they were entitled to the grades applicable to the Lecturers, this Court held that the grades specified in para 2 of the circular letter dated 29-7-1967 were applicable only to those who specifically held the posts of Lecturers. Thus the contention of the Teachers that they were entitled to the scales of pay applicable to Lecturers on their acquiring postgraduate qualifications or the qualifications prescribed for the post of Lecturers was expressly negated.

iii. Punjab Higher Qualified Teachers' Union ((1988) 2 SCC 407 : 1988 SCC (L&S) 551 : (1988) 7 ATC 305)

28. The third ruling was Punjab Higher Qualified Teachers' Union v. State of Punjab. ((1988) 2 SCC 407 : 1988 SCC (L&S) 551 : (1988) 7 ATC 305). The only controversy in that case was whether JBT Teachers falling under Category 'B' Group II were not entitled to higher pay merely on their acquiring higher educational qualifications of BA, BT/BA/B.Ed. etc. but that gaining professional experience of JST/JAV was essential. After construing the relevant clauses in the government circular the Court held that it was not necessary for the Teachers to gain any experience of training and it was sufficient if they got the qualifications of BT or B.Ed. to be entitled to the higher scales of pay admissible to Teachers in Category 'B' Group I with effect from the respective dates of their acquiring the qualification. This court had no occasion in that case to consider whether the Teachers were entitled to get the scales of pay applicable to Lecturers automatically on their acquiring the postgraduate qualifications.

iv. Baij Nath ((1996) 8 SCC 516 : 1996 SCC (L&S) 1026)

29. The last of the cases chronologically cited before us was Baij Nath v. State of Punjab ((1996) 8 SCC 516 : 1996 SCC (L&S) 1026) The appellants before this Court approached the High Court of Punjab & Haryana seeking a direction to the State of Punjab and Director of Public Education to

pay them according to the scale meant for Lecturers on their acquiring postgraduate qualification in terms of government letter dated 23-7-1957 read with government letter dated 20-9-1979. The Division Bench of the High Court negatived their prayer and they filed the appeal in this Court after obtaining special leave. This Court allowed the appeal and directed the Government to pass an appropriate order relating to the appellants within six weeks from the date of the judgment and make available to them all consequential financial benefits within eight weeks thereafter. Learned counsel for the Teachers placed reliance on that judgment and contended that the prayer of the appellants in that case made in the writ petition before the High Court was fully granted by this Court in appeal. Reliance was placed on para 7 of the judgment which is in the following terms: (SCC p. 518)

"7. But this is not all inasmuch as the letter of 23-7-1957, read with that of 20-9-1979, does permit higher pay scale for postgraduates; and that too from the date of acquisition of the same, as held by this Court in Chaman Lal case ((1987) 3 SCC 113 1987 SCC (L&S) 175 : (1987) 3 ATC 779) We would, therefore, state that the teachers in the high schools of Punjab, who acquired the postgraduate qualification, became entitled to such higher pay from the date of acquisition of the qualification, as was contemplated in the letter of 23-7-57. It may be stated that the subject-matter of Gurpal Tuli v. State of Punjab (1984 Supp SCC 716 : 1985 SCC (L&S) 366) referred by Shri Yadav for the respondents, is different and it has not stated anything contrary to what we have held."

30. On the other hand, relying on the very same passage quoted above, learned counsel for the State of Haryana contended that this court had only held that the Teachers who had acquired the postgraduate qualifications became entitled to higher pay which meant the higher pay applicable to Masters. It was argued that this Court did not hold that the appellants in that case were entitled to higher scales of pay applicable to Lecturers on their acquiring the postgraduate qualifications.

31. A reading of the judgment as reported could not disclose the correct position as to what was held in that case. Hence, we sent for the records in that appeal namely, Civil Appeal No. 4544 of 1996. It is seen therefrom that pursuant to the judgment of this Court, a decretal order was issued by this Court, on the following terms:

"That the judgment and order dated 29-5-1992 of the High Court of Punjab & Haryana at Chandigarh in CWP No. 4646 of 1992 be and is hereby set aside and in place thereof an order allowing CWP No. 4646 of 1992 and directing that an appropriate order relating to the appellants herein shall be passed by the respondents herein in the light of the above statement within six weeks from this the 19<sup>th</sup> day of March, 1996 and that consequential financial benefits shall be made available to the appellants within eight weeks thereafter, be and is hereby substituted.

2. That the parties herein shall bear their own costs of this appeal in this court."

32. Thereafter the appellants in the said appeal filed Contempt Petition No. 196 of 1997 for punishing the respondents therein for committing contempt as the respondents did not pay to the appellants' salary on the pay scales applicable to Lecturers. That petition for contempt was contested by the Punjab State Government and the officials. It was stated in the counter-affidavit that the appellants were entitled only to the higher pay scales applicable to the Masters. It was also stated in the counter-affidavit that the judgment of this Court in the appeal granted only the higher

pay scales applicable to Masters and did not grant to the appellants higher pay scales applicable to the Lecturers. That contention of the Punjab Government and the officials in the contempt petition was accepted by this Court and the contempt petition was dismissed by order dated 14-7-1997. Thus it is clear that in the above appeal also this Court did not hold that the Teachers were entitled to higher pay scales applicable to Lecturers automatically on their acquiring postgraduate qualifications or the qualifications prescribed for the posts of Lecturers.

33. Thus it is seen that even with reference to the Teachers in the State of Punjab higher pay scales applicable to Lecturers were not granted. No ruling of this Court was cited before us holding that they would be entitled to higher pay scales applicable to Lecturers on their automatically acquiring postgraduate qualifications. However, as stated earlier, we do not decide that question in these cases as these related to Teachers in the State of Haryana and not Teachers in the State of Punjab.

#### B. Cases relating to teachers in the State of Haryana

##### i. Kirpal Singh ((1995) 4 SCC 740 : 1975 SCC (L&S) 438)

34. It is needless to refer to the earliest case namely, State of Punjab v. Kirpal Singh Bhatia ((1995) 4 SCC 740 : 1975 SCC (L&S) 438) once again. As stated earlier, the ruling in that case will undoubtedly apply to the Teachers in the State of Haryana insofar as the interpretation of the circular dated 23-7-1957 is concerned.

##### (ii) Chaman Lal ((1987) 3 SCC 113 1987 SCC (L&S) 175 : (1987) 3 ATC 779)

35. The Next case is of Chaman Lal v. State of Haryana ((1987) 3 SCC 113 1987 SCC (L&S) 175 : (1987) 3 ATC 779) The appellants in the appeal before this Court were all trained graduates possessing B.Ed. or BT degrees in addition to BA Degrees. They were Teachers in the government schools in the State of Haryana. They acquired the degree qualifications subsequent to their joining service. Some of them acquired such qualifications before 5-9-1979 and some after that date. After the circular dated 23-7-1957 issued by the composite Punjab Government, the State of Haryana had passed an order on 5-1-1968 revising the scales of pay with effect from 1-12-1967. Thereafter, Teachers who had acquired BT or B.Ed. qualifications were held entitled to the higher scales of pay since they acquired the qualifications irrespective of the dates when they were adjusted against the post of Masters. On 5-9-1979, the Government of Haryana issued an order imposing conditions for the grant of Masters' grade to unadjusted JBT Teachers who had acquired BT/B.Ed. qualifications. The High Court interpreted the said order of the government to mean that the Teachers who had acquired the BT or B.Ed. qualification subsequent to 1-12-1967 and before 5-9-1979 would be entitled to the higher grade but with effect from 5-9-1979 only and that those who acquired the qualification subsequent to 5-9-1979 were not entitled to the higher grade. According to the judgment of the High Court the order of the Government dated 5-1-1968 did away with the principle of the 23-7-1957 order that the Teachers who acquired BT or B.Ed. qualification got the higher grade and that a concession was shown in 1979 enabling the teachers who acquired such qualifications between 1968 and 1979 to get the higher scale from 1979. That view of the High Court was upset by this Court in the above case. This Court held that the order of the Government dated 5-1-1968 must be read in the light of the order dated 23-7-1957 and the Report of the Kothari Commission which was accepted. This Court said that there could be no doubt that the Government never intended to retract from the principle that Teachers acquiring the BT or B.Ed. qualifications thereafter would be entitled to higher grade with effect from the respective dates of their acquiring the qualifications. This Court also held that the order dated 5-9-1979 was indeed superfluous. In that

view, the appeal filed by the Teachers was allowed and the Court directed the Government and the officials to give the higher grade admissible to Masters to all the teachers who had acquired the BT/B.Ed. qualification with effect from their acquiring the respective qualifications.

iii. Wazir Singh (1995 Supp (3) SCC 697 : 1996 SCC (L&S) 114 : (1995) 31 ATC 774)

36. The next judgment of this Court in the order of chronology is Wazir Singh, JBT Teacher v. State of Haryana (1995 Supp (3) SCC 697 : 1996 SCC (L&S) 114 : (1995) 31 ATC 774) In that case, the Court had to consider the policy instructions issued by the Haryana Government on 9-3-1990 whereby it retracted from the earlier principle that Teachers acquiring the Bt or B.Ed. Degree would be entitled to higher grade with effect from the respective dates of their acquiring the qualifications. This Court held that the policy instructions issued by the Government would operate prospectively and any Teacher acquiring the qualification of BT/B.Ed. would not get the higher pay scales automatically on acquiring such qualifications. This court also made clear that those who had acquired such qualifications before 9-3-1990 would be entitled to get the benefit of para 2 of the Punjab Government letter dated 23-7-1957.

v. Ravi Bala ((1997) 1 SCC 267 : 1997 SCC (L&S) 724)

37. In State of Haryana v. Ravi Bala ((1997) 1 SCC 267 : 1997 SCC (L&S) 724) the principle laid down in Wazir Singh v. State of Haryana (1995 Supp (3) SCC 697 : 1996 SCC (L&S) 114 : (1995) 31 ATC 774) was reiterated and the claim of Teachers who had acquired the higher qualifications after 9-3-1990 for higher scales of pay was rejected.

38. Thus it is seen, that there is no judgment of this Court holding that Teachers acquiring postgraduate qualifications or qualifications prescribed for the post of Lecturers would automatically be entitled to scales of pay applicable to the Lecturers on acquiring such qualification without being appointed as Lecturers in accordance with the rules.

#### IV. RULING OF THE FULL BENCH OF THE HIGH COURT OF PUNJAB & HARYANA BHAGWAN DUTT SHARMA (ILR (1998) 2 Punj 246 (FB))

39. In Bhagwan Dutt Sharma v. State of Haryana (ILR (1998) 2 Punj 246 (FB)) the question was whether the Teachers who acquired the BT or B.Ed. qualification would be entitled to the higher scales of pay since they acquired the qualification irrespective of the dates when they were adjusted against the post of Masters. A Division Bench of the High Court in CWP No. 7553 of 1976 negated the claim of the Teachers. That writ petition was one of a bunch of cases including CWP No. 1220 of 1978 which had also been disposed of by the common judgment. The petitioner in CWP No. 1220 of 1978 took the matter in appeal to this Court and succeeded. The judgment of this Court was in Chaman Lal v. State of Haryana ((1987) 3 SCC 113 1987 SCC (L&S) 175 : (1987) 3 ATC 779) We have already referred to that judgment in detail. The correctness of the judgment of the Division Bench in CWP No. 7553 of 1976 was referred to a larger Bench by a Single Judge of that Court probably before the matter was disposed of by this Court in Chaman Lal case ((1987) 3 SCC 113 1987 SCC (L&S) 175 : (1987) 3 ATC 779) The Full Bench after referring to Kirpal Singh case ((1975) 4 SCC 740: 1975 SCC (L&S) 438) and Chaman Lal case ((1987) 3 SCC 113 1987 SCC (L&S) 175 : (1987) 3 ATC 779) held that in view of the decision of the Supreme Court in Chaman Lal case ((1987) 3 SCC 113 1987 SCC (L&S) 175 : (1987) 3 ATC 779) the reference was to be answered in favour of the writ petitioners and accordingly the Full Bench held that the writ petitioners were entitled to the Masters' pay from the date they acquired the qualification.

40. Thus, the full Bench had no occasion to consider the question whether the Teachers would be entitled to the scales of pay applicable to the Lecturers automatically on their acquiring postgraduate qualifications. It cannot by any stretch of imagination be contended that the ratio of the decision of the Full Bench was that those who had acquired postgraduate qualifications were automatically entitled to pay scales of Lecturers. In the judgment under appeal in Civil Appeal No. 4304 of 1990, the High Court has merely recorded that the parties' counsel agreed that the writ petition was squarely covered by the judgment of the Full Bench in Bhagwan Dutt Sharma case (ILR (1998) 2 Punj 246 (FB)) and ordered that there will be an order in terms of the ratio given in the Full Bench case. According to the learned counsel for the Teachers, the said direction to pass an order in terms of the ratio given in the Full Bench case would tantamount to upholding the claim of the writ petitioners that they were entitled to higher scales of pay applicable to Lecturers. There is absolutely no merit in this contention. No such ratio can be discovered from the judgment of the Full Bench.

#### VI. CIVIL ORIGINAL CONTEMPT PETITION NO. 649 OF 1989 ON THE FILE OF THE HIGH COURT

41. In view of the above position, the claim of Kamal Singh Saharwat who was the first writ petitioner before the High Court in CWP No. 7122 of 1988 that the officials concerned should be punished for contempt as he was not paid his salary on the pay scales applicable to the Lecturers was unsustainable. The contempt petition was on the face of it without any merit and there was no justification for the High Court in issuing notice on the said petition for contempt. Of course the High Court had not come to any decision or expressed any opinion in the contempt proceedings but the fact that the High Court issued notice to the respondents in the contempt petition shows that the High Court considered that there was a prima facie case for proceeding under the Contempt of Courts Act. No doubt the respondents in the contempt petition could have appeared before the High Court and filed a reply pointing out that there was no question of any contempt as there was no disobedience of the order of the High Court inasmuch as the ratio of the Full Bench did not entitle the writ petitioners to higher pay scales applicable to Lecturers. Instead, the State Government and the Director of Public Instructions came to this Court with an appeal against the order of the High Court in the writ petition. As the appeal has been pending from 1990, no purpose will be served by taking a technical view of the matter and directing the appellants to appear before the High Court and contest the proceedings in contempt.

#### VII. CONCLUSIONS

42. In the result, we have no hesitation to hold that the Teachers are not entitled to claim higher pay on the scales of pay applicable to Lecturers on their acquiring postgraduate qualification without being appointed as Lecturers. Learned counsel for the State of Haryana has categorically stated that higher pay on the scales applicable to the Masters was already being paid to the Teachers and that at any rate the Government has absolutely no objection to pay the same if they were entitled thereto in accordance with the law laid down by this Court. We have already referred to the fact that the only person to whom higher pay on the scales applicable to the Lecturers was being paid was Kamal Singh Saharwat, the first petitioner in CWP No. 7122 of 1988 before the High Court. At the time of grant of leave, this Court passed an order in the stay petition that if the State ultimately succeeds, it will be entitled to appropriate relief. Consequently, the State Government, appellant in Civil Appeal No. 4304 of 1990 is entitled to recover back from Kamal Singh Saharwat, the first respondent in the appeal, whatever has been paid over and above his entitlement. It will be open to the Government to take appropriate proceedings, therefor, if it decides to recover the excess after such a long lapse of time. Similarly, the State Government is entitled to recover from such other person, if any, to whom

excess payments have been made. The proceedings in contempt petition, namely, Civil Original Contempt Petition No. 649 of 1989 on the file of the High Court of Punjab & Haryana requires to be dismissed. If it is still pending on the file of the High Court, a formal order of dismissal may be passed by the High Court pursuant to this judgment. Civil Appeal No. 4304 of 1990 is allowed on the above terms.

43. SLPs Nos. 10080 of 1995, 1005-06, 1002, 1000 and 1003-04 of 1998 as well as Civil Appeal No. 2104 of 1998 are dismissed.

44. The view taken by the High Court in the subsequent contempt/execution proceedings is correct and consequently SLPs Nos. 944-51 and 1008-09 of 1998 are dismissed.

45. The parties shall bear their respective costs.