

PUNJAB AND HARYANA HIGH COURT

Nirmaljeet Kaur

Vs

The Union of India

Civil Writ No. 4181 of 1971

(Bal Raj Tuli, J.)

02.05.1972

JUDGMENT

Bal Raj Tuli, J.

1. This order will dispose of *Nirmaljeet Kaur and others v. Union of India and others*¹, *Harinder Singh Sandhu and others v. Union of India and others*², *Mohanjit Singh Kiran v. State of Punjab and others*³, *Jagdish Chand Haritosh and others v. Union of India and others*⁴, *Sat Parkash Gupta and others v. Union of India and others*⁵, *Inder Singh and others v. Union of India and others*⁶, *Hardial Singh and others v. Union of India and others*⁷, *Manohar Lal and others v. Union of India and others*⁸, *Surjan Singh and others v. Union of India and others*⁹, and *Gian Chand Sharma and others v. State of Punjab and another*¹⁰, as common questions of law and fact are involved in all these petitions.

2. The first three petitions are by the teachers of the Education Department who were employee of the Punjab State before November 1, 1956, and have been allocated to the State of Punjab after its reorganisation with effect from November, 1, 1966. Civil Writs 3301 and 3852 of 1971 relate to the teachers of the Pepsu State who were integrated with the teachers of the Punjab State after the merger of the two States and have been allocated to the State of Haryana as a result of the reorganisation of the State of Punjab with effect from November 1, 1966. The remaining five petitions are by the Pepsu teachers who were integrated with the Punjab teachers after the merger of the two States and have been allocated to the State of Punjab in the wake of the reorganisation of the Punjab State with effect from November 1, 1966.

The petitioners in all these cases are B. A. B. T./R. Ed. teachers who had obtained the degree of B. T./B. Ed. either before November 1, 1956, or thereafter. They have not been adjusted in the regular cadres of the Education Department and their category is known as "Unadjusted B. A., B. T./B. Ed. teachers". It is the case of the Pepsu employees that it was a practice in the Education Department of the erstwhile State of Pepsu that every teacher on passing the B. T. examination was promoted to the rank of Master in the higher pay-scale of ₹ 90-5-140 which was later revised to ₹ 110-250 and that this constituted a condition of their service by virtue of which they were entitled to be promoted to the rank of Master in the pay-scale mentioned above with effect from

the date of their passing the B. T./B. Ed. examination. The Punjab employees claim that they are entitled to the revised scale of pay with effect from May 1, 1957, in accordance with the decision of the Government which was circularised by the Secretary to Government, Punjab, Finance Department, by memorandum dated July 23, 1957, to all heads of departments. A quota of 25 per cent of the posts in the rank of Masters was reserved for the unadjusted B. A. B. T. or B. Ed. teachers but their appointments had not been made to the full extent of that quota. They have, therefore, filed the present petitions to which written statements have been filed.

3. An identical case with regard to Pepsu employees was considered by me in Civil Writ 3301 of 1969, *Kirpal Singh Bhatia and others v. Union of India and others*¹¹ wherein I held :-

(1) According to section 115(7) of the States Reorganisation Act, 1956, the conditions of service applicable to different employees on the appointed day, that is, November 1, 1956, were protected. Even, according to the petitioners, it was only a practice which was followed strictly and faithfully upto the year 1955, and was not followed thereafter with the result that those teachers who qualified in the year 1956, were not granted that benefit, in view of the impending integration of the States of Punjab and Pepsu. A practice in a department of the Government cannot be equated with the conditions of service, and, therefore, the petitioners cannot base their claim to higher scale of pay with effect from the date of passing the B. T. Examination on the basis of that practice. The provisions of section 115(7) of the States Reorganisation Act do not help them in this behalf.

(ii) The petitioners were entitled to the higher grade of pay, namely, 110-250 from the time they obtained a B. T. or B. Ed. degree or from May 1, 1957, whichever was later, in accordance with the circular letter dated July 23, 1957.

(iii) That the petitioners were entitled to the salary in the higher grade of pay for a period of three years and two months prior to the date of their petition in view of the Full Bench judgment of this Court in *Jagdish Mitter v. The Union of India and another*¹²,

4. The Union of India, the State of Punjab and the Director of Public Instruction, Punjab, filed an appeal under Clause 10 of the Letters Patent against that judgment (, *Union of India and others v. Kirpal Singh Bhatia and others*¹³) which was dismissed by a Division Bench on March 10, 1972. With regard to practice in the erstwhile State of Pepsu, the learned Judges of the Division Bench held:-

"It has been urged on behalf of the respondents that right upto the beginning of 1955, there had been followed practice that teachers acquiring degree of Bachelor of teaching or equivalent became entitled to the scale of post of Master the day they passed that degree examination. It is contended that by virtue of sub-section (7) of section 115 of the Act that practice had virtually become a rule of law and consequently the respondents were on the footing of that practice entitled to the Master's grade on the date they passed Bachelor of Teaching examination. Admittedly, that practice was not followed in Pepsu in 1955 nor in 1956 prior to the date of merger on November 1, 1956. Government servants, who were serving in Pepsu prior to merger are entitled to protection against conditions of service,

which gave them additional advantage. The expression, 'condition of service' could not cover such a practice."

5. In view of this pronouncement of the Division Bench, the observations in *Shri Sat Parkash v. Shri Rup Chand Malhotra and others*¹⁴, to the effect that conditions of service governing Sat Parkash immediately before November 1, 1956, did not place any embargo on his further promotion to the post of Head Assistant and rule 3 of the 1961 Rules which had made it a condition precedent for the Stenographers to qualify the departmental test, was certainly a rule which prejudicially affected his conditions of service, are not applicable to the facts of this case. It cannot be held that the practice prevalent in erstwhile Pepsu State, as alleged by the Pepsu employees, was a condition of their service which could not be altered without the prior approval of the Central Government and, therefore, they were entitled to be appointed as Masters. the moment they acquired the degree of Bachelor of Training or Bachelor of Education. That relief is, therefore, refused to the petitioners.

6. The learned counsel for the petitioners then argued that the petitioners could not be deprived of their arrears of pay on the basis of the Full Bench judgment in Jagdish Mitter's case for the period prior to three years and two months of the filing of the writ petition. It is submitted on behalf of the petitioners that Jagdish Miller's case is distinguishable. In that case it was held that Jagdish Mitter should be deemed to have remained in service despite his dismissal as it had been found to be illegal and against the provisions of the Constitution and Service rules and, therefore, he ought to have filed suit for his monthly salary within, the period of limitation prescribed in the Limitation Act. In the present case the petitioners were in the service of the State and they knew that they were entitled to the revised scale of pay with effect from May 1, 1957, or the date on which they acquired the B. T. or B. Ed. degree in accordance with the government's circular letter dated July 23, 1957, and they should have, therefore, claimed their appropriate emoluments under the circular letter dated July 23, 1957, from the date they became eligible to draw that salary. Having not done so, they have lost the right to claim the arrears of pay for the period prior to three years and two months of the filing of these petitions in this Court.

7. The last relief claimed by the petitioners is with regard to fixation of pay and seniority. Reliance has been placed on the decision of their Lordships of the Supreme Court in *S. G. Jaisinghani v. Union of India and others*¹⁵, wherein their Lordships held that the quota rule was not merely an administrative direction to determine recruitment from two different sources in the proportions stated in the rule but was a statutory provision made under the rules of service which was binding on the Government. Their Lordships further observed :-

"In the letter of the Government of India dated October 18, 1951, there is no specific reference to rule 4, but the quota fixed in their letter must be deemed to have been fixed by the Government of India in exercise of the statutory power given under rule 4. Having fixed the quota in that letter under rule 4, it is not now open to the Government of India to say that it is not incumbent upon it to follow the quota for each year and it is open to it to alter the quota on account of the particular situation (See para 24 of the counter-affidavit of respondents 1 to 3 in Writ Petition No. 5 of 1966). We are of opinion that having fixed the quota in exercise of their power under rule 4 between the two sources of recruitment, there is no discretion left with the Government of India to alter that quota according to the

exigencies of the situation or to deviate from the quota, in any particular year, at its own will and pleasure. As we have already indicated, the quota rule is linked up with the seniority rule and unless the quota rule is strictly observed in practice, it will be difficult to hold that the seniority rule i. e., rule 1(f)(iii) and (iv), is not unreasonable and does not offend Article 16 of the Constitution. We are accordingly of the opinion that promotees from Class II, Grade III to Class I, Grade 11 Service in excess of the prescribed quotas for each of the years 1951 to 1956 and onwards have been illegally promoted and the appellant is entitled to a writ in the nature of mandamus commanding respondents 1 to 3 to adjust the seniority of the appellant and other officers similarly placed like him and to prepare a fresh seniority list in accordance with law after adjusting the recruitment for the period 1951 to 1956 and onward, in accordance with the quota rule prescribed in the letter of the Government of India No. F. 24(2), Admn. I. T./51 dated October 18, 1951. We, however, wish to make it clear that this order will not affect such Class II Officers who have been appointed permanently as Assistant Commissioners of Income-tax. But this order will apply to all other officers including those who have been appointed Assistant Commissioners of Income-tax provisionally pursuant to the orders of the High Court."

These observations aptly apply to the cases before me. The petitioners are governed by the Punjab Educational Service Class III (School Cadre) Rules, 1955, rule 7 of which provides for the method of recruitment to the Service and reads as under:-

"7-Method of recruitment-(i) posts in the service shall be filled :-

(a) by direct appointment ; or

(b) by transfer of an official from other services or posts of Government in the Education Department of any Government in India ; or

(c) by promotion from lower grades in the service

(ii) when a vacancy occurs or is likely to occur in the service the appointing authority specified in rule 3 shall determine in what manner such vacancy will be filled ;

(iii) appointment to any post by promotion of officials already in the service or by transfer from other services within the Education Department of Government or other Departments of any State or Central Government, shall be made strictly by selection based on consideration such as qualifications and/or consistent good record for a number of years and no official shall have any claim to such appointment as of right."

8. The Director of Public Instruction, Punjab, issued a memorandum dated November 7, 1958, on the subject of "promotion of the so-called unadjusted B. A. B. T./B. Ed. teachers to the posts of Masters on ₹ 110/250 grade fixing a quota of 25 per cent posts for them. A copy of that memorandum is Annexure "B" to the writ petition. Although no mention has been made of Rule 7 of the Punjab Educational Service Class III (School Cadre) Rules, 1955, in this memorandum, it is quite clear that this quota has been fixed for the unadjusted B. A. B.T./B. Ed. teachers under

Rule 7 and it was not open to the appointing authority to deviate from it at his will and pleasure. The unadjusted B. A. B.T./B. Ed. teachers had to be appointed to 25 per cent posts of Masters on ₹ 110-250 grade. That having not been done to the full extent, the petitioners are entitled to a direction to respondents 2 and 3 to make the necessary appointments to 25 per cent posts of Masters on ₹ 110-250 grade, to the extent falling short of the said quota, in accordance with the memorandum dated November 7, 1958 (Annexure 'B' to the writ petition) with effect from that date from amongst the eligible unadjusted B.A.B.T /B. Ed. teachers including the petitioners and after adjusting them in the cadre- to fix their salary and draw up a fresh list of seniority in accordance with the Service Rules. Of course, the rights of the members of the Service who have already been promoted will not be affected as they have not been made parties to this petition.

9. The learned counsel for the respondents have stated that in view of the affirmance of my judgment in Kirpal Singh Bhatia and others' case (supra) by the Letters Patent Bench, they do not dispute that the petitioners are entitled to the reliefs given to Kirpal Singh Bhatia and others and those reliefs may be allotted to them. I, therefore, do not feel the necessity of discussing them in this judgment.

10. For the reasons given above, these writ petitions are accepted and the following reliefs are allowed to the petitioners :

(i) The petitioners and other members of their Class (Unadjusted B. A. B. T./B. Ed. teachers) shall be appointed to the posts of Masters in the regular cadre to the extent of 25 per cent quota reserved for them for each year in accordance with the memorandum dated November 7, 1958 (Annexure 'B' to the writ petition) and after adjusting them in the cadre their salary and inter se seniority shall be fixed along with the other members of the service in accordance with the service rules, without affecting the rights of the members of the Service who have already been promoted ;

(ii) The petitioners are entitled to the higher grade of Masters ₹ 110-250 from the day they acquired the B. T. or B. Ed. degree or with effect from May 1, 1957, whichever is later, and

(iii) The petitioners shall be paid the arrears of pay in the higher grade for a period upto three years and two months prior to the filing of their respective writ petitions in accordance with their entitlement.

11. Appropriate directions shall issue to respondents 2 and 3. Respondent 1 has been unnecessarily impleaded and the petitions against it are dismissed with no order as to costs.

12. The learned counsel for the petitioners submitted at the end of the arguments that during the pendency of the writ petitions some order reverting some of the petitioners to the posts on which they held liens were passed by the District Education Officer and the stay of the operation of those orders was prayed for. In one case the operation of the said order was stayed while in the other it was not. No relief with regard to those orders can be allowed to the petitioners in these

petitions as they have not been challenged by amending the petitions. The petitioners will be at liberty to challenge those orders by filing fresh petitions. The petitioners are entitled to their costs from respondents 2 and 3. Counsel's fee ₹ 100 in each case.

Petition accepted.

Cases Referred.

1Civil Writ 4181 of 1971

2Civil Writ 4819 of 1971

3Civil Writ 4715 of 1971

4Civil Writ 3301

5Civil Writ 3852 of 1971

6Civil Writ 3507 of 1971

7Civil Writ 2978 of 1971

8Civil Writ 3059 of 1971

9Civil Writ 3570 of 1971

10Civil Writ 4853 of 1971

11(1970 Current Law Journal 811)

121969 Services Law Reporter 376 : ILR. (1969) 2 Pb. & Hry. 96

13LPA 714 of 1970

14LPA 197 of 1970, decided on November 20, 1970

151967 Services Law Reporter 48 : AI. 1967, S.C. 1427