

202282108
47/22

Office of Director Public Instructions (Secondary Education), Punjab.
Education Complex (Punjab School Education Board) Block-E, Phase-8,
S.A.S. Nagar (Mohali)
(Establishment-3 Branch)

4/7/22

Order No. DPIS-EST/GEN/153/2022-ESTABLISHMENT-3/HIS-DPIS-1/E-31/9992
Dated: 30-06-2022

Orders

Sh. Dilbag Singh S/o Lal Singh, Retd. Lecturer (Physical Education) Government Senior Secondary School, Village Ganeana, District Shri Muktsar Sahib and 7 others filed Civil Writ Petition no. 26972 of 2016 in the Hon'ble Punjab and Haryana High Court with the prayer for the issuance of a writ in the nature of Certiorari for quashing the letter dated 14.12.2016 (Annexure P-4) issued by respondent no. 2 to the extent of denied the pension and other retiral benefit on the basis of last pay drawn by the petitioners while working on the higher post of the Principal/Head Master in officiating capacity. The petitioners have further prayed for issuance of a direction to respondents authority to revise the pension and other retiral benefits of the petitioners on the basis of last pay drawn by them at the time of their retirement while working on their respective posts of Principal/Head Master in officiating capacity and to pay the arrears along with interest 12% per annum. The Hon'ble High Court disposed of this writ petition along with bunch of petitions in terms of LPA No. 37 of 2017 vide order dated 25.02.2019. The Division Bench of Hon'ble Punjab and Haryana High Court decided this LPA No. 37 of 2017 in CWP No. 17358 of 2015 vide order dated 25.09.2018. The relevant part of order dated 25.09.2018 is reproduced here as under:-

"[4] We have heard learned counsel for the parties at a considerable length and are of the view that the appellants cannot take undue advantage of their own inaction or wrongs. Seniority is a condition of service. It has to be determined at the earliest in accordance with the

Rules governing conditions of service. If any delay occurs because of multiple Court proceedings, the authorities ought to have evolved some mechanism to grant regular promotions to the senior most Lecturer/ Master/ Mistresses, for promotion is also a legitimate expectation in service career. The controversy nevertheless does not require further deliberations, for necessary directions to consider and promote the Lecturer/ Master/ Mistresses on higher posts as per their seniority and other eligibility conditions have already been issued by this Court in the above-cited order dated 23.05.2017. Let those directions be complied with within the time-frame given in the cited order. The respondents in the lead case or the writ petitioners in the connected petitions shall also be considered for regular promotion as per their seniority and eligibility conditions from the due date and in accordance with the Rules, which were in vogue at the time of occurrence of vacancies. While the promotions shall be granted retrospectively but on notional basis only and they shall be entitled to fixation of their pension and other retiral benefits as per the pay deemed to have been drawn by them on the higher promotional posts. They shall also be entitled to arrears of pension and other retiral benefits along with interest @7% per annum. The needful shall be done within a period of six months. However, if the respondents in the lead case and the writ petitioners in the connected cases have not been granted emoluments for the period they officiated/worked on the higher posts, let such claim be also considered within a period of four months."

The department then preferred Review Application No.10 of 2019 in LPA No.37 of 2017. This review application was dismissed by Division Bench of Hon'ble High Court vide order dated 13.09.2019. As a consequence, the order dated 25.09.2018 passed by the Hon'ble Court in LPA No. 37 of 2017 attained finality, as no SLP was filed based on the opinion of Advocate General, Punjab. Thus, the claim of the petitioners is being considered on the basis of the order dated 25.09.2018 passed in LPA No. 37 of 2017 as well as information provided by the concerned District Education Officer.

In order to redress the grievance of the petitioner no. 2, 4 and 8, the claim of the petitioners has been examined on the basis of record provided by the concerned District Education Officers (SE) as well as instructions issued by the Government from time to time. The petitioners were working in Master cadre in the Department of School Education. The petitioners being senior most in their school were given powers of drawing and disbursing officer in order to draw the pay of employees of concerned school for its smooth functioning. It was merely a stop gap arrangement, as the post of Headmaster/Headmistress was lying vacant during that tenure in the concerned school. It is worthwhile to mention here that the petitioners were not senior in their cadre based on the seniority maintained by the department at the State level, therefore they could not be promoted as Headmaster/Headmistress at that time of their superannuation.

The petitioners being from Master Cadre were entitled for the benefits of their original substantive post and not based on the pay drawn by them while discharging the responsibility of higher post as a stop gap arrangement on administrative grounds. When the instructions of the Government dated 15.04.2015 came to the knowledge of the department, the matter was considered in the wake of these instructions. However, the relevant part of instructions dated 15-04-2015 is reproduced here under: -

"3."The committee deliberated these issues and following decisions were taken based on the afore-mentioned judgments of Higher Courts including the Supreme Court of India :-

1. The Department of Personnel will issue modified instructions regarding CDC in reference to their circular no. 4/11/04-3PP/14755, dated 19.04.2005. The instructions should clearly indicate the direction given by the Apex Court mentioned supra so that there should be no violation of the guidelines. Further it should mention that henceforth CDC shall be given in accordance with the instructions issued by the Department of Personnel and any violation thereof will be the personal responsibility of the officer giving such CDC to the subordinate officer(s).
2. All the Departments will review their CDCs and if such arrangements do not comply with the instructions of the Department of Personnel, such arrangement should be immediately with-drawn. Ex-post-facto approval to

legitimate cases of CDC shall be obtained from the Department of Personnel.

3. The law of limitation shall also apply for giving benefits to people who were given current duty charge in the past.

4. As regards to giving ACP benefits during CDC, benefits shall be given by calculating ACP and the starting scale of the higher post of which he or she is in current duty charge and the employee will get only one benefit, ACP or CDC whichever is higher.

5. The last pay drawn of current duty charge shall not be counted towards giving pensionary benefits. The pensionary benefits of the employees shall be calculated based on the original last pay drawn presuming that the employee was not in the CDC charge."

A perusal of relevant record reveals that the petitioners being senior in the school, officiated on the higher post of Headmaster/Headmistress on account of vacant post of Headmaster/Headmistress in the concerned school, for which the petitioners have already been paid the financial benefits of officiating charge against higher post for the period when the petitioner officiated against the higher post. Moreover, it was a merely a stop gap arrangement in order to enable them to draw the pay of employees of concerned school. It is further evident from the record that the salary of petitioners was again fixed as per their original post i.e. the post of Master/Mistress, when their charge of higher responsibility was withdrawn. Moreover, the petitioners were never promoted to the post of Headmaster/Headmistress based on their seniority in their respective cadre. The petitioners even did not fall within the promotion zone for higher post while they officiated against the higher post. Therefore, the claim of the petitioners for the purpose of fixation of their pay on the basis of last pay drawn for fixing their pension is not valid and sustainable.

Therefore, after considering the grievance of the petitioners for fixation of their pay on the basis of last pay drawn by her in officiating capacity as Headmaster/Headmistress, I, Kuljit Paul Singh Mahi, P.C.S., Director Public Instructions (SE) Punjab, have reached to the conclusion that the claim of the petitioner no. 2,4 and 8 is not maintainable, same is

hereby rejected and Ordered accordingly. The claim of rest of petitioners will be decided by their Competent Authority.

Kuljit Paul Singh Mahi, PCS,
Director Public Instructions (SE) Punjab

2022/7/288-90

Endorsement No. As above

Dated S.A.S. Nagar: - 4/7/2022

A copy of speaking order is forwarded to the following for information and necessary action: -

1. Principal Secretary to Government of Punjab, Department of School Education (Edu-2 Branch), Punjab Civil Secretariat-II, Sector-9-D, Chandigarh.
2. Legal Cell office of D.P.I (SE) Punjab.
3. Superintendent Writs (Writ Section) of Hon'ble Punjab & Haryana High Court.
4. District Education Officer (S.E), Mansa and Ludhiana.
5. Superintendent Services-3, O/o DPI (SE) Pb.
6. Jai Dyal son of Kishor Chand, aged about 66 years, retired Math Master, Govt. Senior Secondary School, Village Chak Giljewala, District Sri Muktsar Sahib, resident of H.No. 4431-A, St. No.1, Kacha Bhagsar Road, Sri Muktsar Sahib.
7. Om Prakash son of Munshi Ram, aged about 63 years, retired Science Master, Govt. High School, Village Mahan Badhar, District Sri Muktsar Sahib, resident of H.No. 4634, Street No. 06, Abohar Road, Sri Muktsar Sahib.
8. Angrej Singh Son of Dogar Singh, aged about 67 years, retired Science Master, Govt. Senior Secondary School, Village Sham Khera, District Sri Muktsar Sahib, resident of V.P.O Guresar Jodha, District Sri Muktsar Sahib.

Assistant Director (HM)

Director Public Instructions (SE) Punjab

2830 ਪੰਨੇ ਪ੍ਰਿਥਮ ਮਹਾਰਾ (ਸੀ) ਮਾਨੀ
ਪਿਓ ਮਿਤੀ ਨੰ. 3/2022/81991 ਮਤ/ਮਿਤੀ 11-7-2022
(ਭਾਗ 2 ਤੇ ਭਾਗ 3 ਵਿਚ ਦਿੱਤੇ ਪ੍ਰਿਥਮ/ਮਹਾਰਾ ਨੂੰ ਦਿੱਤੀ
ਨਿੱਥੇ ਮਾਰਕ) 2830 ਪੰਨੇ ਤੋਂ ਪ੍ਰਿਥਮ ਮਿਤੀ 3
ਪ੍ਰਿਥਮ ਮਹਾਰਾ (ਸੀ)
ਮਾਨੀ ਮ