

PETITIONER:
STATE OF PUNJAB AND ANR.

Vs.

RESPONDENT:
KIRPAL SINGH BHATIA & ORS.

DATE OF JUDGMENT 29/08/1975

BENCH:
RAY, A.N. (CJ)
BENCH:
RAY, A.N. (CJ)
MATHEW, KUTTYIL KURIEN
CHANDRACHUD, Y.V.

CITATION:
1976 AIR 2459 1976 SCR (1) 529
1975 SCC (4) 740
CITATOR INFO :
D 1984 SC1901 (6,9)
F 1985 SC1681 (2,4,5)
E 1987 SC1621 (1,2)
RF 1988 SC 892 (4,5,13)

ACT:
Punjab Educational Services Class III School Cadre Rules, 1955-rr, 7 and 10 and instructions issued by the Government from time to time Scope of.

HEADNOTE:

Promotion from lower grades in the service to a higher grade is one on the methods of recruitment under r. 7 of the Punjab Educational Service Class III School Cadre Rules, 1955 Rule 10 of the rules states that members of the service would be entitled to such scales as may be authorised by the government from time to time.

The State Government issued letter dated 23rd July, 1957 on the subject of revision of scales of low paid government servants in which it was stated that the then existing scales of pay of certain categories of posts should, with effect from 1 May, 1957, be revised as shown therein. In that letter teachers according to their qualifications were placed in categories A and B, and the respective scales of pay to which they were entitled were mentioned. The letter dated 7 November, 1958 issued by the Deputy Director (Schools) to the Inspector of Schools stated that 25% of the posts of B.T./B.Ed. masters should be filled by promotion from amongst teachers working in the lower grade who have passed the above examinations and that the selection was to be made on the basis of seniority -cum- merit.

The respondents who were teachers were promoted from time to time as masters but were never allowed continuously beyond six months to avoid continuity in service and were not given the revised scales. They claimed the revised scales of pay as well as the posts of masters on the ground that they had taken the degrees in Bachelor of Teaching or its equivalent, that the letter dated 23 July, 1957 which became effective from 1 May, 1957 entitled them to the revised grade if they took the degree of Bachelor of

Teaching or its equivalent and that the letter of 7 November 1958 entitled them to the posts of masters to the extent of 25% on the vacancies.

The High Court allowed their prayers. In appeal to this Court it was contended by the State that (1) there was not to be a mass increase of pay of all teachers to that grade of pay but what the letter dated 23 July, 1957 meant was that a teacher who passed B.T. examination would be entitled to be appointed a master and on being so appointed would be entitled to the scale of pay. and (ii) that according to the letter of 7 November 1958 teachers who were qualified by possessing B.T./B.Ed. degrees would be entitled to get 25% of the posts provided the respective posts, according to their subject combination, were vacant.

Dismissing the appeals,

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HELD: The letter dated 23 July, 1957 fixed the scale of pay on the basis of academic qualifications while the letter dated 7 November 1958 recognised the right of promotion to the posts of masters to the extent of 25%. [533E]

1.(a) Rule 10 entitles the teachers to such scales of pay as may be authorised by the Government from time to time. Letter dated 23 July, 1957 showed that teachers who possessed the degree of B.T. Or its equivalent on 1 May, 1957 would be entitled to scales of pay mentioned therein. Those who will pass the examination of B.T. thereafter would be entitled to their revised scale of pay with effect from the date they passed the examination. [532G]

(b) The contention of the State that there was not to be a mass increase of scales of pay is unsound. Teachers who possessed degrees became entitled to the scales of pay according to category A. [532H]
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(c) The High Court rightly came to the conclusion that the scale of pay would be effective either from the date when the teachers would pass the examination of B.T. Or its equivalent or 1 May, 1957, whichever is later. [533B]

(2) The High Court rightly held that the letter dated 7 November, 1958 was subject only to two limitations namely (1) that teachers could not claim more than one fourth of the vacancies of posts of masters, and (ii) the claim by way of promotion would be considered by the appointing authority on the basis of seniority-cum-merit. No condition of combination of subjects could be read into the letter of 7 November 1958. The High Court was also correct in holding that the teachers were to be treated as serving in that scale of pay continuously and not on six months basis, and that the teachers were to be considered for appointment to the posts of masters to the extent of 25% quota as recognised for their category of teachers on the basis of seniority-cum-merit without being subjected to the condition of subject combination. [534A-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1109 of 1973.

Appeal by Special Leave from the Judgment and order dated the 10th March, 1977 of the Punjab and Haryana High Court in L.P.A. No. 714 of 1970 and

Civil Appeals Nos. 1411-1314, 872, 873, 1369 and 1582 of 1974.

F. S. Nariman (In C.As. Nos. 1109 and 1582), Harbans Singh (in C.A. No. 1109/73) and O. P. Sharma, (In all the

appeals), for the appellants.

Hardyal Hardy, S. K. Mehta and M. Qamarrudin, for respondents No. 1 & 8.

V. C. Mahajan, Urmila Sirur, S. C. Agarwala and V. J. Francis, for respondents Nos. 2-5, 9-12 and 15-21 (in C.A. No. 1109/73).

Urmila Sirur, for respondents 2-7, 12, 13, 15-18, 20-22, 26, 27, 30, 32-36, 38, 41, 44-46, 50-57 & 59-62 (In C.A. Nos. 1411-1412/74) and for all the respondents in (In C.A. No. 1414/74) Except Respondent No. 113 and respondents Nos. 1, 3-16 and 18-23 (In C.A. No. 1369/74). F.

V. C. Mahajan and Urmila Sirur, for respondents Nos. (All respondents in C.A. No. 872/74), and respondents Nos. 1, 2, 4-54, 5681, 83 and 85, (In C.A. No. 873/74) and respondents Nos. 1-214 (In C.A. No. 1582/74).

Balak Ram, for respondent No. 245 (In C.A. No. 1582/74). G

The Judgment of the Court was delivered by

RAY, C.J.-These appeals are by special leave from the judgment dated 10 March, 1972 of the Punjab and Haryana High Court.

The respondents were teachers in the former State of Pepsu. On 1 November, 1956 the former State of Pepsu merged in the State of Punjab. These teachers claim the revised scale of pay as well as the posts of Masters. Their claims are based on these grounds. First they have taken the Degrees in Bachelor of Teaching or its equivalent. Second, the letter dated 23 July, 1957 which became effective from 531

1 May, 1957 entitles them to the revised grade if they took the Degrees in Bachelor of Teaching or its equivalent. Third, the letter dated 7 November, 1958 entitles the respondents to the posts of Masters to the extent of 25 per cent of the vacancies.

The letter dated 23 July, 1957 is addressed by the Secretary to the Punjab Government. The letter is on the subject: "Revision of Scales of pay of low-paid Government servants". The letter states that after carefully considering the recommendations made by Pay Revision Committee it has been decided that the existing scales of pay of certain categories of posts should, with effect from 1 May, 1957, be revised as shown therein. It is, thereafter stated that it has been decided that all teachers according to their qualifications should be placed in the following two broad categories:

Category 'A'

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

Category 'B' consists of four groups. The first group consists of Matriculates with Basic Training (including Junior Teachers). The second group consists of Junior School Teachers (including Assistant Mistresses with B.A./Inter-Matric Plus J.A.V. Training). Groups III and IV are also mentioned which are not relevant for the purposes of these appeals. Thereafter the crucial portions in the letter are these. For category 'A' the scale of pay is Rs. 110-8-19/10-250 with a higher start for M.A. Or M.Sc. as at present. The existing per centage of posts fixed by Government for the scales of Rs. 110-8-190/ 10-250 and Rs. 250-10-300 should remain unchanged at 85 per cent and 15 per cent respectively.

It may be stated here that the scale of pay of Head Masters being item (1) in Appendix is Rs. 250-10-350. The scale of pay of Masters, Science Masters, Agriculture

Masters, Clerical and (Commercial Master and Assistant District Inspector of Schools is Rs. 250-10-300. The scale of pay of Second Master, Masters, Physical Training Masters Assistant District Inspector of Schools. Agriculture Masters, Clerical and Commercial Masters and Science Masters being item (2) is Rs. 110-8-190-10-250 with a start of Rs. 126/- to M.A./M.Sc./M.III/B.T. and Rs. 150/- to M.A./M.Sc./M.Ed.(11)/B.T. and Rs. 150/- to M.A./M.Sc./M.Ed.(11)/B.T'.

The second letter on which the respondents relied is dated 7 November 1958. This letter is from the Deputy Director (Schools) to the Inspector of Schools. The subject is: Promotion of the so-called unadjusted B.A. B.T./B.Ed., teachers to the posts of Master on Rs. 110/250 grade. It is stated there that it has been decided that 25 Per cent posts of B.T./B.Ed. Masters in Rs. 110-250 grade should be filled by promotion from amongst the teachers working in the lower grade who have passed the B.A.. B.T./B.Ed. Examinations. The selection is to be made on the basis of seniority-cum-merit.

Two of the relevant rules in Punjab Educational Service Class III A school Cadre Rules, 1955 which were in force with effect from 23 May, 1957 are numbered 7 and 10. Rule 7 speaks of the method of recruitment. The methods of recruitment are: (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. The manner of appointment shall be strictly by selection etcetera as mentioned there. Rule 10 states that "members of the service will be entitled to such scales of pay as may be authorised by the Government from time to time. The scales of pay in force are specified in Appendix 'A' against each post". Appendix 'A' is an appendix to the Rules. This Appendix mentions Masters as item No. 2. The scale of pay given in item No. 2 for the posts of Masters, who are ordinary graduates with 'degree of Bachelor of Teaching or equivalent thereof is Rs. 110-8-190/10-250 whereas for M.As. and M.Sc. with the degree of Bachelor of Teaching or Masters of Teaching or their equivalent, the start of the grade is higher as already mentioned.

The letter dated 23 July, 1957 revised the scales of pay with effect from 1 May, 1957. These appeals concern teachers who are in category 'A'. The revised scale given to teachers in category 'A' is Rs. 110-8-190/10-250. Any teacher who would satisfy the test mentioned in category 'A' would be entitled to the scale of pay.

Counsel on behalf of the State contended that there was not to be a mass increase of all teachers to that grade of pay but the letter dated 23 July, 1957 meant that a teacher who passed Bachelor of Teaching examination would be entitled to be appointed a Master and on being so appointed would be entitled to the scale of pay.

With regard to the letter dated 7 November 1958 which stated that 25 per cent posts of B.T./B.Ed. Masters in Rs. 110-250 grade should be filled by promotion from amongst the teachers who were in lower grade, counsel for the State contended that teachers who were qualified by possessing B.T. B.Ed. degrees would be entitled to get 25 per cent of the posts provided the respective posts according to their subject combination were vacant.

Rule 10 entitles the teachers to such scales of pay as may be authorised by the Government from time to time. The letter dated 23 July, 1957 shows that teachers who possess the degree of Bachelor of Teaching or its equivalent on 1

May 1957 will be entitled to scales of pay mentioned therein. Those who will pass the examination of Bachelor of Teaching thereafter will be entitled to their revised scale of pay with effect from the date they pass the examination.

The contention of the State that there was not to be a mass increase of scale of pay is unsound. Teachers who possessed degrees became entitled to scales of pay according to category 'A'.

The High Court rightly referred to the letter of the Secretary of the Department dated 24 September, 1957 that teachers holding B.A.,

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B.T./B.A., B.Ed. qualifications would hence-forth 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 or 1 May, 1957, whichever is later. The High Court, however, gave the teachers the scales of salary confined to a period of 3 years and 2 months counting back from the date of the presentation of the writ petition. In other words, the High Court did not allow the teachers any claim prior to 1967.

The letter dated 7 November, 1958 was necessary because in spite of the revised grade of Rs. 110-250 having been granted to Bachelor in Teaching or equivalent thereof, they were not being appointed by process of promotion to the posts of Masters. The letter stated that "selection is to be made on the basis of seniority-cum-merit, due regard being paid to good reputation regarding character, popularity among students and parents and capacity to maintain discipline". The respondents claimed that according to the letter those of them who were Bachelor in Teaching or Bachelor in Education were entitled to be appointed to the posts of Masters. The teachers could not claim vacancies by promotion exceeding 25 per cent. Their claim for appointment by promotion had to take into consideration not merely their seniority but also their merit. This percentage of 25 as fixed by the letter is covered by Rule 7(ii) and the principle of selection for appointment is covered by Rule 7 clause (iii). Therefore, the earlier letter dated July 23, 1957 fixed the scale of pay on the basis of academic qualifications. The subsequent letter dated 7 November, 1958 recognised the right of promotion to the posts of Masters to the extent of 25 per cent.

The High Court said that the contention of the State that the teachers could not be considered for promotion unless they satisfied the condition of subject combination namely, that if they were ordinary graduates with training qualifications, they must have studied two out of the four subjects, namely, History Geography, Economics and political Science is not supported by the letter dated 7 November, 1958. The High Court rightly said that the letter does not speak of any limitation of subject combination for promotion.

Some of the teachers were from time to time promoted to the posts of Masters but never continuously beyond a period of six months. After completion of six months, there was a break to avoid continuity in service for the posts of Masters beyond six months. The State contended that the teachers could not be considered for promotion unless the Board were satisfied that the teachers if ordinary graduate with training qualifications must have also studied two out of four subjects of History, Geography, Economics and Political Science. The teachers on the other hand contended

that once the State Government had taken a decision as embodied in the letter dated 7 November, 1958 the policy of not allowing the teachers to continue beyond six months on temporary basis was nullifying the letter and spirit of the decision of the letter dated 7 November, 1958. The teachers also contended that the promotion of teachers to Masters is completely independent of any consideration like the combination of subjects. The High Court rightly held that letter dated 7 November, 1958 was subject only to two limitations. One was that teachers could not claim more than one fourth of the vacancies of the posts of Masters and the other was that the claim by way of promotion would be considered by the appointing authority on the basis of seniority-cum-merit. The High Court rightly held that the letter dated 7 November, 1958 was not subject to the condition of subjects combination being fulfilled. There are three categories of teachers-Science Masters, Mathematics Masters and Social Studies Masters. No condition of combination of subjects can be read into the letter of 7 November, 1958.

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The second conclusion of the High Court is correct that the teachers were to be treated as serving in that scale of pay continuously and not on six months basis.

The third conclusion which the High Court arrived is correct that the teachers were to be considered for appointment to the posts of Masters to the extent of 25 per cent quota as recognised for their category of teachers on the basis of seniority-cum-merit without being subjected to the condition of subject combination.

The judgment of the High Court is affirmed. The appeals are dismissed. The respondents will be entitled to one set of costs.

P.B.R.

Appeals dismissed .

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