

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

OA No.060/00986/2016

Date of decision- 29.01.2018

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MRS. P. GOPINATH, MEMBER (A)**

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1. Anupma W/o Sh. Suman Batish, Aged 36 years,
Yoga Instructor and R/o H.No. 720 (F.F),
Sector 22 A, Chandigarh.
2. Sheeraj S/o Sh. Bhagwan Dass, Aged 39 years,
Yoga Instructor, R/o H.No. 3257,
Sector -44 D, Chandigarh.
3. Sargi Kohli W/o Sh. Sanjeev Kohli, Aged 33 years,
Yoga Instructor, R/o HL 67, Phase-7, Mohali.
4. Suman Batish S/o Sh. S.K. Batish, Aged 32 years,
Yoga Instructor and R/o H.No. 720 (F.F),
Sector 22 A, Chandigarh.
5. Rajwant Kaur W/o Sh. Sukhdeep Singh Sandhu,
Aged 41 years, Yoga Instructor, R/o H.No. 1102,
Sector -39 B, Chandigarh.
6. Roshan Lal S/o Sh. Rameshwar Lal, Aged 32 years,
Yoga Instructor R/o H.No. 1639, Sector 22, Chandigarh.
7. Mohinder Kumar S/o Sh. Ram Partap, Aged 39 years,
Yoga Instructor R/o H.No. 2526, Sector 19 C, Chandigarh.
8. Kulwant Singh S/o Sh. Kundan Singh, Aged 39 years,
Yoga Instructor, R/o H.No. 2,
Village Khuda Ali Sher, Chandigarh.

9. Meetu D/o Sh. Surinder Singh,
 Yoga Therapist R/o H.No. 1392 A,
 Sector 39 B, Chandigarh.

All applicants presently posted as Yoga Instructor/Therapist at Government College of Yoga and Health Education, Sector 23, Chandigarh.

...APPLICANTS

BY ADVOCATE : Mr. D.S. Rawat.

VERSUS

1. Union Territory of Chandigarh
 Through Secretary, Department of Education,
 U.T, Secretariat, Sector 9, Chandigarh.
2. The Director,
 Higher Education, Chandigarh Administration,
 U.T Secretariat, Sector 9, Chandigarh.
3. Secretary Department of Personnel,
 Chandigarh Administration,
 U.T. Secretariat, Sector 9, Chandigarh.
4. State of Punjab,
 Through Secretary Department of Finance, Punjab,
 Punjab Civil Secretariat, Chandigarh.
5. Secretary,
 Department of Personnel, Punjab,
 Punjab Civil Secretariat, Chandigarh.

...RESPONDENTS

BY ADVOCATE: Mr. Rajesh Punj, counsel for respondent no. 1 to 3.
 Mr. Rakesh Verma, counsel for respondent no. 4 & 5.

ORDER (ORAL)

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SANJEEV KAUSHIK, MEMBER(J):-

Applicants impugned instruction/letter dated 29.09.2014 (Annexure A-1) issued by Department of Personnel, Punjab regarding classification in Service/Posts and letter dated 18.11.2014 (Annexure A-2) issued by Chandigarh Administration, Department of Personnel adopting Punjab instructions dated 29.09.2014.

2. Facts which led to filing of present O.A are that the applicants commenced their service as Yoga Instructors/Yoga Therapist in the year 2007 with the Chandigarh Administration in the pay scale of Rs. 5480-8925 + allowances as sanctioned time to time by the Chandigarh Administration. On 27.05.2009, the Government of Punjab formulated Punjab Civil Services (Revised Pay) Rules, 2009 (for short 'the Rules 2009') and revised the pay scales of all its employees w.e.f. 01.01.2006. As per the 2009 Rules, all the posts were grouped in accordance with pay scales as provided therein. Since Chandigarh Administration is following the Punjab Rules, therefore, aforesaid rules were also adopted by Chandigarh Administration and the applicants were granted the revised pay scale of Rs. 10300-34800+ Grade pay of Rs. 3600/- w.e.f. their date of appointment as 2009, rules were made applicable w.e.f. 01.01.2006. It is the case of the applicants that in the month of December, 2011 the Punjab Government further revised/modified the pay scale of many posts which was also adopted by the Chandigarh Administration vide which the pay scales of the post of Yoga Instructor/Yoga Therapist was also changed and they were granted the pay of Rs. 10300-34800, plus Grade Pay of Rs. 5000/-, thus, changing the grouping of the post of Yoga Instructor from Group

C to Group A post in accordance with Rules, 2009 (Annexure A-6). It is thereafter that in total contravention of the Punjab Civil Services (Revised Pay) Rules, 2009, the respondent-State of Punjab issued impugned instruction/letter dated 29.09.2014 (Annexure A-1) conveying that a decision has been taken by the Government that the grant of higher pay scale/Grade pay after issuance of notification dated 27.05.2009 will not change the grouping of the post. Said notification was also adopted by the Chandigarh Administration vide letter dated 18.11.2014 (Annexure A-2). Thus, the post of Yoga Instructor/Yoga Therapist which was earlier in Group C was subsequently included in Group A has been withdrawn by the respondents. Hence the applicants are before this Court invalidating these two communications whereby they have taken decision contrary to 2009 Rules.

3. In support of above plea, Mr. Rawat, learned counsel for the applicants challenged the impugned order on three counts. He argued that once grouping is done as per the revised Pay Rules, 2009 then same cannot be withdrawn by executive instruction. Secondly that impugned instruction has not been issued after getting vetted from the law department. Thirdly, clarification is to be issued by the Finance Department, and not by the Personnel department of Chandigarh Administration, thus, it is prayed that impugned orders/letters be set aside and a direction be issued to consider the post of applicants in Group A category instead of Group C.

4. The respondents while resisting the claim of the applicants did not dispute the factual accuracy. However, they submitted that as per the notification dated 06.06.1990 issued by Chandigarh Administration while implementing the Chattopadhyaya Committee

Report dated 01.01.1986, the pay scale of T.G.T in Chandigarh Administration was given to Yoga instructor/Yoga Therapist. Vide notification dated 13.01.1992, employees of Chandigarh Administration were granted the benefit of Punjab pay scales to its employee w.e.f. 01.04.1991. Notification to this effect was issued on 06.02.1992. Similarly vide notification dated 30.11.1994, Yoga Instructors and Yoga Therapists were equated with Masters/Mistresses and granted the pay-scale of Rs. 1640-2925. They were getting the same pay scale and subsequent revision of pay scale was also made applicable to Masters/Mistresses of the Chandigarh Administration. Subsequent to revision, the Punjab Government revised the pay scale vide notification dated 08.11.2012 and similarly Chandigarh Administration also adopted the said notification and revised the pay scale of Yoga Instructors/Therapists vide notification dated 17.05.2013. It is also submitted therein that as per the Chandigarh Education Service (School Cadre) Group C, Recruitment Rules, 1991, the post of Masters/Mistresses (TGT) is Group C post, thus, it is submitted that by revision of pay, Group cannot be changed even though the pay scale is of particular Group. Govt. of Punjab revised the pay scale and thereafter, the pay scale of post of Yoga Instructor/Yoga Therapist was also changed and the applicants were granted the pay scale of Rs. 10300-34800 + GP 5000/- but it will not change the Group as per their service Rules. Further, it has been clarified by Department of Personnel, Punjab vide notification dated 29.09.2014 that merely by granting the higher pay scale/grade pay will not change the classification of the post which was also duly adopted by the

Chandigarh Administration vide letter dated 18.11.2014. It is, therefore, prayed that O.A be dismissed.

5. Mr. Punj, learned counsel for respondent nos. 1 to 3 argued on similar lines of written statement filed on their behalf.

6. We have given our thoughtful consideration to the entire matter and have perused the pleadings as available on record with the able assistance of the learned counsel for the parties.

7. What borne out from the conjunctive perusal of the pleadings are that the applicants who are working as Yoga Instructor/Yoga Therapist are against the impugned notification (Annexure A-1) issued by Government of Punjab which has been adopted by the Chandigarh Administration to the effect that though the Government has again made alteration in some categories/revised pay of some posts/Grade Pay but no effect would be taken place in Groupism because of alteration in services/Revised pay of posts/Grade pay. Meaning thereby that though pay scale of post of Yoga Instructor/Yoga Therapist in Punjab falls under the Group A as per 2009 Rules, but that will not change the category of applicants from Group C to Group A. Pleadings also makes it clear that service condition of Yoga Instructors/Yoga Therapists are governed by Chandigarh Education Service (School Cadre) Group C, Recruitment Rules, 1991 and by taking conscious decision vide notification dated 06.06.1990, they have been given the pay scale of T.G.T based upon the Chattopadhy Committee Report dated 01.01.1986. Subsequent to that vide notification dated 30.11.1994, the post of Yoga Instructors/Yoga Therapists were equated with Masters/Mistresses and were granted the same pay scale which was attached to said post i.e.

Rs. 1640-2925. They were getting the revision of pay scale as available to the Masters/Mistresses working in the Chandigarh Administration as per 1991 Rules. The post of Masters/Mistresses, as per 1991 Rules falls in Group C as seen from service Rules which are attached as Annexure R-5. For convenience, relevant part of the Rules reads as under:-

(1)	(2)	(3)	(4)	(5)	(6)	(6-A)	(7)
3. Masters/ Mistress (T.G.Ts)	936	General Central Service (Group C)	Rs. 1400- 2600	Non selecti -on	Yes	30 years (Relaxable upto 40 years I the case of widows, deserted wives and upto 35 years for SC/ST & Govt. Servants and women)	Essential (i) for science Master or Mistress (Non-Medical/Medical) B.Sc with at least 45 % marks from a recognized University with Physics, Chemistry and Mathematics and B.Ed OR B.Sc with at least 45% marks with Zoology, Chemistry, Botany and B.Ed.

The above extracted part makes it clear that no where it is the case of the applicants that group of Masters/Mistresses from Group C to Group A has been changed by the respondents and they have been left out, rather they are seeking declaration that since as per Rules 2009, they were held entitled for the pay scale 10300-34800 + GP of Rs. 5000/- and was included in Group A under 2009 Rules, therefore, their category of Group be also changed from Group C to Group A which too our mind cannot be accepted because once there are service rules which are framed under Article 309 of the Constitution of India, then general rules cannot over ride specific rule. This has also been clarified by the respondents while issuing the clarification/letters. If we accept the contention of the applicants then we are amending the 1991 rules

which are governing the field, thus, we find no reason to interfere with the impugned orders/letters. Accordingly, O.A is dismissed being devoid of merit.

8. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 29.01.2018.

'jk'

