

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CHANDIGARH BENCH

O.A.NO.060/01111/2017

Orders pronounced on: 11.04.2019  
(Orders reserved on:08.04.2019)

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

Rajinder Kaur,

Aged about 67 years,

Class-C,

Wife of Sh. Jaswant Singh,

Retired Nursery Teacher,

Govt. Model High School,

Sector 36, Chandigarh,

Resident of House No.842/1, Sector 41-A,

Chandigarh.

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Applicant

**(BY MR. R.K.ARORA, ADVOCATE).**

Versus

1. Chandigarh Administration through the Secretary,  
Department of Education, Sector-9, U.T. Chandigarh.
2. The Director of Public Instructions (Schools), Chandigarh  
Administration, U.T Chandigarh.
3. The District Education Officer, Chandigarh  
Administration, Sector 19, UT, Chandigarh.
4. The Accountant General (A&E), UT Chandigarh, Sector  
17, Chandigarh.

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Respondents

**(BY MR. A.L. NANDA, ADVOCATE FOR RESP NO. 1 TO 3.  
MR. G.S.SIDHU, PROXY COUNSEL FOR  
MR. I.S. SIDHU, ADVOCATE FOR R.NO.4).**

**O R D E R**  
**HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)**

1. The applicant has filed this Original Application (O.A) under section 19 of the Administrative Tribunals Act, 1985, for a declaration that the action of the respondents in not re-fixing her pay and pension in the same terms as allowed in O.A. No. 060/00226/2015 - **JASJEET KAUR NIJHAWAN VS. CHANDIGARH ADMINISTRATION & OTHERS**, decided on 17.3.2016 (Annexure A-20), as implemented vide order 3.1.2017 (Annexure A-21), by granting her benefit of revised scale in terms of 5<sup>th</sup> Punjab Pay Commission Report, adopted by the Chandigarh Administration, on the basis of last pay actually drawn by the applicant with benefit of JST scale and / or by restoration of the higher scale and to release revised pension, gratuity and other retiral benefits along with arrears, is illegal and arbitrary and she be extended similar benefit.

2. The facts of the case are largely not in dispute. The applicant joined service as Nursery Teacher on 22.7.1976 on ad-hoc basis, which was regularized w.e.f. 29.5.1977. She passed higher qualification of B.A. and as such was entitled for higher pay scale in terms of the Punjab Government instructions. She, along with others, approached this Tribunal by filing **O.A. NO. 274-CH-2002** claiming higher pay scale on having acquired higher qualification prior to 19.2.1979. The O.A. was allowed vide order dated 8.10.2002 in terms of decision in **R.D. KAUSHAL & OTHERS VS. UNION OF INDIA & OTHERS**, O.A. No. 649-Ch-1997 decided on 8.1.1998 (Annexure A-1), holding that benefit of higher pay scale, as a result of the acquisition of higher qualification prior to 19<sup>th</sup> February, 1979, shall be extended to

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them. The applicant and others were extended the due benefits vide order dated 25.9.2002 and her pay was also re-fixed on 17.3.2003. She retired from service on 30.6.2008. She was allowed some retiral dues on the basis of higher pay scale. However, the benefit already granted in her favour, as a result of decision of this Tribunal, was ordered to be withdrawn vide order dated 14.5.2009 in pursuance of which leave encashment and arrears on account of grant of revision in pay sales w.e.f. 1.1.2006 etc. were withheld to facilitate recovery calculated by the respondents. This was done on the ground that Punjab Government has withdrawn the benefit of higher pay scale on the basis of higher qualification.

3. The decision of Punjab Government withdrawing the benefit was challenged in C.W.P. No. 738 of 2009 (**MANJEET KAUR & OTHERS VS. THE STATE OF PUNJAB & OTHERS**) which was allowed on 1.12.2009 (Annexure A-8) quashing the withdrawal communication dated 27.3.2008 and respondents were directed not to re-fix the pay and not to effect any recovery and it was directed that petitioners' pensionary/retiral benefits shall be released on the basis of their pay received by them at the time of retirement. This order stands complied with vide order dated 28.4.2011 (Annexure A-3) by the Punjab Government. The applicant filed C.P. No. 93 of 2013 in earlier Original Application No. 274-CH-2002 which was dismissed on 20.1.2014. Since the applicant was still not satisfied and, therefore, he approached this Tribunal by filing a fresh C.P. No. 060/00093/2014, which was also dismissed as withdrawn with liberty to challenge action on original side. It is prayed that O.A. be allowed in same terms as

allowed in O.A. No. 060/00226/2015 – **JASJEET KAUR NIJHAWAN VS. CHANDIGARH ADMINISTRATION & OTHERS**, decided on 17.3.20165 (Annexure A-20), as implemented vide order 3.1.2017 (Annexure A-21), by granting her benefit of revised scale in terms of 5<sup>th</sup> Punjab Pay Commission Report, adopted by the Chandigarh Administration, on the basis of last pay actually drawn by the applicant but applicant has been denied such benefit despite representations from time to time, hence the O.A.

4. The respondents have opposed the O.A. on the ground that since the Punjab Government has withdrawn the grant of pay scales on the basis of qualifications w.e.f. 1.1.1986 vide memo dated 22.11.2005 and have ordered that the teachers shall be entitled to the pay scales on the basis of the posts held by them w.e.f. 1.1.1986 instead of on the basis of their qualifications and this letter was adopted vide letter dated 3.10.2007 (Annexure R-2) and as such direction was issued to re-fix the pay of all such teachers who have been granted the higher pay scales under the Punjab Government earlier letters dated 23.7.1957 and 19.2.1979. Thus, they support the impugned action taken by them.

5. The learned counsel for the applicant vehemently argued that even if action of respondents in withdrawing the benefit on the basis of letter dated 3.10.2007 is upheld, even then the benefits already granted prior thereto would be protected more so when same has been granted pursuant to the directions of the Court of law and when a judicial pronouncement is binding between the parties, then administrative ipse dixit cannot do

away with judicially settled things and benefits already allowed to persons like the applicant. On the other hand, learned counsel for respondents justified their action.

6. We have heard the learned counsel for the respondents and perused the material on file with their able assistance.

7. The issue as raised in this case is no longer res-integra and stands settled by jurisdictional High Court in the case of **MANJEET KAUR & OTHERS VS. THE STATE OF PUNJAB & OTHERS** (supra) which was allowed on 1.12.2009 and respondents were directed not to re-fix the pay and not to effect any recovery and it was directed that their pensionary/retiral benefits shall be released on the basis of their pay received by them at the time of retirement. That order already stands complied with vide order dated 28.4.2011 (Annexure A-3) by the Punjab Government. Not only that, this Tribunal in the case of Jasjeet Kaur Nijhawan (supra) has allowed similar claim. In that case also, benefit was allowed on 1.8.2000 on the basis of O.A. No.329-CH-1999 filed by applicant (therein), which was withdrawn. The Court held that once a decision of withdrawal of JST grade by State of Punjab has been set aside by High Court in CWP No. 9848/2011 titled **NAND LAL & OTHERS VS. STATE OF PUNJAB & OTHERS**, decided on 15.7.2011, therefore, applicant (therein) is also entitled to similar treatment and she was held entitled for JST grade and O.A was allowed directing the respondents to revise her actual benefits etc.

8. The issue can be examined from another angle. In Appeal (Civil) No. 4108 of 2007 titled **THE COMMISSIONER, KARNATAKA HOUSING BOARD Vs. C. MUDDAIAH** decided on

07/09/2007, the Hon'ble Apex Court has settled that (1) a Binding judicial pronouncement between the parties cannot be made ineffective or inoperative with the aid of legislative power by making a provision which, in substance and in reality, overrides and overrules a decision rendered by competent Court (2) Once a direction is issued by a competent court, it has to be obeyed and implemented without any reservation and (3) if a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law". In view of this, the respondents could not have taken back the benefit already granted to the applicant on the basis of a judicial pronouncement, binding between the applicant and the respondents.

9. In the wake of aforesaid factual and legal scenario, this O.A. stands allowed. The action of the respondents in withdrawing the benefit already granted to the applicant is declared as illegal and arbitrary. The respondents are directed to restore the benefits to the applicant in the same terms as in the case of Smt. Jasjeet Kaur Nijhawan (supra). The needful be done within a period of two months from the date of receipt of a certified copy of this order. However, the parties are left to bear their own costs.

**(SANJEEV KAUSHIK)**  
**MEMBER (J)**

**(P. GOPINATH)**  
**MEMBER (A)**

**PLACE: CHANDIGARH.**  
**DATED: 11<sup>th</sup> APRIL, 2019**

**HC\***