

**2023 STPL(Web) 23 HP
HIGH COURT OF HIMACHAL PRADESH**

(JUSTICE JYOTSNA REWAL DUA, J.)

RANJIT SINGH AND OTHERS

Petitioners

VERSUS

STATE OF H.P. AND OTHERS

Respondents

SUSHIL KUMAR DHIMAN AND OTHERS

Petitioners

VERSUS

STATE OF H.P. AND OTHERS

Respondents

PAWAN KUMAR AND OTHERS

Petitioners

VERSUS

STATE OF H.P. AND OTHERS

Respondents

AMIR CHAND AND OTHERS

Petitioners

VERSUS

STATE OF H.P. AND OTHERS

Respondents

VIJAY KUMAR AND OTHERS

Petitioners

VERSUS

STATE OF H.P. AND OTHERS

Respondents

DIWAKAR DUTT SHARMA AND OTHERS

Petitioners

VERSUS

STATE OF H.P. AND OTHERS

Respondents

DEPAN LAL AND OTHERS

Petitioners

VERSUS

STATE OF H.P. AND OTHERS

Respondents

TRILOK CHAND AND OTHERS

Petitioners

VERSUS

STATE OF H.P. AND OTHERS

Respondents

HARDYAL SINGH THAKUR AND OTHERS

Petitioners

VERSUS

STATE OF H.P. AND OTHERS

Respondents

MOHAN LAL

Petitioners

VERSUS

STATE OF H.P. AND OTHERS

Respondents

RANJIT KUMAR AND OTHERS

Petitioners

VERSUS

STATE OF H.P. AND OTHERS

Respondents

HARISH KUMAR AND OTHERS

Petitioners

VERSUS

STATE OF H.P. AND OTHERS

Respondents

AMAR SINGH AND OTHERS

Petitioners

VERSUS

STATE OF H.P. AND OTHERS

Respondents

ABHINAY SOOD AND OTHERS

Petitioners

VERSUS

STATE OF H.P. AND OTHERS

Respondents

VINOD KUMR AND OTHERS

Petitioners

VERSUS

STATE OF H.P. AND OTHERS

Respondents

KISHORI LAL AND OTHERS

Petitioners

VERSUS

STATE OF H.P. AND OTHERS

Respondents

OM PARKASH AND OTHERS

Petitioners

VERSUS

STATE OF H.P. AND OTHERS

Respondents

ASHOK KUMAR AND OTHERS

Petitioners

	<i>VERSUS</i>	
STATE OF H.P. AND OTHERS		Respondents
RAGHUBIR SINGH AND OTHERS		Petitioners
	<i>VERSUS</i>	
STATE OF H.P. AND OTHERS		Respondents
SWARN GULERIA AND OTHERS		Petitioners
	<i>VERSUS</i>	
STATE OF H.P. AND OTHERS		Respondents
RAJINDER KUMAR AND OTHERS		Petitioners
	<i>VERSUS</i>	
STATE OF H.P. AND OTHERS		Respondents
SHARAN VIR AND OTHERS		Petitioners
	<i>VERSUS</i>	
STATE OF H.P. AND OTHERS		Respondents
RAKESH CHAND AND OTHERS		Petitioners
	<i>VERSUS</i>	
STATE OF H.P. AND OTHERS		Respondents
RAJESH KUMAR AND OTHERS		Petitioners
	<i>VERSUS</i>	
STATE OF H.P. AND OTHERS		Respondents
AJEEV KUMAR AND OTHERS		Petitioners
	<i>VERSUS</i>	
STATE OF H.P. AND OTHERS		Respondents
RAJINDER SINGH AND OTHERS		Petitioners
	<i>VERSUS</i>	
STATE OF H.P. AND OTHERS		Respondents
AJAY AND OTHERS		Petitioners

VERSUS

STATE OF H.P. AND OTHERS

Respondents

KAUR CHAND AND OTHERS

Petitioners

VERSUS

STATE OF H.P. AND OTHERS

Respondents

SHAMMI DEVI AND OTHERS

Petitioners

VERSUS

STATE OF H.P. AND OTHERS

Respondents

JOGINDER PAL VERMA AND OTHERS

Petitioners

VERSUS

STATE OF H.P. AND OTHERS

Respondents

INDU BALA SHARMA AND OTHERS

Petitioners

VERSUS

STATE OF H.P. AND OTHERS

Respondents

SURJIT SINGH AND OTHERS

Petitioners

VERSUS

STATE OF H.P. AND OTHERS

Respondents

HARI SINGH RANTA AND OTHERS

Petitioners

VERSUS

STATE OF H.P. AND OTHERS

Respondents

CWP No. 2500 of 2021; CWP No. 2524 of 2021; CWP No. 3129 of 2021; CWP No. 3204 of 2021; CWP No. 3206 of 2021; CWP No. 3207 of 2021; CWP No. 3209 of 2021; CWP No. 3210 of 2021; CWP No. 3359 of 2021; CWP No. 3384 of 2021; CWP No. 3913 of 2021; CWP No. 3923 of 2021; CWP No. 3956 of 2021; CWP No. 3957 of 2021; CWP No. 3958 of 2021; CWP No. 3959 of 2021; CWP No. 3960 of 2021; CWP No. 3961 of 2021; CWP No. 3962 of 2021; CWP No. 3963 of 2021; CWP No. 3964 of 2021; CWP No. 3965 of 2021; CWP No. 3966 of 2021; CWP No. 3967 of 2021; CWP No. 3968 of 2021; CWP No. 3969 of 2021; CWP No. 3970 of 2021; CWP No. 3971 of 2021; CWP No. 3972 of 2021; CWP No. 5082 of 2021; CWP No. 6339 of 2021; CWP No. 7079 of 2021; CWP No. 7080 of 2021 and CWP No. 2935 of 2022-Decided on 7-7-2023

Service Law

Service Law – Promotion - None of the incumbents who were promoted as Head Teacher were granted promotional increments. Held: All the HTs in service on 01.10.2012 are constituents of one common block of HTs. It is an admitted factual position that HTs promoted prior to 01.10.2012 were not granted promotional increments wherein HTs promoted as such after 01.10.2012 have been granted promotional increments w.e.f. 01.10.2012. The respondents cannot restrict grant of promotional increment only to those HTs who got promoted as such after 01.10.2012. Petition allowed - The respondents are directed to

release the promotional increments to the petitioners to the post of Head Teachers w.e.f. 01.10.2012/the date from which the promotional increment has been released to such of Head Teachers who were promoted as such after 01.10.2012. This exercise be carried out within six weeks.

(Para 4, 5)

Advocate(s): For the Petitioners : S/Shri Onkar Jairath, Shubham Sood, Naresh Kaul and Parkash Sharma, Advocates, for the respective petitioner(s) in the respective petitions.

For the Respondents : Mr. Anup Rattan, Advocate General, with Mr. Y.P.S. Dhaulta, Mr. Rupinder Singh, Mr. Varun Chandel, Additional Advocates General with Mr. Sumit Sharma, Deputy Advocate General, for the State-respondents in all the petitions.

JUDGMENT

Jyotsna Rewal Dua, Judge-All these petitions involve common question of law and facts, hence are being taken up together for adjudication. For convenience, facts and pleadings from lead case CWP No. 2500 of 2021 (Ranjit Singh and others Vs. State of H.P. and others) are being referred to hereinafter. Petitioners are presently serving as Head Teachers/Central Head Teachers in the State Education Department. With the basic grievance of denial of increments on their promotion as Head Teachers and discrimination meted out to them on this count vis-à-vis other Head Teachers, who have been given promotional increments on promotion to the post of Head Teachers, the petitioners have preferred these writ petitions.

2. The case

2(i) Petitioners were appointed as Junior Basic Teachers (JBT) in respondent-Education Department on different dates. They satisfy the criteria laid down under the applicable Recruitment and Promotion Rules (R&P Rules).

2(ii) Post of JBT held by the petitioners is feeder cadre for promotion to the post of Head Teacher. Post of Head Teacher is feeder category post for promotion to the post of Central Head Teacher. All the petitioners were promoted as Head Teachers. Some of them now stand promoted to the post of Central Head Teacher.

2(iii) Present dispute pertains to the claim of the petitioners to the promotional increment on their promotion to the post of Head Teacher. Therefore, it will be appropriate to first take note of pay scale enjoyed by the post of JBT and Head Teacher (HT).

1. Sr. No.	2. Date	3. J.B.T. Pay scale	4. H.T. Pay scale
1.	w.e.f. 01.01.1986	Rs. 1200-2100	1410-2750
2.	w.e.f. 01.01.1996	Rs. 4020-6200 Further revised to Rs. 4550-7200	4550-7220
3.	w.e.f. 01.01.2006	Rs. 5910-20200 + 3,000 (GP) after two years of service Rs. 10300- 34800 + 4200 (GP)	10300-343800 + 4200 (GP)

The above table is indicative of the fact that petitioners and other similarly situated JBTs were initially fixed in the pay scale of Rs. 1200-2100 w.e.f. 01.01.1986. Pay of Head Teachers was fixed in the pay scale of Rs. 1410-2750 w.e.f. 01.01.1986. Pre-revised pay scale of JBTs was revised to Rs. 4020-6200 w.e.f. 01.01.1996. Subsequently, this scale was further revised to Rs. 4550-7220 w.e.f. 01.01.1996. Post of Head Teacher was carrying the pay scale of Rs. 4550-7220 w.e.f. 01.01.1996. This was the same scale that was granted to JBTs. According to the petitioners, the post of Head Teacher carries higher responsibilities than the ones attached to the post of JBT. The petitioners though were promoted to the post of Head Teachers, but they remained in the pay scale of Rs. 4550-7220 which was being enjoyed by them as JBTs. With effect from 01.01.2006, the respondents introduced the system of pay band and grade pay. Pay of JBTs was revised and re-fixed in the pay band of Rs. 5910-20200 + 3000/- (G.P.) on their fresh appointment. After two years of regular service, the JBTs were to be granted the pay band of Rs. 10300-34800 + 4200 (G.P.). The Head Teachers were also granted the same pay band and grade pay i.e. Rs. 10300-34800 + 4200 (G.P.).

2(iv) The petitioners-JBTs were promoted as HTs, but not given promotional increments. Instead, they were given placement allowance of Rs. 100/- per month.

2(v) The respondents issued a Notification on 27.09.2012 revising pay of its employees. The pay-scale enjoyed by JBTs-HTs also underwent revision. It was re-fixed as under :-

Post	Pre-revised Pay	Revised Pay (Pay Band and Grade Pay) w.e.f.
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		01.10.2012.
JBT	Rs. 5910-20200 + 3000 GP	Rs. 10300-34800 + 4200 GP
HT	Rs. 5910-20200 + 3000 GP	Rs. 10300-34800 + 4400 GP

JBTs got grade pay of Rs. 4200/-, whereas HTs got grade pay of Rs. 4400/- w.e.f. 01.10.2012. All those JBTs, who got promoted as HTs were to get Rs. 4400/- as grade pay. The petitioners having been promoted as HTs also got this benefit and their grade pay was fixed at Rs. 4400/- w.e.f. 01.10.2012.

3. The Controversy

None of the incumbents who were promoted as Head Teacher were granted promotional increments. On 27.11.2014, the respondent-State took a decision to grant promotional increments to the Head Teachers, but this benefit was confined only to such HTs who were promoted after 01.10.2012. This has triggered filing of instant petition. According to the petitioners, they having been promoted as HTs prior to 01.10.2012 cannot be denied benefit of promotional increment merely on the ground that they were promoted as HTs prior to 01.10.2012, whereas according to the respondents, the petitioners are not entitled for promotional increment as HTs for the reason that :- (a) the petitioners were posted/placed to work as HTs in the existing scale (Rs. 4550-7220) w.e.f. 01.01.1996, Rs. 5910-20200 w.e.f. 01.01.2006 and (b) in lieu of petitioners' placement as HTs, they were paid allowance of Rs. 100/- p.m. prior to grant of higher grade pay of Rs. 4400/-.

During hearing of the case, learned counsel for the petitioners made a factual submission that allowance of Rs. 100/- p.m. paid to the petitioners was withdrawn by the respondents after the filing of writ petition.

4. Observations On hearing learned counsel on both sides, my observations are as under :-

4(i) Legal position

In 1983 (1) SCC 305 (D.S. Nakara and others Vs. U.O.I.), it was held that the employer shall not discriminate and divide the homogeneous class of employee and deprive one of them by the artificial device of a cut off date.

In AIR 2023 SC 792 (Maharashtra State Financial Corporation Ex-employees Association and others Vs. State of Maharashtra and others, the Hon'ble Apex Court reiterated that pay revision & the extent thereof, are undoubtedly matters falling within the domain of executive policy making. Whilst, the fixation of cut-off date for the grant of benefits cannot be questioned, what is within the domain of the Court, is to examine the impact of such fixation and whether it results in discrimination. In the facts of that case, the respondent had confined the grant of revised pay scales to employees existing as on 29.03.2010. The Pay Commission's recommendations for pay revision in the case were w.e.f. 01.01.1996. The State decided not to implement it from that date, but w.e.f. 01.01.2006 because the benefit given to the employees (arrears) on role of the employer as on 29.03.2010 were limited to arrears payable from 01.01.2006. The Hon'ble Apex Court noticed various precedents, including 2006(9) SCC 630 (U.P. Raghavendra Acharya & Ors. Vs. State of Karnataka & Ors.), wherein it was held that teachers of Government aided Colleges as also the teachers of Regional Engineering Colleges formed a class by themselves and no discrimination could have been made between the employees who retired prior to 31.3.1998 and those retiring subsequent thereto. The Court held that discrimination brought about on the basis of date of retirement was invidious. It would be profitable to extract following concluding paras from the judgment in Maharashtra State Financial Corporation's case (supra) :-

“36. In the present case, too, there is no denial that the employees who retired prior to 29.03.2010 discharged the same duties as in the case of those who did thereafter. The quality and content of responsibilities assigned to them were the same. The respondents' decision not to grant arrears prior to 01.01.2006 cannot be found fault with; however, not to grant any revision to those who were not in service when the order implementing the pay revision was issued and confining it to those, in employment is clearly discriminatory. The rationale that granting such pay revision only to existing employees would be to enthruse them to recover NPA amounts payable to MSFC has no rational nexus with the object sought to be achieved by the pay revision, which is to benefit employees and protect them from the rise in the cost of living.

37. In the present case, therefore, applying the ratio in the above decisions, it is clear that there is no distinction between those who retired (or died in service) before 29.03.2010 and those who continued in service - and were given the pay revision. Those who worked during the period 01.01.2006 to 29.03.2010 and those who continued thereafter, fell in the same class, and a further distinction could not be made. The fact that the MSFC did not recover any interim relief, or ad-hoc amount disbursed between 18.09.1996 to

31.12.2005 (towards recommendations of the 5th Pay Commission), also reaffirms that these ex-employees belonged to the same class as those that received the benefit of the pay revisions. The exclusion of the retired employees, who retired between 01.01.2006 and 29.03.2010 on achieving their date of superannuation, is violative of Article 14 of the Constitution of India.”

4(ii) In the backdrop of above legal position, facts of present case be now examined.

4(ii) (a) All the HTs in service on 01.10.2012 are constituents of one common block of HTs. It is an admitted factual position that HTs promoted prior to 01.10.2012 were not granted promotional increments wherein HTs promoted as such after 01.10.2012 have been granted promotional increments w.e.f. 01.10.2012. The respondents cannot restrict grant of promotional increment only to those HTs who got promoted as such after 01.10.2012.

4(ii) (b) The respondents have created a class within the same set of employees. Category of HTs has been divided into two groups, one who got promoted prior to 01.10.2012 and the other, who were promoted after 01.10.2012. There is no rational behind creating these two groups. Such an action of the respondents in creating these groups for the purpose of paying promotional increment is illegal, arbitrary and violative of Articles 14 & 16 of the constitution of India.

4(ii) (c) The petitioners, who were promoted as HTs prior to 01.10.2012 or the other incumbents who were promoted as HTs after 01.10.2012 remained as HTs and enjoy the same pay-scale. They are to discharge the same and similar duty. Their promotions prior to 01.10.2012 or after 01.10.2012 will not create any difference insofar as their entitlement to promotional increment is concerned.

4(iii) There is no object or nexus sought to be achieved by creating an artificial class in the cadre of HTs. The main argument pleaded by the respondents that the petitioners on their promotion/placement as HTs were granted Rs. 100/- as monthly allowance also falls flat in view of factual assertion made by the learned counsel for the petitioners that this amount now stands withdrawn by the respondents from all the petitioners.

4(iv) Viewing from any angle, it has to be held that irrespective of their dates of promotions as HTs, which are all prior to 01.10.2012, the petitioners are also entitled to the benefit of promotional increments at least w.e.f. 01.10.2012/the date when the respondents decided to release this benefit to the incumbents who were promoted as HTs after 01.10.2012.

5. For all the aforesaid reasons, these writ petitions are allowed. The respondents are directed to release the promotional increments to the petitioners to the post of Head Teachers w.e.f. 01.10.2012/the date from which the promotional increment has been released to such of Head Teachers who were promoted as such after 01.10.2012. This exercise be carried out within six weeks, failing which the amount shall carry interest @ 5% p.a. All the pending applications, if any, to stand disposed of.
