A WAZIR SINGH, JBT TEACHER AND ORS.

v.

THE STATE OF HARYANA THROUGH ITS SECRETARY, EDUCATION DEPARTMENT AND ORS.

B SEPTEMBER 29, 1995

[J.S. VERMA AND K. VENKATASWAMI, JJ.]

Service Law :

C *State of Haryana—Government schools—Teachers—Appointment—Acquisition of higher qualifications subsequently—Claim for higher grade—Claim based on instructions issued by State Government—Instructions superseded by subsequent policy decision of Government—Teachers governed by changed policy decision—Held not entitled to higher grade automatically.*

D **The appellants were appointed as J.B.T. teachers in Government schools in the State of Haryana. Subsequently they acquired B.T/B.Ed. degrees and claimed higher grade as admissible to the Masters with effect from respective dates of their acquiring higher qualifications. They based their claim on the instructions dated July 23, 1957 issued by Government**
E **of Punjab. The respondent-State disputed the appellants' claim on the ground that the instructions dated July 23, 1957 relied on by the appellants were superseded by a later policy decision dated March 9,1990 taken by the Government of Haryana which provided that the pay scales admissible to the Masters would be given to such teachers who have been appointed against the posts for which the qualification is B.A. B.Ed. In other words,**
F **teachers who acquire higher qualification during the course of their service would not be entitled to be placed in the higher scales of pay automatically. The High Court held that the appellants were not entitled to the relief prayed for because they were never appointed against the post of Masters.**

G **In appeal to this Court it was contended that in view of the judgment of this court in *Chaman Lal* v. *State of Haryana*, [1987] 3 SCC 113 the appellants were entitled to the higher grade of pay.**

Disposing the appeal, this Court

H **HELD : 1. From the policy of the Government dated 9.3.1990 it is**

clear that the Government have altered their earlier policy decision dated 23.7.1957. In its revised policy the Government have expressed their unequivocal intention to retract from the earlier principle that teachers acquiring the B.T. or B. Ed. degree would be entitled to the higher grade with effect from the respective dates of their acquiring that qualification. But for the policy instructions issued by the Haryana Government on 9.3.1990 the ruling of this Court in *Chaman Lal's* case would have definitely applied to the facts of this case. The appellants who have not acquired the B.T./B.Ed. degree before 9.3.1990 cannot, therefore, claim the benefit of higher grade of pay automatically. [144-G-B, H, 145-A]

Chaman Lal v. *State of Haryana*, [1987] 3 SCC 113, **held inapplicable.**

2. In order to prevent avoidable multiplicity of litigation it is made clear that all those who have acquired B.T./B.Ed. degree before 9.3.1990 would be entitled to get the benefit of para 2 of the Punjab Government letter dated 23.7.1957 and those who have acquired B.T./B.Ed. degree subsequently are governed by the changed policy of Haryana Government dated 9.3.1990. [145-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9219 of 1995.

From the Judgment and Order dated 25.1.94 of the Punjab & Haryana High Court in W.P. No. 3201 of 1993.

Pardeep Gupta and K.K. Mohan for the Appellants.

K.C. Bajaj and Ms. Indu Malhotra for the Respondents.

The Judgment of the Court was delivered by

K. VENKATASWAMI, J. Leave granted.

I.A. No. 1/95 for impleadment is allowed.

The appellants are teachers in Government schools in the State of Haryana. The appellants were appointed as (J.B.T.) teachers in the schools as they did not possess B.T./B.Ed. qualification at the time of their appointments. However, they acquired B.T. B.ed. degree on various dates as mentioned in page 9 of the S.L.P. Paper Book and also at page 53 (so far

A as newly impleaded appellant No. 8 is concerned). They moved the High Court of Punjab & Haryana under Article 226/227 of the Constitution of India for the issue of writ of Mandamus directing the respondents to give them the higher grade admissible to the Masters with effect from respective dates of their acquiring B.T./B.Ed. qualifications and they also prayed for issue of writ of Mandamus to the respondents to implement the decision/ direction of this Court in the case of *Chaman Lal* v. *State of Haryana* reported in 1987 (3) SCC 113.

B

In response to the notice of motion issued by the High Court, written statement on behalf of respondents was filed and therein it was brought to the notice of the Court that the erstwhile Punjab Government's Instructions dated July 23, 1957 on the basis of which the petitioners/ appellants rested their claims, stood superseded and no more applicable to the employees of the Haryana Government. It was also stated in the written statement that a policy decision was taken by the Government of Haryana in Finance Department Letter No. 7/2 (i)/90-FRI dated March 9, 1990 stating that the pay-scales admissible to the Masters, that is, B.A., B.Ed. *would be given to such teachers ho have been appointed against the posts for which the qualification is B.A. B.Ed.* In the light of the written statement and also applying the earlier decision of the High Court in C.W.P. No. 14736 of 1991 dated December 1,1992, the learned Judges held that the appellants were not entitled to the reliefs prayed for as they were never appointed against the post of Masters. Aggrieved by the dismissal of the writ petition, the present special leave to appeal is preferred by the appellants.

C

D

E

Learned counsel for the appellants strenuously urged before us that the ratio laid down by this Court in [1987] 3 SCC 113 (supra) will apply in full force to the facts of this case and, therefore, the appellants would be entitled to succeed in the present appeal.

F

Learned counsel appearing for the respondents submitted that in *Chaman Lal's* case this Court was considering the scope of the letter dated July 23, 1957 issued by the composite Punjab Government in the light of subsequent order of Haryana Government dated 5.9.79. However, in the present case the letter dated 23.7.57 stood superseded by the latest policy instructions issued by the Haryana Govt. on 9.3.1990 and therefore, the judgment in [1987] 3 SCC 113 will be no avail. He also invited our attention to the policy instructions contained in the letter dated 9.3.1990 which is

G

H

Annexure III to the Special Leave Petition found at page 44. A

But for the policy instructions now issued by the Haryana Government on 9.3.1990, the ruling of this Court in *Chaman Lal's* case would have definitely applied to the facts of this case. In *Chaman Lal's* case this Court considered both the letter dated 23.7.1957 and the Order dated 5.9.1979. While considering the scope of the letter and order, this Court also took B note of certain admissions made by the Government during that period and observed as follows :

> "It is thus seen that from 1957 to 1980 whenever the question arose, it was always accepted that teachers who acquired the B.T. or C B.Ed. qualification would be entitled to higher grade of pay as soon as they acquired the qualification irrespective of the dates when they were adjusted against the posts of Masters. The adjustment against the posts of Masters was relevant for the purpose of seniority in the posts of Masters and for the further purpose of promotion from that post. So far as the scale of pay was concerned D irrespective of adjustment against the post of Master, a teacher was always held to be entitled to the higher scale of pay from the date of the acquisition of the B.T. or B.Ed. qualification.
>
> 2. On September 5, 1979, the Government of Haryana issued an E order in the following words :
>
> Sanction of the Governor of Haryana is hereby accorded w.e.f. September 5, 1979 of the grant of Masters grade to unadjusted JBT teachers who have passed B.A./B.Ed. subject to the following conditions : F
>
> (i) That the expenditure involved would be met from the savings of the current year revised sanctioned estimates.
>
> (ii) That these teachers will not be allowed any seniority in the G cadre of Masters.
>
> (iii) That it will not form a precedent for future.
>
> (iv) That the award of Master's grade to the concerned teachers would be personal to them. H

A This order of the Government is now sought to be interpreted and it has been so interpreted by the High Court of Punjab and Haryana in the Judgment under appeal that those teachers who had acquired the B.T. or B.Ed. qualification subsequent to December 1, 1967 (the date on which the 1968 order came into force) and before September 5, 1979 would be entitled to the higher grade but with effect from September 5, 1979 only and that those who acquired the qualification subsequent to September 5, 1979 would not be entitled to the higher grade. According to the judgment of the High Court under appeal, the 1968 order did away with the principle of the 1957 order that teachers acquired B.T. or B.Ed. qualification should get the higher grade and that a concession was shown in 1979 enabling the teachers who acquired the B.T. or B.Ed. qualification between 1968 and 1979 to get the higher scale from 1979. In our opinion, this is plainly to ignore all the events that took place between 1957 and 1980. The principle that pay should be linked to qualification was accepted by the Punjab Government in 1957 and when Kirpal Singh Bhatia case was argued in the High Court and in the Supreme Court *there was not the slightest whisper that the principle had been departed from in the* 1968 order. In fact the 1968 order expressly stated that the Government had accepted the Kothari Commission's report in regard to scales of pay and as already pointed out by us the main feature of the Kothari Commission's report in regard to scales of pay was the linking of pay to qualification. That was apparently the reason why no such argument was advanced in *Kirpal Singh Bhatia* case. Even subsequently when several writ petitions were disposed of by the High Court of Punjab and Haryana and when the Government issued consequential orders, it was never suggested that the 1968 order was a retraction from the principle of qualification linked pay. The 1968 order must be read in the light of the 1957 order and the report of the Kothari Commission which was accepted. If so read, there can be no doubt that the *Government never intended to retract from the principle that teachers acquiring the B.T. or B.Ed. would be entitled to the higher grade with effect from the respective dates of their acquiring that qualification.* The 1975 order was indeed superfluous."

H In the present revision of pay scale of Govt. employees teaching

Personnel of the Education Department (hereinafter called the 'policy of the Government'), in unequivocal terms the Government have expressed their intention to retract from the earlier principle that teachers acquiring the B.T. or B.Ed. degree would be entitled to the higher grade with effect from the respective dates of their acquiring that qualification. Relevant portions in the policy of Government dated 9.3.1990 read as follows :

> "I am directed to refer to composite Punjab Govt. Finance Department circular No. 5056-FR-11/57 dated the 23rd July, 1957 on the subject noted above, which contains the details regarding the revision of the pay scales of various categories of subordinate services (including teachers) done on the recommendations made by the Pay Revisions Committee, then appointed to examine this matter. While evolving revised pay scales in respect of different categories of teachers in the Education Department, in para 3 of above mentioned circular, two broad categories namely, category 'A' and category 'B' of teachers were mentioned, *inter alia* laying down the requirements of academic qualifications in their cases. *It would not have been intended by the Government that on their acquisition of High academic qualification, various categories of teachers in the lower grades shall automatically be placed in the different higher grade commensurate with their academic qualification.* Normally, pay scales of various category of posts in any Department are sanctioned keeping in view the minimum qualifications required for each category of posts, besides the duties prescribed for them. Similarly, the teaching posts are sanctioned for various educational institutions keeping in view the subjects and classes, the incumbents of these posts are required to teach and for that specific qualifications are prescribed in the service rule as well at the time of recruitment. For example, if a B.A. B.Ed. pass candidate with the qualifications of Matric J.B.T. also applied for the post of Matric J.B.T. and is taken into service on the basis of higher qualification, he/she cannot claim the grade of Master/Mistress but will get the sanctioned scale of pay of teacher meant for Matric J.B.T. Similarly, if a Matric J.B.T. teacher improves his qualification during the course of service and acquires degree of B.A. B.Ed or of language teacher i.e. O.T. Giani or Prabhakar, he cannot claim the scale of Master i.e. B.A. B.Ed. or of language teacher *unless he is appointed as Master against the*

A *post of Master and language teacher against the post of language teacher for which the minimum qualifications are B.A. B.Ed and O.T. (Giani or Prabhakar) respectively.*

2. As the instructions contained in paragraph 3 of the above mentioned letter dated 23rd July, 1957 did not bring out the above
B mentioned intentions of the Government in unambiguous terms, it has resulted in different interpretations i.e. automatic grant of higher scales of pay on the basis of qualifications irrespective of number of posts available in the Department in that category.... ..... it was never the intention of the State Government to under-
C take the continuing heavy financial burden that has devolved on it because of the faulty framing of the above-mentioned instructions.

(3 to 5 omitted)

6. In order to remove the confusion being created by misconstruing
D the intention of the Government the whole matter has been reconsidered by the State Government. *As a result of the reconsideration, the Governor of Haryana is pleased to clarify that the teachers of the Education Department are not entitled to be placed in the higher scales of pay in terms of para 2 of the Punjab Government letter No.*
E *5056-FR-11/57/6600 dated 23rd July, 1957 or any subsequent letters/notifications issued by the Haryana Government referred to in the preceding paras, which letters already become inoperative on their improving/acquiring higher qualifications during the course of their service automatically.* The masters/teachers in the Education Department will be placed in the scales of pay of their respective
F categories to which they are appointed against the sanctioned posts and mere possession/acquiring of higher qualifications will not entitled them automatically to claim higher pay scales. (emphasis supplied)"

G From the above extracts, it is clear that the Government have altered their earlier policy and, therefore, the judgment in *Chaman Lal's* case will have no application. The appellants who have not acquired the B.T./B.Ed before 9.3.90 cannot, therefore, claim the benefit of higher grade of pay automatically.

H Learned counsel for the respondents frankly conceded that all those

who have acquired B.T./B.Ed before 9.3.90 would be entitled to get higher scales of pay in terms of para 2 of the composite Punjab Government letter dated 23.7.1957. A

We find that among the appellants 5 of them, namely, appellants Nos. 2, 5, 6, 7 and 8 who have acquired B.T./B.Ed prior to 9.3.90 would get the benefit and the others are not entitled to get the relief. To that extent mentioned above, the appeal succeeds. B

In order to prevent avoidable multiplicity of litigation, we make it clear that all those who have acquired B.T./B.Ed before 9.3.90 would be entitled to get the benefit of para 2 of the Punjab Government letter dated 23.7.1957 and those who have acquired B.T./B.Ed subsequently are governed by the changed policy of Haryana Government dated 9.3.1990. The appeal is disposed of accordingly. No costs. C

T.N.A. Appeal disposed of.