A STATE OF HARYANA & ORS.

v.

HEM LATA GUPTA & ORS.

(Civil Appeal No. 4714 of 2006)

JANUARY 5, 2010

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[R.V. RAVEENDRAN AND G.S. SINGHVI, JJ.]

Service Law:

C *Punjab Education Service Class-III (School Cadre) Rules, 1955:*

r.10 – Government of Punjab letter dated 1.9.1960 – Providing for advance increments to Masters on acquiring post graduate qualification – Benefit – Benefit under letter D *dated 1.9.1960 claimed by teachers falling in State of Haryana on its formation – **Held:** Teachers employed under Government of Haryana could claim the benefit in terms of the policy decisions taken by Government of undivided Punjab only till the revision of their pay scales, which were made* E *effective from 1.12.1967, and not thereafter.*

The respondents, employed as teachers under the Government of Haryana, claimed advance increments in terms of Punjab Government to Memo dated 1.9.1960. The F **Director of Secondary Education, Haryana rejected their claim on the premise that in terms of Rule.10 of the Punjab Education Service Class-III (School Cadre) Rules, 1955, the pay scales of the teachers were subject to variation from time to time, and since the State of Haryana revised** G **the pay scales of various categories of teaches w.e.f. 1.12.1967, Memo dated 1.9.1960 stood superseded. He also observed that higher start of pay with advance increments for post graduate qualification was provided only to Masters/Mistresses and not to other categories of**

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teachers. The High Court allowed the writ petitions and directed that the respondents be given advance increments in terms of the Punjab Government Memo dated 1.9.1960 and the letter dated 5.1.1968 of the Government of Haryana. Aggrieved, the State of Haryana filed the appeals.

Allowing the appeals, the Court

HELD: 1.1. The teachers employed under the Government of Haryana could claim benefit of the higher pay scales, advance increments etc. in terms of the policy decisions taken by the Government of undivided Punjab and instructions issued by it only till the revision of their pay scales, which were made effective from 1.12.1967, and not thereafter. [Para 14] [39-E-F]

1.2. The question of revision of pay scales of the teachers employed under the Government of Haryana was considered by the Education Commission which is also known as Kothari Commission. The recommendations made by that Commission were accepted by the President of India and were implemented by the State Government with effect from 1.12.1967.
After revision of the pay scales of various categories of teachers, the Government of Haryana issued instructions vide letters dated 26.7.1972, 26.11.1974 and 17.7.1975 for grant of monetary benefits in the form of personal pay to those Government servants who improved their qualifications by undertaking further studies within the country and abroad. Further, by letter No. 4718-2GS-II-77/17173 dated 20.6.1977, all the existing instructions were superseded and fresh instructions were issued on the subject. However, the decisions contained in letter dated 20.6.1977 and other related communications were withdrawn by the State Government by letter dated 20.12.1982. [Para 8 to 10] [33-B-C; 35-A-B; 36-F-G]

A 1.3. The High Court erred in accepting the plea of the respondents that revision of the pay scales of teachers with effect from 1.12.1967 did not result in automatic supersession of the existing policy decisions. All the financial benefits including increments admissible to the B teachers in terms of extant policy decisions must have been taken into consideration by Kothari Commission while recommending grant of revised pay scales. If this was not so, there could be no warrant for separately giving one advance increment to first and second class C graduate Masters/Mistresses for whom revised pay scales of Rs.220-8-300-10-400 (for 85% of the cadre) and Rs.400-20-500 (for 15% of the cadre) were prescribed; similarly, there was no justification to give one advance increment to the Lecturers on their attaining professional D training; equally, there was no occasion for the State Government to give additional benefit by way of increments in the form of personal pay to the employees on improving qualifications after joining Govt. service. This being the position, the High Court was not right in holding that the decision taken by the President of India E to accept the recommendations of Kothari Commission for revision of the pay scales of Government teachers and grant of revised pay scales to them with effect from 1.12.1967 did not have the effect of superseding the policy contained in letter dated 1.9.1960. [Para 13] [38-G-F H; 39-A-D]

1.4. The doubts and confusion created due to the judgment in Chaman Lal's case* on the entitlement of the teachers to automatically get particular pay scale G prescribed for higher post have been clarified by the judgments in Wazir Singh's case** and Kamal Singh Saharawat's case and in view of the latter decisions, the respondents' claim for grant of advance increments in terms of letter dated 1.9.1960 issued by the Government H of Punjab cannot be accepted. [Para 21] [47-F-G]

A ****Wazir Singh v. State of Haryana* 1995 (4) Suppl. SCR 138 = 1995 Supp. (3) SCC 697; *State of Haryana v. Kamal Singh Saharawat* 1999 (3) Suppl. SCR 67 = (1999) 8 SCC 44, relied on.**

B ***Chaman Lal v. State of Haryana* 1987 (2) SCR 923 = (1987) 3 SCC 113; *State of Punjab v. Kirpal Singh Bhatia* 1976 (1) SCR 529 = (1975) 4 SCC 740; *Gurpal Tuli v. State of Punjab* 1984 Supp SCC 716; *Punjab Higher Qualified Teachers' Union v. State of Punjab* (1988) 2 SCC 407; *Baij Nath v. State of Punjab* (1996) 8 SCC 516; *State of Haryana v. Ravi Bala* (1997) 1 SCC 267, referred to.**

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Case Law Reference:

1995 (4) Suppl. SCR 138	**relied on**	**Para 4**
1976 (1) SCR 529	**referred to**	**Para 15**
1987 (2) SCR 923	**referred to**	**Para 16**
1999 (3) Suppl. SCR 67	**relied on**	**Para 19**
1984 Supp SCC 716	**referred to**	**Para 20**
(1988) 2 SCC 407	**referred to**	**Para 20**
(1996) 8 SCC 516	**referred to**	**Para 20**
(1997) 1 SCC 267	**referred to**	**Para 20**

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4714 of 2006.

From the Judgment & Order dated 8.1.2001 of the High Court of Punjab & Haryana at Chandigarh in C.W.P. No. 17842 of 1998.

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WITH

C.A. Nos. 4715, 4716, 4717, 4719, 4720, 4721 of 2006.

P.N. Mishra, Kamal Mohan Gupta for the Appellants.

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A Shailendra Bhardwaj, Dr. Ramesh K. Haritash, Dr. Kailash Chand, Uma Datta, Sanjay Kapur, D. Mahesh Babu, Tarun Gupta, S. Janani, Ujjal Singh, J.P. Singh, Balbir Singh Gupta, R.C. Kaushik, Anjani Aiyagari, S.K. Sabharwal for the Respondents.

B The Judgment of the Court was delivered by

G.S. SINGHVI, J. 1. These appeals are directed against the orders of the Punjab and Haryana High Court whereby the alleged denial of advance increments to the writ petitioners C (respondents herein) has been declared illegal and the appellants have been directed to grant them increments in terms of the instructions issued by the Government of Punjab vide Memo No. 6462-ED-II(2)60/32640 dated 1.9.1960 and the Government of Haryana vide letter No.152-Edu-II-69/540 dated D 5.1.1968.

2. The respondents joined service as teachers in different categories i.e., Lecturers, Masters/Mistresses, Language Teachers and Physical Training Instructors either in the E undivided State of Punjab or the newly formed State of Haryana, which came into being with effect from 1.11.1966. Some of the respondents possessed post-graduate qualifications at the time of entry in the service while others claim to have acquired such qualifications after joining the service. Smt. Hem Lata Gupta and others filed Writ Petition No. 18638/1997 for issue of a F mandamus to the concerned authorities of the Government of Haryana to give them benefit of 2/3 advance increments from the date of acquiring post-graduate qualifications in terms of Memo dated 1.9.1960 issued by the Government of Punjab. The same was disposed of by the High Court with a direction that G representation dated 1.10.1997 submitted by the writ-petitioners be decided by the competent authority by passing a reasoned order. In compliance of the Court's directive, the Director of Secondary Education, Haryana (for short, 'the Director'), passed order dated 30.7.1998 whereby he rejected the claim of the H respondents on the ground that after fixation of their pay in the

revised pay scales in terms of the policy contained in letter dated 5.1.1968 of the Government of Haryana, the teachers are not entitled to advance increments in terms of Memo dated 1.9.1960 issued by the Government of Punjab. The Director also observed that the instructions issued by the Government of Punjab were applicable only to the Masters working in the grade of Rs.110/250 and were not applicable to other teachers like Junior Basic Teachers, Language Teachers, Art and Craft Teachers, Physical Training Instructors, Headmasters and Lecturers and, therefore, they cannot claim advance increments in terms of those instructions. For the sake of reference, the relevant portions of order dated 30.7.1998 are extracted below:-

I. "That the petitioners were the members of Punjab Educational Service Class-III (School Cadre) Rules, 1955 and their conditions of service were governed by the provisions of the said rules. The pay has been defined in para 10 of the said rules as under:

10. Pay: Members of the service will be entitled to such scale of pay as may be authorized by the Govt. from time to time.

This rule clearly contemplates that members of the service like the petitioners will be entitled to such scale of pay as authorized by Govt. from time to time, meaning thereby, as soon as the pay scales of the employees are revised, the present pay scale attached with the post will be of no consequence.

II. That as per rule 10 of the said service rules the petitioners are entitled to such scales of pay as authorized by the govt. from time to time. In Appendix A of the said rules the pay scales of Rs.110/250 with a higher start of 2/5 advance increments on acquiring of M.A./M.Sc. qualifications which was enforced at the time of framing of the said

service rules was only provided for the post of Masters/Mistresses and not to other categories of teachers. The said scale of pay remained operative upto 30.11.1967 because after formation of the State of Haryana, the State Govt. vide letter dated 5.1.1968 had further revised the pay scale of the Masters/Mistresses from Rs.110/250 to 220/400 w.e.f. 1.12.1967. and by virtue of the letter dated 5.1.1968 the earlier circulars regarding revision of pay scales issued by the either Governments stood automatically superseded. Meaning thereby Masters/Mistresses who were earlier made eligible for the grant of benefit of advance increments in terms of the pay scales shown in Appendix A of the service rules 1955 and further supplemented as per joint Punjab Govt. letter No. 6382-Edu.III (2) 60/ 32640 dated 1.9.1960 become disentitled to the benefit of advance increments on acquiring Post Graduation qualifications after having been given revised pay scales w.e.f. 1.12.1967. In other words such Masters/Mistresses who got the Post Graduation qualification on or after 1.12.1967 and were appointed in the service or after 1.12.1967 are not eligible to get the benefit of higher start of 2/3 increments as such provisions did not exist in the Govt. letter dated 5.1.68 under which the grades were revised w.e.f. 1.12.1967. By virtue of the statutory sanction in rule 10 of the Punjab Educational Service Class-III (School Cadre) Rules, 1955 vide which the pay scales were subject to variation from time to time, the petitioners are not entitled to the advance increments as after revision of pay scales w.e.f. 1.12.1967 the pay scales shown in Appendix A in the said service rules 1965 and letter dated 23.7.57 did not remain in existence as the petitioners have either been appointed after 1.12.67 or acquired the M.A./M.Sc. qualifications

after 1.12.67.

III. xxx xxx xxx

IV. That after 1.12.67, the State Govt. had further revised the scales of pay of its employees including the petitioners w.e.f. 1.4.79 and 1.1.86 by framing rules under the proviso of Article 309 of the Constitution of India and these rules are known as Haryana Civil Services (Revised Pay) Rules, 1987 published on 29.2.80 and 29.4.87 respectively. At this time also as provision of grant of 2/3 advance increments on acquiring of M.A./M.Sc. qualification existed and as such the petitioners are not entitled to the benefit of advance increments on acquiring of M.A./M.Sc. qualification existed and as such the petitioners are not entitled to the benefit of advance increments on acquiring of M.A./M.Sc. qualification.

V. xxx xxx xxx

VI. That further mere look of the provisions of Appendix-A of the said rules 1955 and later on supplemented vide Punjab Govt., letter No.6482-Edu.III (2) 60/32640 dated 1.9.1960 would show that the benefit of 2/3 advance increments was only given to the category of Masters/Mistresses working in the grade of Rs.110/250 and not to the other categories of teachers like J.B.T., Maths, Sanskrit, Punjabi, Art & Craft teachers, P.T.I., Headmasters and Lecturers. Thus those petitioners who are working/appointed against the said posts are also not entitled to 2/3 advance increments on acquiring of M.A./M.Sc. qualification."

3. Respondents Smt. Hem Lata Gupta and 11 others challenged the aforementioned order in C.W.P. No. 17842/ 1998. They pleaded that in view of the instructions issued by

A the Government of Punjab vide Memo dated 1.9.1960, they are entitled to advance increments as of right and fixation of their pay in the revised pay scales with effect from 1.12.1967 cannot be made a ground for denying them the benefit of advance increments. In the counter affidavit filed before the High Court, B the appellants pleaded that the respondents are not entitled to advance increments in terms of the instructions issued by the Government of Punjab because the same will be deemed to have been superseded with the revision of pay scales of various categories of teachers with effect from 1.12.1967.

C 4. By an order dated 8.1.2001, the Division Bench of the High Court allowed the writ petition and issued direction, which is under challenge in Civil Appeal No. 4714/2006. The Division Bench relied upon the judgments of this Court in *Wazir Singh v. State of Haryana* 1995 (Supp) 3 SCC 697, *State of Haryana* D *v. Harbans Lal* (2002) 10 SCC 125 and held that even though pay scales of the teaches were revised by the Government of Haryana, the earlier instructions were not superseded and, as such, the writ petitioners are entitled to the benefit of advance increments in terms of the policy decision contained in E Government of Punjab Memo dated 1.9.1960. The Division Bench also noted that teachers employed in Kurukshetra District have been allowed personal pay equal to one increment in their respective grades for a period of 5 years and held that other teachers cannot be discriminated. The writ petitions filed F by other respondents were likewise allowed and similar direction was issued for grant of advance increments to them.

5. Shri P.N. Misra, learned senior counsel appearing for the appellants argued that as a result of revision of pay scales of the teachers with effect from 1.12.1967, the policy contained G in Government of Punjab Memo dated 1.9.1960 will be deemed to have been superseded and the High Court committed serious error by relying upon the said memo for issuing a mandamus for grant of advance increments to the respondents. Shri Misra referred to letters dated 5.1.1968, 20.6.1977 and H

20.12.1982 issued by the Government of Haryana and argued that once the State Government took a conscious decision to revise the pay scales of teachers and grant them increments on fulfillment of the specified conditions, the instructions issued by the Government of Punjab could not be invoked by the respondents for claiming benefit of advance increments. On the other hand, Shri Balbir Singh Gupta, learned counsel for the respondents argued that on acquiring higher qualifications, his clients became entitled to advance increments in terms of Memo dated 1.9.1960 issued by the Government of Punjab and they cannot be deprived of that right simply because the Government of Haryana decided to revise the pay scales with effect from 1.12.1967.

6. We have considered the respective submissions. In exercise of the powers conferred upon him by the proviso to Article 309 of the Constitution of India, the Governor of Punjab framed the Punjab Educational Service Class-III (School Cadre) Rules, 1955 (for short, "the 1955 Rules") for regulating recruitment and conditions of service of persons appointed to the Punjab Educational State Service, Class III, School Cadre. The same were notified on 30.5.1957. Rule 10 of the 1955 Rules lays down that members of the service will be entitled to such scale of pay as may be authorized by the Government from time to time. The scales of pay of different categories of teachers, which were in force at the relevant time, were specified in Appendix 'A' annexed to the 1955 Rules. For the post of Headmasters, the prescribed pay scale was Rs.250-10-350. For the post of Masters, the prescribed pay scale was Rs.250-10-300. For certain other categories of teachers, the pay scale was Rs.110-8-190/10-250 with a start of Rs.126 to those having the qualification of M.A./M.Sc./M.Ed. with third division and Rs.150 to those possessing qualification of M.A./ M.Sc./M.Ed. with second or first division. After two months, the Government of Punjab issued circular dated 23.7.1957 for revision of the scales of pay of certain posts including those of

A teachers. This was followed by Memo dated 1.9.1960 vide which the State Government sanctioned grant of advance increments to the Masters on their acquiring postgraduate qualifications. The relevant portions of Memo dated 1.9.1960 which constitutes the foundation of the respondents' claim for
B advance increments are reproduced below:

"Sanction of the Government of Punjab is accorded to the grant of advance increments to the Masters working in the Punjab Education Department, who improve/have improved their educational qualifications in the manner
C detailed below:-

Category of personnel	Nature of improved qualifications	Extent of advance increments
Masters	(110-8-190/10-250) MA/MSc./M.Ed. (3rd Division)	2 increments
	MA/M.Sc./M.Ed. (1st/2nd Division)	3 increments

2. The advantage will be enjoyed only once and not for doing any subsequent M.A. It will not be available to those who were given higher start of
F entry for being MA/M.Sc./M.Ed.

3. These orders will take effect from the date of issue.

The original date of increments shall remain unchanged and the persons concerned should be allowed to retain
G their old dates of increments."

7. Though not directly relevant to the issue raised in these appeals, we may make a mention of circular letter No. 961-4GS-62/5593 dated 16.2.1962 (this circular finds a mention in
H letter dated 20.12.1982 issued by the Government of Haryana),

vide which the Government of Punjab decided to give advance increments/rapid promotions to officers going abroad to improve their qualifications. This was done with a view to ensure that the officers who improve their qualifications in foreign countries continue to serve the State.

8. The question of revision of pay scales of the teachers employed under the Government of Haryana was considered by the Education Commission which is also known as Kothari Commission. The recommendations made by that Commission were accepted by the President of India and were implemented by the State Government with effect from 1.12.1967. For this purpose, instructions were issued vide letter No. 152-Edu-II-69/ 540 dated 5.1.1968, the relevant paragraphs whereof are reproduced below:

> I am directed to say that the matter concerning the revision of scales of pay of teaching personnel working in Govt. Schools in Haryana has been engaging the attention of Govt. for sometime past. After careful consideration, the President of India is pleased to accept the recommendations of the Education Commission popularly known "KOTHARI COMMISSION" and revise the scale of pay of Govt. teachers w.e.f. Ist December 1967 in the following manner:-

Sr.No.	Category of teachers	Revised grade
1.	J.B.T./J.S.T./J.A.V. & V Teacher, Drawing Master, Tailoring Mistresses, Art & Craft teachers, Domestic Mistresses & Shastries	i) Rs.125-5-150/5-250 (for 85% of the cadre) ii) Rs.250-10-300 (for 15% of the Cadre)

A N.B. The untrained Teachers with Higher Secondary Matriculation qualifications will draw the starting of Rs.100/- mensum and they will be integrated in the regular pay of scales only after they obtain necessary profession qualification.

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2.	Masters/Mistresses (Trained Graduates)	i) Rs.220-8-300-10-400 (for 85% of the cadre)
C		ii) Rs.400-20-500 (for 15% of the cadre)

N.B. (I) The 1st & 2nd class graduates will be entitled to draw one advance increment in addition.

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(ii) The Untrained graduates will be allowed the starting salary of Rs.200/- per mensum and will be entitled for the regular scales of pay only after attaining the prescribed professional training.

E 3.	Lecturers (Post Graduates)	i) Rs.300-25 450-25-600 (For Ist & 2nd class M.A.'s and M.Ed)
F		ii) Rs.250-25-450/25-550 (For 3rd class M.A.'s and M.Sc's)

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N.B. The Lecturers will be given one advance increment as soon as they attain professional training.

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9. After revision of the pay scales of various categories of teachers, the Government of Haryana issued instructions vide letters dated 26.7.1972, 26.11.1974 and 17.7.1975 for grant of monetary benefits in the form of personal pay to those Government servants who improved their qualifications by undertaking further studies within the country and abroad. In 1977, all the existing instructions were superseded and fresh instructions were issued on the subject vide letter No. 4718-2GS-II-77/17173 dated 20.6.1977, the relevant portions of which are reproduced below:

"Subject: Grant of personal pay to Govt. servants who improve their qualifications by further study within the country and abroad.

Sir,

I am directed to refer to the instructions contained in this Department's letter No. 4857-GSII-72/28344 dated 26.9.1972, letter No. 6452-2GSII-74/28173 dated 26.11.1974 and letter No. 434-2GS-II 75/21469 dated 17.7.1975 on the subject noted above and to say that the Government has further considered the matter and in supersession of the aforesaid instructions, taken the following decisions:-

1. Personal pay shall be granted to all employees, who improve their qualifications after joining Govt. service, if the qualifications so acquired from a recognized University is/ are higher than the minimum qualifications prescribed for the post on which they were recruited at the time of entry into Govt. Service, in accordance with the scales and conditions laid down in the succeeding paragraphs/sub-paragraphs:-

(i) Personal pay admissible for acquiring each of the following qualifications shall be equal to the amount of

A increment(s) mentioned against each qualifications:-

(a) Diploma of at least one year duration One increment

(b) Law degree or post graduate Two increments

(c) Doctorate or Post Doctorate Four increments
B qualification

Provided that the maximum benefit will not exceed the equivalent of four increments.

(ii) Govt. employees who have acquired the aforesaid
C qualifications after 26.9.1972 (i.e. whose result as declared on or after the said date) shall be eligible for the benefit of personal pay with effect from the date of declaration of the result of the examination concerned and those who had improved their educational qualifications
D before 26.9.1972 i.e. whose result was declared before the said date shall be eligible for the benefit of personal pay with effect from the date of issue of these instructions. In either of the two type of cases, thereto of increment for the purpose of calculating the amount of personal pay shall
E be taken to be the which was last drawn prior to the date of eligibility.

(iii) No benefit shall not be given for such of these qualifications as had already been acquired by the Govt. employee before joining Govt. service."
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10. The decisions contained in letter dated 20.6.1977 and other related communications were withdrawn by the State Government vide letter dated 20.12.1982, which reads thus:

"No.14/38/82-2GS-II
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From

The Chief Secretary to Government, Haryana.

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To

1. All Heads of Departments, the Commissioners, Ambala and Hissar Divisions, all Deputy Commissioners and Sub-Divisional Officer (Civil) in Haryana

2. The Registrar, Punjab and Haryana High Court, Chandigarh

Dated, Chandigarh, the 20th December, 1982

Subject: Grant of personal pay to Government servants who improve their qualifications by further study within the country and abroad.

Sir,

I am directed to refer to the instruction contained in Punjab Government No.961-4GS-62/5593, dated the 16th February, 1962, Haryana Government letter No.4718-2GS-II-77/17173, dated the 20th June, 1977, letter No.14/3/78-GS-II dated 26.7.78 and letter No. of even number dated the 23rd October, 1978 and letter No.14/18/78-GS-II, dated the 16th July, 1979, on the subject noted above and to say that the matter concerning grant of advance increments as personal pay to Government employees who improve their academic qualifications while in service has been under the consideration of the Government for some time. It has now been decided to discontinue the practice of giving advance increments to Government employees for acquiring higher qualifications and all the instructions issued on the subject as referred to above should be treated as withdrawn with immediate effect.

Yours faithfully
Sd/-
Joint Secretary General Admn.
For Chief Secretary to Government Haryana"

A 11. Having noticed the factual matrix of the case and various instructions issued by the Governments of Punjab and Haryana, we shall now consider whether the direction given by the High Court for grant of advance increments to the respondents from the date of acquiring postgraduate B qualifications is legally correct and justified.

12. A reading of rule 10 of the 1955 Rules and Appendix-A appended thereto shows that the pay scales prescribed for different categories of teachers prior to 30.5.1957 were made part of the Rules. After two years, the Government of Punjab C issued instructions vide letter dated 23.7.1957 for grant of higher scales of pay to the teachers from the date of acquiring higher qualifications. By Memo dated 1.9.1960, sanction was accorded for grant of 2/3 advance increments to the Masters from the date of improving their educational qualifications. D However, it was made clear that the advantage of advance increments will not be available to those who were given higher start on account of possessing the postgraduate qualifications. This stipulation was incorporated in Memo dated 1.9.1960 because some of the teachers who possessed postgraduate E qualifications were already given the benefit of additional increments by being allowed higher start in the prescribed pay scale. These instructions could be treated as having been issued by the Government of Punjab under rule 10 of the 1955 Rules. The teachers employed under the Government of F Haryana got benefit of the policy decisions contained in letter dated 23.7.1957 and Memo dated 1.9.1960 till their pay scales were revised vide letter dated 5.1.1968.

13. The argument of the respondents, which found favour G with the High Court that revision of the pay scales of teachers with effect from 1.12.1967 did not result in automatic supersession of the existing policy decisions sounds attractive in the first blush, but, on a deeper consideration, we are convinced that the said argument is fallacious and should have been rejected by the High Court . All the financial benefits H

including increments admissible to the teachers in terms of extant policy decisions must have been taken into consideration by Kothari Commission while recommending grant of revised pay scales. If this was not so, there could be no warrant for separately giving one advance increment to first and second class graduate Masters/Mistresses for whom revised pay scales of Rs.220-8-300-10-400 (for 85% of the cadre) and Rs.400-20-500 (for 15% of the cadre) were prescribed. Similarly, there was no justification to give one advance increment to the Lecturers on their attaining professional training. Equally, there was no occasion for the State Government to give additional benefit by way of increments in the form of personal pay to the employees on improving qualifications after joining Govt. service. This being the position, we are convinced that the High Court was not right in holding that the decision taken by the President of India to accept the recommendations of Kothari Commission for revision of the pay scales of Government teachers and grant of revised pay scales to them with effect from 1.12.1967 did not have the effect of superseding the policy contained in Memo dated 1.9.1960.

14. In our view, the teachers employed under the Government of Haryana could claim benefit of the higher pay scales, advance increments etc. in terms of the policy decisions taken by the Government of undivided Punjab and instructions issued by it only till the revision of their pay scales, which were made effective from 1.12.1967 and not thereafter.

15. At this stage, we may usefully notice some of the judgments. In *State of Punjab v. Kirpal Singh Bhatia* (1975) 4 SCC 740, this Court was called upon to consider whether teachers were entitled to higher pay scales in terms of the policy contained in letter dated 23.7.1957. On behalf of the State of Punjab, it was argued that the policy decision taken by the Government was not intended to give benefit of higher scales of pay to all the teachers who acquired higher qualifications and before claiming higher post, the concerned teachers were

A required to be selected by the Board. While rejecting the argument, this court held as under:

> "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 November 7, 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 graduates 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 November 7, 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 November 7, 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 November 7, 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 November 7, 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 November 7, 1958."

16. In *Chaman Lal v. State of Haryana* (1987) 3 SCC 113, this Court recognized the entitlement of the teachers to get higher scales of pay from the date of acquiring higher qualifications in terms of the policy contained in letter dated 23.7.1957 issued by the Government of Punjab. The plea of the State Government that those teachers who acquired B.T. or B. Ed. after 1.12.1967 i.e. the date on which the 1968 order came into force, and before 5.9.1979, would be entitled to higher grade only with effect from 5.9.1979 and those who acquired higher qualification after 5.9.1979 would not be entitled to the higher grade was negatived only on the ground that 1968 order had not been brought to the notice of the Court in *State of Punjab v. Kirpal Singh Bhatia* (supra). This is evident from the following portion of paragraph 2 of the judgment:

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 BT or BEd qualification should get the higher grade and that a concession was shown in 1979 enabling the teachers who acquired the BT or BEd 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[1] was argued in the High Court and in the Supreme Court there was not the slightest whisper that the principle had been departed

A 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 pay was the linking of
B 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
C 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
D to retract from the principle that teachers acquiring the BT or BEd would be entitled to the higher grade with effect from the respective dates of their acquiring that qualification.

17. With respect, we find it difficult to appreciate as to how
E the so-called failure of the Government to bring the 1968 order to the notice of this Court in *Kirpal Singh Bhatia's* case was relevant for deciding the issue raised in *Chaman Lal v. State of Haryana* (supra). The facts of *Kirpal Singh Bhatia's* case were that the respondents before this Court were employed as
F teachers in the former State of PEPSU. After merger of the State of PEPSU with the State of Punjab, the respondents claimed the revised scale of pay from the date of acquiring the degrees of B.T. or its equivalent in terms of the policy contained in letter dated 23.7.1957. They also claimed promotion to the
G post of Master. The High Court allowed the writ petitions filed by the respondents. The appeals preferred by the State were dismissed by this Court. Since letter dated 5.1.1968 issued by the Government of Haryana for giving effect to the decision taken by the President of India to accept the recommendations
H made by Kothari Commission for revision of the pay scales of

the Government teachers had no bearing whatsoever on the claim of Kirpal Singh Bhatia and others, there was no occasion for the Government of Punjab to produce that letter before the High Court and/or this Court. We are sure, if the contents of letter dated 5.1.1968 are read in a correct perspective, interpretation thereof in *Chaman Lal's* case cannot be treated as correct. As per the recommendations of Kothari Commission, the revision of pay scales was linked with qualifications. This has been noted by the Court in *Chaman Lal's* case and yet the so-called omission on the Government's part to produce letter dated 5.1.1968 before this Court in *Kirpal Singh Bhatia's* case was made a ground for holding that notwithstanding revision of the pay scales of the teachers employed under the Government of Haryana, they would continue to get the benefit of the policy contained in letter dated 23.7.1957.

18. With a view to overcome the difficulties created by the judgment in *Chaman Lal's* case, the Government of Haryana issued instructions dated 9.3.1990 making explicit what was implicit in the instructions issued vide letter dated 5.1.1968 for implementation of the recommendations made by Kothari Commission. In *Wazir Singh v. State of Haryana* 1995 Supp. (3) SCC 697, this Court considered the question whether the teachers employed under the Government of Haryana are entitled to higher grade admissible to Masters with effect from the dates of their acquiring B.T./B.Ed. qualifications. The concerned teachers relied upon the policy contained in letter dated 23.7.1957 of the Government of Punjab, judgment in *Chaman Lal's* case and pleaded that the benefit of higher grade cannot be denied by the Government of Haryana despite the policy contained in Finance Department letter dated 9.3.1990. On behalf of the respondents, it was argued that the policy instructions contained in letter dated 23.7.1957 were superseded by the subsequent instructions issued on 9.3.1990. The Court extracted the observations made in *Chaman Lal's* case, referred to the policy contained in letter dated 9.3.1990

A and held that once the Government altered the earlier policy, the judgment in *Chaman Lal's* case will have no application and the appellants who had not acquired B.T./B.Ed. qualification before 9.3.1990 cannot claim the benefit of higher grade of pay automatically.

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19. In *State of Haryana v. Kamal Singh Saharawat* (1999) 8 SCC 44, a somewhat similar issue was considered. The High Court had accepted the claim of the teachers that they are entitled to higher scales of pay according to qualifications irrespective of the post held by them. This Court noted that the C recommendations made by Kothari Commission were accepted by the State Government and the pay scales of the teachers were revised vide letter dated 5.1.1968. The Court also took cognizance of the policy contained in letter dated 9.3.1990 issued by the Finance Department of the Government of D Haryana and rejected the claim of the respondent-teachers that they are entitled to higher scales of pay applicable to the post of Lecturers on their acquiring post-graduate qualifications. Paragraphs 19, 20, 22 and 23 of the judgment which contain detailed consideration of the issue read as under:

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> 19. With effect from 1-11-1966, the State of Haryana came into existence. Earlier there was an Education Commission popularly known as "the Kothari Commission" at the national level which made recommendations regarding F further revision of pay scales of Teachers who were divided into several categories. The basis for classifications adopted by the Commission was academic qualifications. The recommendations of the Kothari Commission were mostly accepted by the State of Haryana. The pay scales of Teachers were revised and the decision of the G Government was contained in Letter No. 152-Edu.II-68/540 dated 5-1-1968 from the Secretary to Government of Haryana, Education Department, Chandigarh to the Director of Public Instruction, Haryana, Chandigarh. The letter also fixed the percentage in which various

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incumbents were to be divided for purposes of higher scale or the lower scale as mentioned in the letter. Column II referred to the category of teachers and Column III set out the revised grades. Sl. No. 1 pertains to JBT/JST/JAV etc. Sl. No. 2 pertains to Masters/Mistresses (trained graduates). Sl. No. 3 relates to Lecturers (postgraduates). The NB reads: "The Lecturers will be given one advance increment as soon as they attain professional training." Sl. No. 4 refers to Headmasters/Headmistresses etc. There is nothing in the said letter to show that the post of Lecturers was included in Appendix 'A' to the Punjab Educational Service Rules or that it came to be governed by the said rules. The letter refers merely to revision of scales of pay and does not set out the method of recruitment or conditions of service. There is nothing in the letter to show that the categories of Teachers set out at Sl. No. 1 and Sl. No. 2 were automatically entitled to become Lecturers or entitled to the scales of pay applicable to the Lecturers.

20. It may be mentioned here that there was an earlier letter issued by the Punjab Government on 29-7-1967 revising the pay scales of the teaching personnel of government schools in the State of Punjab w.e.f. 1-11-1966 after consideration of the recommendations made by the Kothari Commission. Though the said letter is not applicable to the Teachers in the present case, reference has been made to the same and reliance has been placed on a decision of this Court in which the said letter was considered. We will advert to that decision later and it is unnecessary for us to dilate any further on the letter of the Punjab Government dated 29-7-1967.

22. Insofar as the State of Haryana is concerned, one other letter has been placed before us by the counsel for the State Government viz. Letter No. 7/2(I)/90-4 FR-I dated, Chandigarh, 9-3-1990 sent by the Financial Commissioner

A & Secretary to Government of Haryana, Finance Department to the Commissioner & Secretary to Government of Haryana, Education Department. That letter makes a reference to the circular letter dated 23-7-1957 issued by the Punjab Government to which we have already B adverted in detail. The letter also makes reference to the subsequent letter dated 5-1-1968 which has also been referred to by us earlier. Reference has been made to subsequent Notification No. GSR-20/Const./Art/309/89 dated 29-2-1980 by virtue of which the letter dated 5-1- C 1968 stood inoperative automatically. It is seen from the said letter that the Haryana Government had revised the pay scales further under Notification No. GSR-20/Const./ Art/309/87 dated 29-4-1987 with effect from 1986. Ultimately, the letter clarifies that the teachers in the D Education Department in the State of Haryana were not entitled to be placed in the higher scales of pay in terms of para 3 of the Punjab Government letter dated 23-7-1957 or any subsequent letter or notification issued by the Haryana Government referred to therein which had become inoperative. The last sentence in para 6 of the E letter reads as follows:

"The Masters/Teachers in the Education Department will be placed in the scales of pay of their respective categories to which they are appointed against the F sanctioned posts and mere possessing/acquiring of higher qualifications will not entitle them automatically to claim higher pay scales."

23. Thus a perusal of the Educational Service Rules which G have been prevailing from 1955 undergoing amendments from time to time and the subsequent government policy letters and circulars show that the Teachers are not entitled to higher scales of pay applicable to the posts of Lecturers automatically on their acquiring postgraduate qualifications or such qualifications as are prescribed for the post of H

Lecturers. We have already pointed out that the post of Lecturers has throughout been governed by different sets of rules and never by the Punjab Educational Service Class III School Cadre Rules, 1955 or the amendments thereto. Hence, the common question raised in these matters has to be answered in the negative against the Teachers/Masters/Mistresses some of whom are respondents in Civil Appeal No. 4304 of 1990 and the others being petitioners in SLPs and appellants in Civil Appeal No. 2104 of 1998.

20. The Court then considered various judgments rendered by this Court and the High Court including *Kirpal Singh Bhatia's case, Gurpal Tuli v. State of Punjab* 1984 Supp SCC 716, *Punjab Higher Qualified Teachers' Union v. State of Punjab* (1988) 2 SCC 407, *Baij Nath v. State of Punjab* (1996) 8 SCC 516, *Chaman Lal's case, Wazir Singh's* case, *State of Haryana v. Ravi Bala* (1997) 1 SCC 267 and concluded that on acquiring postgraduate qualification or qualifications prescribed for the post of Lecturers, teachers are not automatically entitled to the scales of pay of the Lecturers without being appointed as Lecturers in accordance with the rules.

21. In our view, the doubts and confusion created due to the judgment in *Chaman Lal's* case on the entitlement of the teachers to automatically get particular pay scale prescribed for higher post have been clarified by the judgments in *Wazir Singh's* case and *Kamal Singh Saharawat's* case and in view of the latter decisions, the respondents' claim for grant of advance increments in terms of Memo dated 1.9.1960 issued by the Government of Punjab cannot be accepted.

22. Before concluding, we consider it necessary to observe that while deciding the writ petitions filed by the respondents, the High Court neither adverted to the reasons assigned by the Director for rejecting the respondents' claim for advance increments nor any fault was found with order dated

A 30.7.1998. The High Court also failed to notice that the writ petitions were filed not only by the Masters/Mistresses, but also by other categories of teachers i.e., Lecturers, Language Teachers, Physical Training Instructors etc. who could not, by any stretch of imagination, lay claim for advance increments in B terms of Memo dated 1.9.1960 issued by the Government of Punjab which was confined to the Masters only. Therefore, on this ground also the direction given by the High Court for grant of advance increments to the respondents cannot be sustained.

C 23. In the result, the appeals are allowed. The impugned orders are set aside and the writ petitions filed by the respondents before the High Court are dismissed. However, it is made clear that this order shall not be made a ground to deny the benefit, if any, admissible to the respondents or any one of them in terms of the policy contained in letter dated 20.6.1977. D Rather, the State Government and the concerned authorities should *suo motu* undertake appropriate exercise for grant of benefit of that policy to the respondents and other similarly situated persons, pass appropriate orders and pay monetary benefits to the concerned teachers within six months from the E date of production/receipt of copy of this judgment. Needless to say that such benefit shall not be admissible to the teachers who may have improved their qualifications on or after 20.12.1982 i.e., the date on which the policy contained in letter dated 20.6.1977 was withdrawn.

F R.P. Appeals allowed.