

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 13.12.2016

CWP No.7535 of 2015

Dr. Vizender Singh & others

...Petitioner(s)

Vs.

Guru Jambheshwar University of Sciences & Technology, Hisar through its
Registrar at Hisar, Haryana

...Respondent(s)

CWP No.6473 of 2015

2. Gaurav Kumar

...Petitioner(s)

Vs.

Kurukshetra University, Kurukshetra & others

...Respondent(s)

CWP No.6717 of 2015

3. Rajesh Kumar & others

...Petitioner(s)

Vs.

Kurukshetra University, Kurukshetra

...Respondent(s)

CWP No.7944 of 2015

4.Vikas & others

...Petitioner(s)

Vs.

Chaudhary Devi Lal University, Sirsa

...Respondent(s)

CWP No.8465 of 2015

5. Dr. Kuldeep Yadav & others

...Petitioner(s)

Vs.

Kurukshetra University, Kurukshetra

...Respondent(s)

CWP No.9101 of 2015

6. Sachin Verma & others

...Petitioner(s)

Vs.

Kurukshetra University, Kurukshetra

...Respondent(s)

CWP No.9544 of 2015

7. Pawan & others

...Petitioner(s)

Vs.

Guru Jambheshwar University of Sciences & Technology, Hisar

...Respondent(s)

CWP No.9566 of 2015

8. Naveen Kumar & others

...Petitioner(s)

Vs.

Chaudhary Ranbir Singh University, Jind

...Respondent(s)

CWP No.10152 of 2015

9. Dr. Varun Malik & others

...Petitioner(s)

Vs.

Maharishi Dayanand University, Rohtak & others

...Respondent(s)

CWP No.10279 of 2015

10. Diksha & others

...Petitioner(s)

Vs.

Kurukshetra University, Kurukshetra

...Respondent(s)

CWP No.10280 of 2015

11. Harvinder Singh & others

...Petitioner(s)

Vs.

Kurukshetra University, Kurukshetra

...Respondent(s)

CWP No.10331 of 2015

12. Esha & others

...Petitioner(s)

Vs.

Chaudhary Ranbir Singh University, Jind

...Respondent(s)

CWP No.12188 of 2015

13. Pulkit Berwal

...Petitioner(s)

Vs.

Maharishi Dayanand University & others

...Respondent(s)

CWP No.12874 of 2015

14. Poonam Yadav

...Petitioner(s)

Vs.

Maharishi Dayanand University & another

...Respondent(s)

CWP No.15050 of 2015

15. Ankur Sangwan & others

...Petitioner(s)

Vs.

Chaudhary Devi Lal University, Sirsa

...Respondent(s)

CWP No.15410 of 2015

16. Aarti & another

...Petitioner(s)

Vs.

Maharishi Dayanand University, Rohtak & another

...Respondent(s)

CWP No.15755 of 2015

17. Adhip Deswal

...Petitioner(s)

Vs.

Maharishi Dayanand University & another

...Respondent(s)

CWP No.16233 of 2015

18. Sumit Mor & another

...Petitioner(s)

Vs.

Maharishi Dayanand University & others

...Respondent(s)

CWP No.17410 of 2015

19. Vipin Sehrawat

...Petitioner(s)

Vs.

Maharishi Dayanand University, Rohtak & another

...Respondent(s)

CWP No.18250 of 2015

20. Kanwar Singh

...Petitioner(s)

Vs.

Indira Gandhi University & another

...Respondent(s)

CWP No.16440 of 2015

21. Pradeep Tomar & others

...Petitioner(s)

Vs.

Maharishi Dayanand University, Rohtak & another

...Respondent(s)

CWP No.19386 of 2015

22. Atul Jhaghria

...Petitioner(s)

Vs.

Kurukshetra University, Kurukshetra

...Respondent(s)

CWP No.20826 of 2015

23. Rajesh & another

...Petitioner(s)

Vs.

State of Haryana & others

...Respondent(s)

CWP No.24528 of 2015

24. Mrs. Nameeta

...Petitioner(s)

Vs.

Indira Gandhi University & another

...Respondent(s)

CWP No.3026 of 2016

25. Sanjeet Kumar & others

...Petitioner(s)

Vs.

Kurukshetra University, Kurukshetra through its Registrar

...Respondent(s)

CWP No.5668 of 2016

26. Akshay Singh & others

...Petitioner(s)

Vs.

Maharishi Dayanand University, Rohtak & another

...Respondent(s)

CWP No.7211 of 2016

27. Sunil Kumar & others

...Petitioner(s)

Vs.

Kurukshetra University, Kurukshetra

...Respondent(s)

CWP No.7751 of 2016

28. Kirti Saini

...Petitioner(s)

Vs.

Kurukshetra University, Kurukshetra

...Respondent(s)

CWP No.7802 of 2016

29. Ms. Vandana Pandey & others

...Petitioner(s)

Vs.

Kurukshetra University, Kurukshetra

...Respondent(s)

CWP No.8285 of 2016

30. Mahak & others

...Petitioner(s)

Vs.

Maharishi Dayanand University & another

...Respondent(s)

CWP No.9464 of 2016

31. Anuradha

...Petitioner(s)

Vs.

Maharishi Dayanand University & others

...Respondent(s)

CWP No.9902 of 2016

32. Vivek Balyan & another

...Petitioner(s)

Vs.

Maharishi Dayanand University, Rohtak & another

...Respondent(s)

CWP No.10182 of 2016

33. Aparna Vats

...Petitioner(s)

Vs.

Kurukshetra University, Kurukshetra

...Respondent(s)

CWP No.12585 of 2015

34. Himanshu Manchanda & another

...Petitioner(s)

Vs.

Guru Jambheshwar University of Science & Technology, Hisar & Anr

...Respondent(s)

CWP No.12590 of 2016

35. Anuj Singal & others

...Petitioner(s)

Vs.

Guru Jambheshwar University of Science & Technology, Hisar & Anr

...Respondent(s)

CWP No.12906 of 2016

36. Nitu

...Petitioner(s)

Vs.

Maharishi Dayanand University, Rohtak & another

...Respondent(s)

CWP No.13699 of 2015

37. Amit Kumar

...Petitioner(s)

Vs.

Maharishi Dayanand University, Rohtak & another

...Respondent(s)

CWP No.16033 of 2016

38. Santosh Rani

...Petitioner(s)

Vs.

Managing Committee, Dayanand College, Hisar & others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.K. Malik, Sr. Advocate
with Ms. Rimple Kadyan, Advocate

Mr. Rajat Mor, Advocate,
Mr. Vivek Salathia, Advocate,
Ms. Bhupinder Kaur, Advocate,
for Dr. Surya Parkash, Advocate,
Mr. Sant Lal Barwala, Advocate,
Mr. J.S. Rana, Advocate,
Mr. Suman Nandal, Advocate, for
Mr. Kulvir Narwal, Advocate,
Mr. Vinod Bhardwaj, Advocate,
Mr. Aditya Yadav, Advocate,
Mr. Kulvir Narwal, Advocate,
Ms. Bhupinder Kaur, Advocate for
Dr. Surya Parkash, Advocate,
Mr. Sajjan Singh Malik, Advocate,
Mr. Deepak Aggarwal, Advocate,
Mr. Deepak Kundu, Advocate,
Dr. S.K. Radhey, Advocate,
for the petitioners.

Mr. Amit Rao, Advocate, for
Mr. Anurag Goyal, Advocate,
for respondent no. 1 (University)
(CWP-12874, 16233, 15410, 15755, 16440, 17410,
10152, 24528, 12188 of 2015, 5668, 9464, 9902, 12906,
13699).

Mr. Naveen S. Bhardwaj, Advocate,
for the respondent-University
(CWP No. 18250 of 2015)

Mr. AK Sharma, Advocate,
for the respondent-UGC(CWP No.18250 of 2015)

Mr. AS Virk, Advocate,
for the respondent-Kurukshetra University.

Mr. Arvind Seth, Advocate,
for respondent No.1
(CWP No.15050, 9544, 7535 of 2015, 12585 & 12590 of 2016)

Mr. Vishal Satija, Advocate, for
Mr. Ashe Kumar Goyal, Advocate
for respondent no. 2 (CWP- 24528 of 2015)

Mr. Tribhawan Dahiya, Advocate for respondent
in CWP Nos.9566 and 10331 of 2015.

RAJIV NARAIN RAINA, J.

This order disposes of collectively by a common order a bunch of above cause titled writ petitions brought under Article 226 of the Constitution, either by Guest Faculty, Teaching Associates on contract basis paid consolidated salary, Resource Persons on extension basis or Assistant Professors on contract etc. who are working at the level of University and a few in its affiliated privately managed Colleges receiving grant-in-aid from the State Government. Many of them work in the status of Assistant Professors on Contract on consolidated salary with no right to permanency wherever the employment is located in the respondent Universities in the State of Haryana. Besides the other categories of employment in the respective colleges, the Assistant Professors on contract have approached this Court for directions to the Kurukshetra University, Kurukshetra, Guru Jambheshwar University of Science & Technology, Hisar, Chaudhary Ranbir Singh University, Jind, Indira Gandhi University, Rewari and the Chaudhary Devi Lal University, Sirsa for discontinuing the alleged malpractice in the respondent – Universities/Colleges which relieve them before the vacations which keeps them on tenterhooks that they may not be recalled which leaves them without salary for the break period even after they are taken back in their respective positions earlier held. They seek

directions to the respondent – Universities/Colleges to allow them to continue on their respective posts by ensuring directions recalling them at the start of the forthcoming academic session and to continue them till regular appointments are made. They pray for directions to grant them the minimum of the pay scale and grade pay prescribed for the regular employees including allowances attached to the posts occupied by regular faculty or in accordance with the University Grants Commission, New Delhi letter dated 05.02.2010 issuing revised guidelines, a copy of which is found annexed in quite a few of the petitions. They further seek directions to the respondent– Universities/Colleges to grant salary for the vacation period and in a case or two the benefit of maternity leave to the female employees as per the Punjab Civil Services Rules, 1970, as applicable to Haryana. Still further, they seek a direction to the University Grants Commission to re-notify the letter regarding minimum scale of pay and emoluments to be paid to them while teaching as Guest Faculty, Teaching Associates, and Resource Persons on Extension Basis and Associate Professors on contract or temporary basis and for its enforcement.

2. It is not disputed that the UGC Regulations are mandatory in nature and all the Universities are required to strictly comply with them to maintain standards of higher education. It is necessary for the Universities and the Management of Colleges to make necessary changes in their statutes, ordinances, rules, regulations etc. to incorporate these Regulations. The University Grants Commission has notified in the Gazette of India, the law in ‘Regulations on Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010’ (for short ‘Regulations – 2010’), as amended up to date.

3. These Regulations have been issued to ensure minimum standards of academic qualifications for appointment and other service conditions of University and College Teachers, Librarians, Directors of Physical Education and Sports for the maintenance of standards of higher education and revision of pay scales. It is the stand of the University Grants Commission in their affidavit in return that anything contrary to the Regulations – 2010, as amended up to date, shall be null and void.

4. These Regulations prescribe that the post of Assistant Professor when not in regular direct appointment should carry with it payment of ₹1000/- per lecturer to a maximum ceiling limit of ₹25,000/- per month. The University Grants Commission says that these Guidelines are not very old and do not warrant any review of the scale of honorarium of Guest/Part Time Teachers at this stage. However, they may be reviewed by the 7th Central Pay Commission in its Report.

5. The forensic debate whether the Regulations framed by the University Grants Commission are recommendatory in nature or have binding force was resolved by the Supreme Court in University of Delhi Vs. Raj Singh, (1994) Supp. 3 SCC 516 : 1995 (1) SCT 1 holding that the Regulations were binding on Universities. The dictum in *Raj Singh's case* was applied and followed in two most noticeable judgments of this Court delivered in 'Neeraja Malik Vs. State of Haryana', 1996 (4) SCT 113 and a Division Bench judgment in delivered in CWP No.24447 of 2012 titled 'Anil Kumar & another Vs. State of Haryana & others' decided on 05.03.2013.

6. There is no doubt that the Guidelines and Regulations issued by the University Grants Commission apply in case of persons, who are serving as Lecturers etc. on permanent basis after regular selection by a duly

constituted Selection Committee in accordance with the ordinances, rules & regulations of the Universities and the respective Government Colleges or Private Colleges receiving grant-in-aid. The State of Haryana has accepted the Regulations framed by the University Grants Commission in the year 1991 and these Regulations have been treated as applicable for the purpose of recruitment to various teaching courses in the Colleges affiliated to different Universities established in the State. A distinction would have to be made between the Regulations of the University Grants Commission and the Guidelines issued from time to time and if the latter are not inconsistent with the former, they would prevail and be binding on the State Government as well as the Colleges in so far as they provide for maintenance of standards of higher education in the Universities and the Colleges and institutions affiliated to them. These Universities are the ones which are established or incorporated by or under the Central Act, Provincial Act or a State Act, as the case may be, and every other institution deemed to be a University under Section 3 of the University Grants Commission Act, 1956.

7. For the sake of convenience to render a common judgment these cases can conveniently be divided into five groups as follows:-

- (1) Petitions involving actions brought by Assistant Professors on contract basis to teach different subjects with employment for fixed term or extensions granted by the four different respondent universities with no right to regularization and to await regular recruitment are University wise listed: (i) Kurukshetra University; CWP Nos. 10280, 10279, 8465, 6473, 9101, 19386 and 6717 all of 2015; CWP No. 7802, 7751, 7211, 10182, 3026 all of 2016. (ii) Jambheshwar University: CWP No. 12590 of 2016. (iii)

Chaudhary Devi Lal University; CWP No. 15050, 7944 of 2015. (iv) Chaudhary Ranbir Singh University; CWP No. 9566 and 10331 of 2015 and (v) Indira Gandhi University, Meerpur, Rewari; Assistant Professors on Guest Faculty in CWP 24528 of 2015 and CWP 18250 of 2015. [Note: Petitioners in this University are unlike pure Guest Faculty in Group (3) below].

(2) Petitions involving Lecturers/Assistant Professors on temporary basis in privately managed aided colleges affiliated to the Kurukshetra University claiming summer vacation salary and to allow them to work till regular selection is made and direct recruits join, are: CWP Nos. 20826 of 2015 and CWP 16033 of 2016.

(3) Those involving Guest faculty are: CWP Nos. 10152, 17410, 16440, 15410, 16233, 12188, 15755 and 12874 all of 2015.

(4) The cases involving Teaching Associates on contract basis on consolidated salary in Guru Jambheshwar University of Science & Technology, Hisar are CWP No. 9544 of 2015, 7535 of 2015 [treated by consent as Main Case] and CWP 12585 all of 2016 broadly falling in Group (1) supra when appointed in a teaching department of the University on contract basis on “consolidated salary” on recommendation of the Ad hoc Selection Committee in 2014 till regular recruitment.

(5) Petitions by Resource Persons on extension basis in MDU, Rohtak are CWP Nos. 9464, 8285, 13699, 5668, 9902, 12906 all of 2016

8. Few of the salient facts, which are necessary in determining the questions which fall for consideration in these cases is as to whether the petitioners of the five different categories have a right to grant of the threefold prayers made, equal pay for equal work, vacation salary and continuity of job till regular hands are available for joining posts occupied by them as Assistant Professors. Thus the facts are taken from the lead petition by consent of counsel i.e. CWP No.7535 of 2015 brought by 52 Teaching Associates against the Guru Jambheshwar University of Science & Technology, Hisar, except where reference is made to another petition.

9. Briefly put, Guru Jambheshwar University of Science & Technology, Hisar in the main case [CWP 7535 of 2015] is stated to have been advertising assignments of positions as Teaching Associates from time to time. The advertisement which is relevant to the case invited applications from eligible candidates fulfilling UGC prescribed qualifications similar to the post of Assistant Professor and candidates who do not possess UGC qualifications, but have experience of teaching as Guest Faculty/contractual in two semesters in the College/University may also come forward and attend a 'walk-in-interview' with their testimonials in hand to participate in the selection process. The appointments to the selected candidates were offered as Teaching Associates on contract basis in the Departments notified in the public notice for teaching assignments to continue till regular recruitments are made on the cadre posts lying unfilled for lack of timely regular recruitments, whichever is earlier. The appointed Teaching Associates were selected through an Ad hoc Selection Committee and given consolidated a salary of ₹23,000/- per month up to 30.05.2015, the end of the period of contract or till regular appointment is made, whichever is earlier. However, there were stipulations in the offer of appointments dated

12.08.2014 (Annex P-3) that they would not be entitled to claim regularisation of service or regular pay scale; their appointment was liable to be terminated at any time without any notice and they will be entitled only to casual leave as per University rules. The petitioner(s) accepted the offer and joined as Teaching Associate [in the main case]. A similar position obtains in the connected cases where the appointments were designated as Assistant Professors on contract, Guest Faculty, Extension Lecturers on extension basis etc.

10. The University Grants Commission, New Delhi mandates that qualifications for Guest Faculty, Teaching Associates etc. should be the same as those prescribed for Regular Teachers of University/Colleges in UGC Regulations and they could only be appointed against sanctioned posts. The University Grants Commission had in place due regard to the recommendations of the 6th Pay Review Committee duly accepted by the Commission in its revised Guidelines styled 'The Scheme of Appointment/Honorarium of Guest/Part Time Teachers', as noticed in the letter of the University Grants Commission dated 05.02.2010 (Annex P-4) conveyed to the Registrar, Aligarh Muslim University, Aligarh. The letter also stipulates that these Teachers would not be given benefit of allowances, pension, gratuity etc.

11. To assert their right to continuation till the regular appointments are made, the petitioners rely on the judgment of the Supreme Court in Hargurpratap Singh Vs. State of Punjab & others, (2007) 13 SCC 292. The two issues settled by the Supreme Court in this case were that though the appellants may not be entitled to regular appointment, but they would be entitled to the minimum of the pay scale and they should be continued till regular incumbents are appointed. The right to claim regularisation was

rejected. The mainstay of the ruling is the upholding the view of this Court giving rise to the appeal that ordinarily an ad hoc arrangement should not be replaced by another ad hoc arrangement since in the meanwhile the ad hoc appointees have gained experience, which would be more beneficial and useful to the Colleges concerned rather than to appoint fresh persons on ad hoc basis who are yet to gain experience. However, the Supreme Court did not approve the view of the High Court that an ad hoc employee should be denied the claim of minimum of the pay scale till regular persons are appointed.

12. Mr. R.K.Malik, learned senior counsel appearing on behalf of the petitioners in the lead petition, has relied upon a large number of judgments to support his contentions on his threefold prayers which have been placed on record of the case file as a ready reckoner to support his stand that the petitioners have a right to continue till they are not replaced by regular recruits and for minimum of the pay scale of the jobs involved. It may not be necessary to notice all of them except a decision of the learned Single Judge rendered in CWP No.9300 of 2015 titled 'Mrs. Menka & others Vs. State of Haryana & others' on 05.05.2016. The petitioners in this case were Assistant Professor/Extension Lecturers (also called as Resource Persons) and they made similar prayers as in this bunch of petitions to continue them in service till they were not replaced by regular hands joining. Learned Single Judge framed three questions for consideration i.e. (i) whether the petitioners can be allowed to continue to work on their post till the regular selections are made?; (ii) whether the petitioners are entitled to get the salary for the vacation period? & (iii) whether the petitioners are entitled to get ₹1000/- per lecture instead of ₹250/- as per UGC Guidelines?

The first question was answered on the basis of *Hargurpratap Singh's case*

and as such they would have a right to continue on contract or temporary basis till regular selections are made. The second question was decided in terms of the judgment of this Court delivered in CWP No.13946 of 2004 titled 'Dr. Anil Khuranna Vs. MDU, Rohtak & others', which in turn had relied upon the Supreme Court judgment in Rattan Lal Vs. State of Haryana, (1985) 4 SCC 43 and in terms of Full Bench judgment of this Court in CWP No.14796 of 2003 titled 'Avtar Singh Vs. State of Punjab' decided on 11.11.2011. In the view of the Full Bench in *Avtar Singh's case*, a daily wager, ad hoc or contractual appointee working against regular sanctioned post, if appointed after undergoing a selection process based upon fairness and equality of opportunity to all other eligible candidates, shall be entitled to minimum of the regular pay scale from the date of engagement. A moratorium period was fixed for 10 years for rights to mature. The appeal against the judgment in *Dr. Anil Khuranna's case* was dismissed on 21.11.2014 in LPA No.2104 of 2013 and the SLP (C) No.8504 of 2015 carried by the unsuccessful party was dismissed by the Supreme Court on 17.04.2015. Therefore, the second question was answered in favour of the petitioners that they would be entitled to the minimum pay scale from the date of engagement. Regarding the third question posed, the learned Single Judge relied on the case of Dr. Pushpa Devi & others Vs. BPS Mahila Vishwavidyalaya & others, [CWP No.2372 of 2011 decided on 04.10.2013] dealing with the case of Guest Lecturers, wherein this Court approved grant of remuneration as prescribed at the rate of ₹1000/- per lecturer subject to a maximum of ₹25,000/- per month w.e.f. the date of their appointment. Letters Patent Appeal No.137 of 2014 filed against the said judgment was dismissed on 25.02.2015 and the order stands affirmed. A gray area fell between the remuneration per lecture with ceiling and the minimum of the

running pay scale of the post. The ceiling was more than the minimum of the prescribed pay scale of Lecturer re-designated as Assistant Professor, years ago.

13. As I read the judgment in *Mrs. Menka's case*, I fail to understand the co-existence of the precedential rule in *Avtar Singh's case (FB)* stipulating principles in cases of daily wage/ad hoc/contractual appointees to the minimum of the pay scale when the appointment came in a fair and transparent manner by a process known to law then even after declaration of such right, the remuneration has been restricted to ₹1000/- per lecture subject to ₹25,000/- per month. But this is what the expert body in UGC ordains in its wisdom and is accepted as just and fair contracts of service in any of the capacities allowed. Since a strong reliance has been placed on *Mrs. Menka's case* by the petitioners, I would then have to consider the argument of Mr. Tribhuvan Dahiya appearing for Chaudhary Ranbir Singh University in the connected case i.e. CWP No.9566 of 2015 titled 'Naveen Kumar & others Vs. Ch. Ranbir Singh University & others' that *Mrs. Menka's case* merely records the dismissal of LPA No.137 of 2014 arising out of *Dr. Pushpa Devi's case*, but fails to notice the UGC circular dated 06.02.2010 [for lack of proper assistance] and the remuneration mentioned therein would alone be payable after fulfilling all the requirements mentioned and stipulated by this Court in LPA No.137 of 2014. The order passed in LPA No.137 of 2014 titled 'BPS Mahila Vishwavidyalaya, Khanpur Kalan, through its Registrar Vs. Dr. Pushpa Devi and others' on 25.02.2015 relied upon by Mr. Dahiya is reproduced as follows:

“This appeal can be disposed of on the basis of the stand taken by the State Government in its affidavit in reply and on the basis of the submissions made before us.

2. The question is whether the communication from the University Grants Commission (UGC) to all the Central/Deemed/State Universities is binding on the appellant-university and the State Government. The communication as far as the appellant is concerned is dated 06.02.2010. By this letter the UGC conveyed its acceptance to the recommendations of the 6th Pay Review Committee regarding the revised guidelines for the scheme of appointment/honorarium of Guest/Part-Time Teachers. The U.G.C. decided that the Guest/Part-time teachers with the qualifications prescribed therein should be paid ₹1000/- per lecture subject to a maximum of ₹25,000/- per month. The original petitioners i.e. respondent Nos. 1 to 9 were appointed as the Guest Lecturers pursuant to notice dated 17.06.2010 for “Walk-in-Interview” for the post of Guest Lecturers in the subjects mentioned therein. The amount payable to the Guest-Lecturers as per that notice was ₹250/- per lecture subject to a maximum of ₹10,000/- per month.

3. The question is whether the University Grants Commission’s instructions dated 06.02.2010 are binding on the appellant and the State Government.

4. Mr. Vivek, learned Additional Advocate General appearing for the State of Haryana has invited our attention to a judgment of the Division Bench of this Court dated 05.03.2013 in a group of writ petitions first of which was Civil Writ Petition No. 24447 of 2012 in the case of *Anil Kumar and another v. State of Haryana and others*. It is admitted that the issue is answered against the appellant and the State Government to the effect that the circular would be binding on them. The appellant itself had in its reply stated that if the State Government approves the U.G.C. guidelines it would have no hesitation in implementing the same.

5. In view of the above, the appeal is dismissed. Needless to add that the concerned persons would be

entitled to the benefit of circular subject to their fulfilling all the requirements stated therein.”

14. Thus, *Mrs. Menka's case* cannot be treated as a precedent on the University Grants Commission circular dated 06.02.2010 and Mr. Dahiya is not wrong in pointing this out to avoid any error of judgment. On the same line of reasoning as in *Mrs. Menka's case*, the learned Single Judge has followed the opinion in Anurag Chahal & others Vs. State of Haryana & another [CWP No.16954 of 2015 decided on 05.05.2016].

15. It has been further argued by Mr. Dahiya that a specific period of appointment on contract has to come to an end by efflux of time. He invites the attention of this Court to the judgment of the Supreme Court in Vidyavardhaka Sangha & another Vs. Y.D.Deshpande & others, (2006) 12 SCC 482 to contest the prayer. In para.4, the Supreme Court observed as under:

“4. It is now well-settled principle of law that the appointment made on probation/ad hoc basis for a specific period of time comes to an end by efflux of time and the person holding such post can have no right to continue on the post. In the instant case as noticed above, the respective respondents have accepted the appointment including the terms and conditions stipulated in the appointment orders and joined the posts in question and continued on the said post for some years. The respondents having accepted the terms and conditions stipulated in the appointment order and allowed the period for which they were appointed to have been elapsed by efflux of time, they are not now permitted to turn their back and say that their appointments could not be terminated on the basis of their appointment letters nor they could be treated as temporary employee or on contract basis. The submission

made by the learned counsel for the respondents to the said effect has no merit and is, therefore, liable to be rejected. It is also well-settled law by several other decisions of this Court that appointment on ad hoc basis/temporary basis comes to an end by efflux of time and persons holding such post have no right to continue on the post and ask for regularisation etc.”

16. Accordingly, on first principles of law the petitioners have no right to avoid or prevent termination of service in a case of contractual appointments where replacement is not taking place by a similar arrangement and they cannot receive directions in advance of an event which has not transpired since there is no order in existence which is sought to be impugned and therefore a writ will not issue as a prophylactic doze without any acquaintance to the ground situation as to whether their induction into service ushered the best talent. A general direction cannot go from the writ Court in every case by reflex on the court made rule against fresh talent to continue services of the petitioners anyhow by interim orders which continue and cannot be vacated without hearing the other side when the better part of the session is nearing completion given law's delays and saddle their services on an unwilling University, a private College or privately managed aided institutions affiliated to the University which are connected only for the purpose of grant of degrees and academic qualifications. The subsisting rights of parties would have to be examined on a case to case basis on the factual matrix, having regard to the nature of the employment, engagement, appointment, ad hoc, temporary or regular or by any other nomenclature used in the field of teaching, just as we have here Assistant Professors on contract, Guest Faculty Lecturers, Resource Persons, Teaching Associates and multiplications thereof which may be created in the

future to prevent regular recruitment which is the need of the hour. These arrangements not only involve weak service law foundations but also are taking an ad hoc view. Be that as it may, at the same time due regard has to be paid to financial considerations and monetary constraints upon the employer which are difficult to imagine by the writ court to consider enhancement or reduction of salary, pay, honorarium, wages or whatever you might like to call them. To take an example on the financials involved in a privately managed aided college one would have to take stock of whether the teacher or staff member is employed against an aided post or a non-aided post in self financing scheme, and then the concept of the level of remuneration payable may necessarily change creating disparity in pay. Equality is not an empirical test and the science of law is not based on absolutes. The very foundation of grant-in-aid schemes confirms that India is not ripe yet for private institutions to independently shoulder salaries, running costs and sundry expenses without State's substantial financial support in its constitutional obligations towards higher education. The wealth of the nation is itself a constraint on court of which it knows little without extrinsic help in understanding of who should be paid what. I would venture no more in this case to hazard.

17. Mr. Dahiya also invites the attention of this Court to the 'Statutes of Chaudhary Ranbir Singh University, Jind', which he represents in some of the cases. He refers to the Schedule to the Statute notified in the Haryana Government Gazette (Extra) on 07.08.2014. The provisions of Sections 23 & 24 deal with appointments and composition of Selection Committee for appointment to teaching posts including those of Professor/Associate Professor/Assistant Professor. The relevant provisions read as follows:

“23. (1) All appointments to teaching posts shall be made by the Executive Council on the recommendations of the Selection Committee.

(2) appointments to Class-A posts (non-teaching/technical) shall be made by the Executive Council, on the recommendation of the Establishment/Selection Committee.

(3) (i) Appointments to post of Class-B shall be made by the Vice-Chancellor after complying with the due procedure laid down in the rules or orders.

(ii) Appointments on daily wages in respect of Class C and D employees shall be made by the Registrar after complying with the due procedure laid down in the rules or orders.

(4) Notwithstanding anything contained in clauses (1), (2) and (3) above, the Vice-Chancellor may, where he considers necessary, make an ad hoc or temporary appointment for a period not exceeding six months, if it is not possible or desirable to make regular appointment. Where the appointing authority is the Executive Council, the decision taken by the Vice-Chancellor shall be reported to the Executive Council in its next meeting.

24. (1) A Selection Committee for any appointment of Professor/associate professor/assistant professor shall consist of:-

- (i) the Vice-Chancellor;
- (ii) the Dean of the Faculty;
- (iii) the Chairperson of the Department concerned, if he is Professor;
- (iv) the senior most Professor in the Department except where otherwise decided by the Vice-Chancellor;

- (v) three persons, not connected with the University, nominated by the Vice-Chancellor from a panel of name drawn up by the Academic Council on the basis of their special knowledge of or interest in the subject with which the Professor shall be concerned;

Provided that the Vice-Chancellor may add more names to the panel in special circumstances and report these to the Academic Council at its next meeting.

- (vi) an academician, who is nominee of the Chancellor.

(2) The panel of names drawn up by the Academic Council and the additions, if any, made thereto by the Vice-Chancellor, as provided in the Statutes, shall be subject to approval of the Chancellor.

Provided that in case one of the experts fails to turn up at Selection Committee, after accepting the invitation to attend the same, the proceeding of the meeting shall not be invalidated.

Provided further that the proceedings of the meeting of a Selection Committee shall not be invalidated in case any of the ex-officio members of the Selection Committee fails to attend the meeting.

(3) The Vice-Chancellor shall preside over at the meeting of a Selection Committee and the Registrar shall act as its Secretary. The meeting of a Selection Committee shall be convened by or under the directions of the Vice-Chancellor.

(4) The Selection Committee shall consider and submit to the Executive Council the recommendations as to the appointment referred to it. If the Executive Council is unable to accept the recommendations made

by the Committee, it shall record its reasons and submit the case to the Chancellor for final orders.

25. The constitution of the Establishment Committee shall be determined by the Ordinance.

26. (1) The Academic Planning Board shall consist of-

- (a) the Vice-Chancellor;
- (b) not more than seven persons of high standing in education who shall be appointed by the Chancellor on the recommendations of the Vice-Chancellor for a term of two years;
- (c) The Registrar shall be the Secretary to the Board.

(2) The recommendations of the Board shall be implemented after they are approved by appropriate authorities of the University.

(3) It shall advise on the planning and development of the University particularly in respect of the standards of educations and research in the University.”

18. He may be right in contending that where an Ad hoc Selection Committee has been constituted which is inconsistent with Section 24(1), then it cannot be said that there has been selection in terms of the ‘equal opportunity principles’ enshrined in Article 16(1) of the Constitution for the reason that the posts are either public posts in Universities and Colleges or are appointments made against grant-in-aid posts. However, it may be a different thing where appointment of persons like the petitioners in the respective capacities is against posts maintained by self-finance of the respective Societies that run Colleges receiving grant-in-aid as said earlier by me. The private managements may have to be treated differently in the matter of pay and allowances when not falling under the umbrella of State and other Authorities, which may not be amenable to the financial discipline

of State-sponsored or aided institutions. Their cases would require to be treated differently while applying the principles of replacement theory, minimum of the pay scale prescribed by the employing institutions or by Government for its employees even regarding vacation salary. There can be no doubt that appointments made in sharp departure of statutes are irregular and illegal. Apart from guidelines, circulars and letters issued under Article 162 of the Constitution or the statutes of the respondent Universities and their executive decisions where expressions such as Guest Faculty, Part-Time Teachers, Teaching Associates, Assistant Professor on contract etc. are used, then none of these appointments barring Assistant Professor may find expression in the Statutes and the Ordinances of the Universities, and to my mind these designations have been created only to defeat the principle evolved by Courts against the replacement by similar arrangement till regular recruitment is made to side step regular recruitment by unsatisfactory ad hoc arrangements for the time being and which if continued for an inordinately long or endlessly time prevent direct recruitment. This is the bane of governance at the cost of quality education at the highest levels. This is not to say that one or the other brings the best talent on board. But one is protected by the law, the other not.

19. The Supreme Court in *Rattan Lal's case* (supra) was not confronted with these new found designations when it decided the case in 1987. They may not have been evolved by then as a bridge to regular recruitment bearing the efficacy of law and its imprint. The Supreme Court in *Rattan Lal's case* filed directly under Article 32 of the Constitution dealt with ad hoc lecturers in college cadre at Chandigarh, who had been selected by a regular mode of recruitment though in ad hoc capacities and the lecturers had served for large number of years depriving them of their

vacation salary by a method of relieving and joining, which right was declared in their favour. To appreciate the philosophy in *Rattan Lal*, the short order requires to be read for culling out its ratio and the order is short enough to be reproduced below verbatim without adding much heft to the order:-

“In all these petitions the common question which arises for decision is whether it is open to the State Government to appoint teachers on an ad hoc basis at the commencement of an academic year and terminate their services before the commencement of the next summer vacation, or earlier, to appoint them again on an ad hoc basis at the commencement of next academic year and to terminate their services before the commencement of the succeeding summer vacation or earlier and to continue to do so year after year. A substantial number of such ad hoc appointments are made in the existing vacancies which have remained unfilled for three to four years. It is the duty of the State Government to take steps to appoint teachers in those vacancies in accordance with the rules as early as possible. The State Government of Haryana has failed to discharge that duty in these cases. It has been appointing teachers for quite some time on an ad hoc basis for short periods as stated above without any justifiable reason. In some cases the appointments are made for a period of six months only and they are renewed after a break of a few days. The number of teachers in the State of Haryana who are thus appointed on such ad hoc basis is very large indeed. If the teachers had been appointed regularly, they would have been entitled to the benefits of summer vacation along with the salary and allowances payable in respect of that period and to all other privileges such as casual leave, medical leave, maternity leave etc. available to all the Government servants. These benefits are denied to these

ad hoc teachers unreasonably on account of this pernicious system of appointment adopted by the State Government. These ad hoc teachers are unnecessarily subjected to an arbitrary “hiring and firing” policy. These teachers who constitute the bulk of the educated unemployed are compelled to accept these jobs on an ad hoc basis with miserable conditions of service. The Government appears to be exploiting this situation. This is not a sound personnel policy. It is bound to have serious repercussions on the educational institutions and the children studying there. The policy of “ad hocism” followed by the State Government for a long period has led to the breach of Article 14 and Article 16 of the Constitution. Such a situation cannot be permitted to last any longer. It is needless to say that the State Government is expected to function as a model employer.

2. We, therefore, direct the State Government to take immediate steps to fill up in accordance with the relevant rules the vacancies in which teachers appointed on an ad hoc basis are now working and to allow all those teachers who are now holding these posts on ad hoc basis to remain in those posts till the vacancies are duly filled up. The teachers who are now working on such ad hoc basis if they have the prescribed qualification may also apply for being appointed regularly in those posts. The State Government may also consider sympathetically the question of relaxing the qualification of maximum age prescribed for appointment to those posts in the case of those who have been victims of this system of “ad hoc” appointments. If any of the petitioners in these petitions has under any existing rule acquired the right to be treated as a regularly appointed teacher, his case shall be considered by the State Government and an appropriate order may be passed in his case.

3. We strongly deprecate the policy of the State Government under which “ad hoc” teachers are denied

the salary and allowances for the period of the summer vacation by resorting to the fictional breaks of the type referred to above. These “ad hoc” teachers shall be paid salary and allowances for the period of summer vacation as long as they hold the office under this order. Those who are entitled to maternity or medical leave shall also be granted such leave in accordance with the rules.

4. If the petitioners have any other grievances, they may approach the High Court of Punjab and Haryana.

5. These petitions are accordingly disposed of.

20. Therefore, *Rattan Lal’s case* cannot be treated as a precedent in all situations much less on contractual services or Guest Faculty, Teaching Associates or Resource Persons on extension basis which are stop-gap arrangements far from ad hoc employees recruited to public posts avoiding regular recruitment in accordance with rules. It is trite to say that if regular recruitment is made in the beginning, the principles in *Rattan Lal*, *Hargurpratap Singh etc. cases* would never have been born or needed to be decided. The rule evolved by the Courts is essentially one of equity and against exploitation and abuse of authority to appoint persons not by a regular procedure established by law, but by an ad hoc method, which has over the decades, shifted the focus of Universities and Colleges from teaching to litigation or be faced with it. In *Rattan Lal* such ad hoc appointments were disapproved in no uncertain words. We are three decades away from the anguish expressed by the Supreme Court and the malady remains. *Hargurpratap Singh case* cannot become a crutch forever to cripple the system and be a drug for the employer to be dependent of. Ad hocism of any kind and especially in the precincts of a University finds no legal approval and has to be deprecated unequivocally in every case. The issues in this case are about measures to be taken meanwhile without putting the

imprimatur of the court as established legal precepts or canons of law. Actually the best way forward to my mind is to quash all these appointments once and for all to sound their death knell instead of propagating them by discovering principles and creating artificial ones to save them on the mantras of the anti-replacement theory by the same ilk of persons. Ad-hocism breeds parasitically on ad-hocism and rather draws strength from it which creates a vicious circle difficult to get out of by inertia setting in. But the court cannot be harsh and throw people out or tolerate arbitrary replacement and therefore the system flourishes and would predictably continue given weak people at the helm of affairs who are afraid to govern Universities and Colleges in accordance with law, their own law, and shelf effort to advertise posts and face the burden of thousands of applications which may be received by eligible candidates. Or is it that the burdens of Article 14 and 16 of the Constitution are too difficult to bear in a burgeoning population? Why not scrap them and go back to the days of British India where a letter of recommendation from a high up was enough to certify talent and character and land a job. We have no evidence pre-independence that method led to bad governance by our own kind. Post independence has been a down-sliding disaster in loss of faith and trust in institutions of excellence, like the Universities are supposed to be, as was there past glory. That glory has to be brought back by the Universities to the Universities; but not by addiction to ad-hocism but by restoration of loss of will to do wallowing in sheer bureaucratic apathy, care-less attitude and the proverbial red tape.

21. The issues emerging from these cases involved academia and social issues, which cannot easily be painted with one brush and each of the rights claimed in these petitions would have to be independently examined

on a case-to-case basis and not by a wide sweep of court directions. In answering the question, it really matters little whether you call the petitioners Assistant Professors on contract, Teaching Associates, Guest Faculty and Resource Persons etc. when they are far removed from regular recruitment against regular pay scale and allowances. The longer is the arrangement it carries with it a complex baggage of litigation and it is ultimately left for the Court to evolve legal principles universal in all situations covering all kind of temporary employments. This is also an adhoc task. The task is not without hazard. Time and again this Court has denounced guest faculty appointments and called upon employers to make regular recruitment but the effort has been mostly in vain because the disease is like a multi-headed hydra you may strike here and there but without durable solutions. The judicial experience has been that when the court closes one door of misuse of power to appoint, the Government/Universities and the Colleges open another one to carry on with the disease subjecting the academia to disrepute and the very purpose of establishing the University Grants Commission, New Delhi is lost. The wisdom of which institution is sought to be emasculated by lowering the standards of class room teaching, or at least the perception of this, where lies the crux of education imparted with an invention of designations and nomenclature adding to the glossary of posts. I think it is a sad day where a student at college and university level is taught by Assistant Professors on contract, Teaching Associates, Guest Faculty and Resource Persons teachers on a regular basis unless the appointment is par excellence. The goals get lost apart from getting mired in litigation, as this bunch of cases represents.

22. However, at the same time, the Court cannot ignore that the system of making such temporary passing-phase appointments is an

exploitation of labour at cheap cost as pointed out by the Supreme Court in *Rattan Lal* case. The fundamental duties in Article 51A(j) enjoin dealing with citizens in a spirit of humanism and, therefore, to end the disease and exploitation regular recruitments in time from open merit talent is desirable at the earliest so that the interest of students are not jeopardized for which these edifices have been created by the various regulatory laws. It appears to me that these cases would have to be decided on a balance of the principles of justice, equity and good conscience being in non-rule territory and make-shift arrangements and in cases where such engagements have continued for sometime or long years they should be put to end by regular selection. It is not enough to say that one case is squarely covered by another, as the petitioners insist, without culling out a workable legal principle synthesizing the reliefs which may or may not be due to the petitioners, whether they have a right to continue till regular appointments are made; whether they can justifiable claim salary for the summer vacations and minimum of the prescribed scale of pay of posts depending on the well worn doctrine of 'equal pay for equal work' as explained by the Supreme Court and the High Courts over the passing years. An arrangement of Assistant Professor appointed on contract basis may refer to a sanctioned post, as it must, to justify salary to be paid at the minimum of the pay scales prescribed for regular incumbents, but I certainly do not believe that this would be ipso facto true of Teaching Associates, Guest Faculty and Resource Persons etc. or whatever you may call them by a stroke of the same pen without there being pleading and proof of equal work performed with equal responsibilities and degrees all things being equal in every manner. This cluster of *katcha* engagements when not referable to cadre and statutory posts designated and incorporated in the rules and regulations may found no

legal basis for a claim to minimum of the pay scale admissible to regular employees. Teaching Associates, Guest Faculty and Resource Persons don't belong to sanctioned cadre strength. These three categories are not equal to Assistant Professors on contract basis who have been taken on board against cadre posts duly sanctioned. Teaching Associates on extension basis if appointed on contract to cadre posts and paid fixed salary like Assistant Professors on contract basis would fall in the same category for reliefs granted at the end of this order and not otherwise if engaged on per lecture basis in any of the respondent institutions.

23. In order to cull out the three reliefs (supra) in these cases one would have to make broad slots to examine each of the categories of cases composing this bunch.

24. In applying the 'anti replacement theory', which is a court created devise, all categories may fall in the same frame, as the law appears to be well-settled that one type of arrangement should not be replaced by a similar type, if it continues for a sufficiently long time and regular recruits are not in sight, then all of them have rights not to be replaced and continued till regular recruits are available for joining, provided their work and conduct and efficiency is not in doubt. Complacency resulting from making temporary arrangements of the kind in this case is anathema to regular appointments. This delays the legitimate hopes and aspirations of the categories under debate to meet regular recruitment if vacancies are advertised. They may be good enough to fit the bill of merit selection or at least some of them. Some may turn overage by delay in regular selection. Outsiders may be available to take up regular teaching assignments trying to get in but not in temporary arrangements. Their careers are also getting lost to time and tide and reluctance of the authorities to make permanent

appointments. These types of temporary ad hoc services or what I may call in the colloquial *jugad* arrangements usually tend to retard the will and effort to take recourse by the employer of the trouble of making direct recruitments to sanctioned posts which requires serious effort towards transparency in appointments to public service, which is part of national wealth. Since the posts are budgeted, therefore payment of minimum of the pay scale prescribed for the corresponding post or fixed salary, or per lecture with ceiling as guided by the UGC and the Universities is the easier payment alternative to carry on teaching work. These engagements fall far short of the constitutional scheme of making public appointments and attaching pay scales to posts. Where the contract of service is limited by time then incumbents must inevitably go when the contract ends. If the contract ends and is replaced by a fresh contract because of the lethargy to make regular appointments by public advertisement and selection process, the contract would continue willy-nilly till regular replacement comes by. This mostly adds substantial work to this Court in perennial litigation invoking the ‘anti-replacement theory’ of which there is an avoidable flood only because the officers of the government and the universities fail to abide by the law or avoid it like demonstrated in cases like *Rattan Lal*, *Hargurpratap Singh*, ‘*Satbir Singh v. State of Haryana*’, 2002 (2) SCT 354 (DB) *etc.* Colleges, which are affiliated to the Universities and receive grant-in-aid from Government and are privately managed then against non-aided posts and aided posts falling suddenly vacant for any reason, replacement should not be normally allowed [barring work and conduct falling short of desired standards] and incumbent should continue till direct recruitment is made where these candidates would have a right to compete, all things being equal, maximum entry age limitations etc prescribed in the rules of service.

25. However, in institutions run by private Societies which do not receive grant-in-aid, they should not, I think, be compelled to apply any of the three principles mentioned above for ad hoc engagements such as Guest Faculty, Extension Lecturers and Teaching Associates as they have a right to manage their own institutions within the limited resources and financial capacity they may have and to this end a Court interdict may be avoided so as not to shut them down and buckle over. But this may not be true where institutions receiving grant-in-aid appoint regular teachers against non-aided posts they may have to comply with equality principles in the matter of pay drawn by teachers on aided posts to remove discrimination applying equal pay for equal work.

26. Those of whom are engaged in the aforesaid categories of employment in private aided colleges against posts which do not receive grant-in-aid being employed against posts a self-financing scheme, none of the above principles to my mind should apply automatically and all they would need is to conform to the minimum academic qualifications and other conditions laid down in the UGC guidelines since they occupy teaching posts and are to be treated equally so far as standards of imparting education is concerned. While applying the minimum of pay scale principle, the UGC guidelines dated 06.02.2010 would have to be adhered and the petitioners cannot claim anything more than what is fixed and stipulated in the Regulations and the institutions cannot be compelled by a court of law to pay anything more by way of emoluments or allowances other than provided to them which they have accepted at the time of joining.

27. In cases of pure contractual appointments, engagements other than Teaching Associates, Guest Faculty Teachers and Resource Persons and contractual Assistant Professors with service limited by time and

extended by fresh contract, the vacation salary would be admissible to them as their appointment letters seem to run continuously for the period of contract with no rider put or ban imposed that they will not be paid during vacations and *Rattan Lal* case would apply. Where contracts have continued after efflux of time by extension/s they would have a right to be paid vacation salary and have protection against arbitrary relieving of services and not calling them back for the following academic session and being replaced with persons/teachers by the same arrangement. They would have a right to continue till regular recruitment, a right claimable by the Assistant Professors on contract in the 1st & 2nd Groups in paragraph 7 above. But they can claim no more than the minimum of the pay scale of the post of Assistant Professor or corresponding posts without any allowances in view of the recent Supreme Court ruling in State of Punjab v. Jagjit Singh and connected appeals decided on October 26, 2016 in main Civil Appeal No. 213 of 2013. *Jagjit Singh* sets aside the Full Bench of this Court in Avtar Singh v. State of Punjab, 2012 (2) S.C.T. 31: 2011 (4) RSJ 522 which once classified temporary employees for differential treatment on the subject of wages, the Supreme Court holding thus in paragraph 52 of the report:-

“52. In view of all our above conclusions, the decision rendered by the full bench of the High Court in *Avtar Singh v. State of Punjab & Ors.* (CWP no. 14796 of 2003), dated 11.11.2011, is liable to be set aside, and the same is hereby set aside. The decision rendered by the division bench of the High Court in *State of Punjab & Ors. V. Rajinder Singh & Ors*, LPA No. 337 of 2003, decided on 7.1.2009) is also liable to be set aside, and the same is also hereby set aside. We affirm the decision rendered in *State of Punjab & Ors. v. Rajinder Kumar* (LPA no. 1024 of 2009, decided on 30.8.2010), with the modification, that the concerned employees would be

entitled to the minimum of the pay-scale, of the category to which they belong, but would not be entitled to allowances attached to the posts held by them.

28. The philosophical and social premises in *Jagjit Singh* (supra) is summed up succinctly in paragraph 55 of the judgment which sets the tone and tenor of evolution of a new administrative law jurisprudence for this Court to apply in such cases. To quote:-

“55. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.”

29. A word of explanation: There is a vast divide between the rule in *Rattan Lal's case* dealing with ad hoc lecturers in School/College cadre in Chandigarh and other species of engagement like Guest Faculty teachers and Teaching Associates etc. The vacation salary cannot follow automatically and as a matter of right for Teaching Associates, Guest Faculty Teachers and Resource Persons etc. who have not been appointed against sanctioned posts

mentioned in the rules and regulations of the Universities and the Colleges affiliated to them and the appointment in not in a regular manner.

30. As a result, the petitioners in all the categories will have a right to continue till regular appointments are made, but the two other grievances i.e. salary for summer vacation and minimum of the pay scale are concerned, they appear to me to deserve segregation of the other three [from the cases of Assistant Professor on contract] in the five respondent Universities when not discharging the same duties and responsibilities as their regular counterparts and not appointed on sanctioned posts in the establishment/cadre. However, in cases of Teaching Associates, Guest Faculty Teachers and Resource Persons they may be protected against arbitrary replacement but would not have a right to salary for the vacation period or minimum of the pay scale for two reasons; firstly, they are not appointed against cadre posts unlike the Assistant Professors on contract basis and secondly, they have not established in their petitions by pleading and showing ex facie that they perform work in equal degrees as regular teachers holding cadre posts. The burden is on the petitioners to plead and prove prima facie the factors which go to make rights and entitlements on principles of equal pay for equal work, a concept so extensively dealt with in the magnum opus on the subject in *Jagjit Singh* case dealing with all the precedential milestones of past judgments of the Supreme Court in capsule form that one may not need to read the earlier case law so meticulously dealt with by the Supreme Court in the comprehensive judgment. Assistant Professors can legitimately claim comparison with their counterparts but the other species of employments dealt with in this case cannot as they have no counterparts to set up discrimination. They are paid accordingly to policy and UGC guidelines, rules and regulations 2010 etc. and can claim no more.

But this is not true in cases where the respondent University has employed Assistant Professors on ad hoc contract basis against sanctioned posts, who would be entitled to the minimum of the lowest grade of the pay scales admissible to their regular counterparts on the respective posts performing equal work but not the allowances attached to the posts; as is the law recently enunciated by the Supreme Court in *Jagjit Singh* decided on October 26, 2016 laying down the following principles while setting aside the Full Bench judgment of this Court in *Avtar Singh* (supra) and the Division Bench in State of Punjab v. Rajinder Singh, 2009 (8) SLR 733 : 2009 (4) S.C.T 88 while affirming the law in earlier Division Bench judgment rendered in State of Punjab & others v. Rajinder Kumar & others, LPA 1024 of 2009 delivered on August 8, 2010, with the modification that the concerned employees would be entitled to the minimum of the pay scale of the category to which they belong, but would not be entitled to the allowances attached to the posts held by them. Therefore, the principle in *Avtar Singh* that an ad hoc/daily wage/contract employee would have to wait for 10 years before his right to minimum of the pay scale would mature is no longer good law as declared in *Jagjit Singh* (supra). The right to minimum of the pay scale will be from the date of temporary or contractual appointment.

31. Consequently, petitioners in the Groups 1st & 2nd in paragraph 7 above will receive no directions to up their pay as they are already in receipt of salary which is equal to the minimum of the pay scale of ₹15,600-39,100/-, that is, minimum Basic Pay plus Annual Grade Pay of ₹6,000/- which fetches them ₹21,600 per month in three of respondent Universities and ₹25,600 per month on contract in Guru Jambheshwar University. All other allowances attached to the master pay scales of regular employees are inadmissible to them and they can have no quarrel with their regular

counterparts on this score by virtue of their contracts, even if they are treated as temporary employees of the University even then the legal position in *Jagjit Singh* case is against their prayer on this account. However, they succeed on right to salary for vacations till employment continues and the protection that they will not be replaced by another set of contractual employees and resort to the same arrangement is upheld as law is in their favour in *Hargurpratap* case. These two prayers are answered against the respondent Universities till the regular hands come in to occupy the posts of Lecturer/Assistant Professor their contracts can be put to an end immediately. This is in case regular recruits are equal in number to the sanctioned posts in the cadre. If they are less and the contractual employees more, then the 'last come, first go' principle can be adopted subject-wise/cadre-wise. The balance can continue till the next recruitment brings a new crop of regular teachers selected in accordance with law in Articles 14 & 16 of our Constitution and the rules and regulations of UGC etc. The only caveat is that their work and conduct is assessed as satisfactory by a reasonable person with rational reasons and not by way of arbitrary adverse action which is always open to judicial scrutiny. In such cases, if they arise, to point of termination before period of contracts are curtailed they must be confronted with the material used against them and some minimal hearing given and an opportunity to improve and refute the allegations at least by receiving a reply and considering the same. This would be true to cases where the first period of contract is renewed by the employer time and again. This is a hope expressed by the Court.

32. To summarize the cases in terms of relief or denial thereof in the five groups, it is held and ordered as follows:-

33. That petitions involving Guest Faculty and Resource Persons for grant of the minimum of the pay scale of the posts by applying principle of 'equal pay for equal work' are rejected since they do not equate in principle on all fours with the regular faculty applying principles laid down in *Jagjit Singh* (supra) nor with the Assistant Professors on contract appointed against cadre posts. They belong to no cadre and are ex cadre employees. They do not do the same or equal work of equal responsibilities and confidentiality. The pleadings are singularly silent to claim relief except stray ones where it is baldly asserted in the prayer clause that 'equal pay for equal work' should be applied to their cases without substantiating the claim in the petition with the necessary ingredients required to establish right and therefore, there are no responses from the other side to admit or deny when not called upon to make an answer. It is trite law that the party who claims '*equal pay for equal work*' has to make plead and prove that all things are equal. Thus, before any direction can be issued by a Court, the Court must first see that there are necessary averments and there is prima facie proof sufficient to bring home the claim. However, like the Assistant Professors on contract they would have the similar protection against arbitrary replacement by the same arrangement. I would deny them vacation salary as they stand in non-rule, non-cadre territory in a hybrid arrangement fashioned by the respondents de hors rules and the statutes. The nature of their work is not explained in the petitions except making general statements. They cannot compare themselves with Assistant Professors on contract much less the regular employees without proving equal work being identical. The respondent Universities would do well to scrap these arrangements as soon as practicable and afford an opportunity to these three categories and other eligible candidates in the open employment market in a regular recruitment

process to compete for the cadre posts without delay. The best and the talented may still find their way back to secure a permanent future teaching at college and university level given their experience gained in the class room.

34. The claim of these Guest Faculty and Resource Persons for minimum of the pay scale is rejected for the reason that they are paid honorarium per lecture as per UGC norms with a ceiling and not salary or pay. Court cannot rewrite their contracts of service and convert honorarium to salary and then grant them minimum of the pay scale of a post they are not appointed to. However, their claim for remuneration on per lecture basis cannot be less than fixed by the UGC norms. Wherever it is less their earnings should be stepped up to ₹1,000 per lecture but their ceiling limits will be such which is more beneficial to them so as not to be downgraded and their minimum package should at least be not less than the minimum of the pay scale of their regular counterparts to avoid exploitation and under employment given that they are employed at the University level. For instance, in the case of Guest Faculty in the 10 cases involving them who get ₹450/- per Lecture with a maximum of ₹27,000 from the MDU, Rohtak their payment rate per lecture needs to be stepped up in tune with the UGC prescribed rates of ₹1,000/- but so as not to exceed maximum of ₹27,000/- which amount is already the norm fixed. This would be true for Resource Persons in the same University [MDU] if both the categories teach at par the same subject to the student community. However, if Resource Persons unlike Guest Faculty teachers have duties assigned which require no class room instruction then their financial arrangement already existing shall not be disturbed.

35. So far as vacation salary is concerned to the pure Guest Faculty and Resource Persons they cannot claim salary for the vacations since they are not salaried class of employees. It would be a contradiction in terms if the two concepts of salary and honorarium are mixed up. This is unlike the Assistant Professors on contract or temporary basis in the respondent Universities or affiliated Colleges and Assistant Professors as Guest Faculty in Indira Gandhi University, Rewari who would be entitled to minimum of the pay scale of already drawn whichever is more as explained above, protection against arbitrary replacement and salary for the vacation period since they are not paid per lecture or honorarium. “Assistant Professors as Guest Faculty” used in appointment orders in some of the cases is a loose cocktail of two distinct employment concepts i.e. Assistant Professors on contract and Guest Faculty, unless it is held that they constitute one class or to the contrary are just Guests of the University assigned fill-in teaching jobs to do the same thing as regular employees in imparting instruction. In the case of Assistant Professors as Guest Faculty in IGU, Rewari the veil will have to be lifted. The University cannot camouflage designations and take advantage of one and deprive the other. In the written statement dated 23.9.2015 filed by IGU, Rewari in defense of CWP 18250 of 2015 it has been averred that “The issue as regards the mode of payment and the emoluments to be paid is also under active consideration of the answering respondent University” The University admits in paragraph 3 of the return that the petitioner has been working as guest faculty to the post of Assistant Professor in the department of Management for the last four years including the last academic session i.e. 2014-2015. They do “teacher work”. They rely on the UGC guideline/instructions dated 7.2.2010 regarding payment of remuneration on per lecture basis @ ₹1,000/- to a maximum of ₹25,000/-

which has been approved and recommended. It is their case, specific to CWP 18250 of 2015 that the Performance Appraisal Committee has not recommended the case of the petitioner (Kanwar Singh a NET qualified candidate) for the next academic session 2015-16 which is not the case set up by the petitioner. This Court by interim order dated 31.8.2015 directed that the petitioner shall not be replaced by any other contractual employee. There is no averment that the service of the petitioner was disengaged before the interim order was passed and the Court assumes he continues. The factual position is not known on the file or appraised by any party at the hearing. In CWP 24528 of 2015 the IGU, Rewari has not filed reply despite office note dated 29.1.2016 that service is complete and I would thus apply the principle of non-traverse and accept the averments of that petitioner. These two cases will be governed by this order and the detailed reasoning regarding Group (1).

36. Maternity benefit and right to bear child is an inalienable personal and natural right of women and much of it is presently in codified form of how the benefit is to be availed. Therefore, cases of female employees in any of the categories would have to be redressed favourably and requests accepted, as far as possible, in terms of the provisions of the Maternity Benefit Act, 1961 or service rules, if any. Where the arrangement/engagement in any of the groups is likely to continue for some time awaiting regular recruitment and the least inconvenience is caused to the stakeholders. Female employees are expected as teachers to themselves plan accordingly addressing student concerns of delivering lectures and at the same time fulfilling their social responsibility by striking a proper balance between absence and duty. However, the situation would be best avoided especially in cases falling in Groups (4) to (5). The respondent

Universities/Colleges may address themselves to this issue and frame policies to regulate the benefit suitable to the callings falling in the Groups mentioned in paragraph 7 above, if not already in place.

37. The petitions involving Associate Professors (Group 1) appointed on ad hoc/temporary basis temporarily or on contract awaiting regular recruitment and employment co-terminus with availability of regular hands are allowed on all the three aspects since they do the same job on all fronts, meaning thereby, they would take vacation salary, would have the protection against arbitrary replacement by the same arrangement or akin to it subject to satisfactory work and conduct. They would be entitled to the minimum of the pay-scale of the category to which they belong but without allowances in view of the law handed down and principles indicated by their Lordships of the Supreme Court in *Jagjit Singh* case (supra) provided their emoluments per lecture with ceiling limits prescribed in their appointment orders fall short of the minimum of the pay scale plus annual grade pay which is by definition part of salary. Pay structures inform reason that apart from basic pay employees receive grade pay which depends on the category/class of employee. The sum of basic pay and grade pay is used to calculate dearness allowance and other allowances. Allowances are not to be given to any of the petitioners and resultantly only basic minimum pay in the pay scale and grade pay is involved and if the sum of both is more than the remuneration received by the petitioning Assistant Professors then they are not entitled to anything more than what they receive. If it is less than the pay then the take home is not to be reduced and the contention is merely academic as regards pay.

38. The two writs falling in Group (2) i.e .CWP No. 16033 of 2016 and CWP No. 20826 of 2015 relating to private colleges affiliated to the

Kurukshetra University are allowed as prayed. The petitioners will be entitled to summer vacation salary and right not to be replaced till regular recruitment whether on aided or unaided posts and salaries will not be reduced from accustomed pay as prayed in CWP No. 20826 of 2015 of their terms and conditions not less beneficial than initially agreed with usual rise as per price index to meet inflationary trends.

39. Needless to mention that all these engagements would remain underpinned to the fair, transparent subjective satisfaction by careful assessment of the decision-makers in the employing agencies when taken rationally, whether all or any of the petitioners are fit to hold teaching posts assessed during the course of their temporary or contractual employment to continue them when doing good work and gaining precious experience in imparting quality education. If they have been selected the presumption is that they fit the bill. Otherwise it might amount to an indictment of the Universities. It would be for the employers to act reasonably according to their objective dictates of wisdom and fair assessment of their work and conduct as being satisfactory in the larger backdrop of higher education since this case involves teachers in whatever capacity they were engaged. They should be of the finest standards that the community can supply and for the Universities to induct short of open merit. Nevertheless, disengagement of services of the petitioners can take place only when they fail to meet the requisite standards demanded by College and University education and student response must be kept in view as they are the best judges.

40. As a result of the preceding discussion on the three four issues involved, all the petitions stand disposed of either as allowed or partly so, to the extent indicated in the summing up in paragraph 33 onwards read with

the reasoning wherever recorded in the entire order while dealing with each Group of cases considered. Accordingly, orders reserved are pronounced.

.12.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>