IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.W.P No. 9300 of 2015 (O&M)
Date of decision : 05.05.2016

Mrs. Menka and others **....Petitioners**

versus

State of Haryana & ors. **..Respondents**

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vijay Pal, Advocate
for the petitioner.

Mr. Rajesh Gaur, Addl.A.G. Haryana

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RITU BAHRI , J.

By way of present writ petition, petitioners are seeking issuance of a writ in the nature of mandamus directing the respondents to allow them to work on the post of Assistant Professor/Extension Lecturers till the time, said posts are not filled up through regular selected candidates and further prayer is to quash the practice of the respondents to relieve the petitioners during vacations and further to pay the salary to the petitioners for vacation period, as per law laid down by this Court.

Brief facts of the case are that pursuant to advertisement to

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the post of Extension Lecturers (P-1), petitioners being eligible and duly qualified applied for the said posts and were selected by the duly constituted selection committee and subsequently, they joined their duties. However, petitioners are being paid Rs.250/- per lecturer maximum Rs.18000/- per month despite the fact that they are performing duties similar to that of Assistant Professors but are not being paid salary as per UGC guidelines as UGC vide notification dated 05.02.2010 has issued directions that Guest/Part time Teachers shall be paid Rs.1000/- per lecture to a maximum of Rs.25000/-. Even Haryana Government has filed an affidavit in CWP No. 7176 of 2010 that the Government of Haryana has implemented the scheme of Government of India for colleges and University teachers.

The respondents in the written statement have admitted that pursuant to advertisement (P-1), petitioners were engaged as resource person on extension lecturer basis on period basis @ Rs.250/- per lecture subject to maximum Rs.18000/-. Further it has been stated that the petitioners were appointed just to fill the gap in teaching in colleges. The respondents in their written statement have not taken a stand that the petitioners are not qualified as per UGC guidelines. Once the petitioners are duly qualified at the time of their appointment, they are also entitled to be paid as per UGC guidelines.

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The three questions which arises for consideration before this Court:-

(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 of the vacation period?

(iii) Whether the petitioners are entitled to get Rs.1000/- per lecture instead of Rs.250/-, as per UGC guidelines?

With regard to the first question, reference at this stage can be made to judgment of Hon'ble the Supreme Court in a case of ***Hargurpratap Singh vs. State of Punjab and others, 2007(13) SCC 292 (P-4)*** whereby Hon'ble the Supreme Court has allowed the petitioners to continue to work on the contract basis till regular selections are made on minimum of pay scale. The above said judgment has been followed by this Court in a case of ***Shivkesh and others v. State of Haryana and others, passed in CWP No. 13555 of 2013, decided on 02.07.2013.***

With regard to the second question, reference at this stage can be made to a judgment of this Court in a case of ***Dr. Anil Khuranna vs. MDU, Rohtak and others, passed in CWP No. 13946 of 2004*** whereby this Court while disposing of the writ petition by

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referring to the judgment of Hon'ble the Supreme Court of India in a case of ***Rattan Lal vs. State of Haryana passed in Civil Appeal No. 4600 of 1985, dated 16.08.1985*** and in terms of full bench judgment of Avtar Singh vs. State of Punjab in CWP No. 14796 of 2003, decided on 11.11.2011 has observed as under:-

> *"2. As regards the second relief relating to the practice of discontinuing the contract during the vacation period and reemploying them, the issue has been settled by the Supreme Court in the judgment in Civil Appeal No.4600 of 1985, dated 16.08.1985 in Rattan Lal and others Versus State of Haryana and others where the Court has held that the practice of discontinuing during summer holidays and reemploying them was to be deprecated and all the ad hoc teachers shall be paid salary and allowances during the period of summer vacation as long they held the post after the vacation also. The petitioners will have consideration of such pay during the summer vacations for all the periods commencing from 3 years next prior to the filing of the petition till they held the service beyond the vacation. As regards the third prayer that regarding the consolidated pay, that was paid to the petitioners, the principal contention was that they were selected after a regular process*

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of selection and, therefore, in terms of the judgment of Full Bench in ***Avtar Singh Versus State of Punjab in CWP No.14796 of 2003, decided on 11.11.2011****, all the petitioners would be entitled to the minimum of regular pay scales for the period of 3 years commencing prior to the institution of the writ petition till the date when the respective services were terminated. The amounts shall be calculated and the benefits released to the petitioners within a period of 8 weeks from the date of receipt of order. The petitioners are at liberty to make a representation giving out the calculations for release of benefits.*

LPA filed against the above said judgment was dismissed by this Court on 21.11.2014, vide LPA No. 2104 of 2013. The relevant para reads as under:-

"Before us, the only grievance so raised on behalf of the appellant-University was that the respondents have wrongly been held entitled to the grant of minimum of the regular pay scales. This argument made on behalf of the appellant-University is to be considered only to be rejected. When questioned, learned counsel appearing on behalf of the appellant-University admitted before us that before the respondents had been appointed, the posts had been duly

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advertised and that their selection and appointments were through a duly constituted Selection Committee. Thus, it is clear that the respondents had been appointed by adopting a fair and transparent procedure. That being so, the Full Bench decision of this Court in Avtar Singh versus State of Punjab (Supra) fully covers the case against the appellant-University and in favour of the respondents. The relevant paragraph of the Full Bench decision is reproduced below for ready reference:-

> *"However, it is also noticed that certainly daily wagers are permitted to continue for long numbers of years. Keeping in view the ration of the aforesaid judgments, we hold that daily wagers, ad hoc or contractual appointees are not entitled to minimum of the regular pay scale from the date they were engaged merely for the reason that the physical activity carried out by the daily wager and the regular employee is similar, but such general principle shall be subject to the following exceptions:*

(1) A daily wager, ad hoc or contractual appointee against

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the regular sanctioned posts, 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."

SLP (C) No. 8504 of 2015 filed against the judgment passed by the Division Bench on 21.11.2014, has also been dismissed by Hon'ble the Supreme Court on 17.04.2015.

With regard to the third question, reference at this stage can be made to a judgment passed by the Hon'ble CAT in a bunch of cases in ***Vandana Jain and others vs. Union of India and others, passed in O.A. No. 33-CH of 2011 and connected matters, decided on 31.03.2011*** whereby denying the salary to the petitioners in vacation period was held to be unconstitutional.

Further reference at this stage can be made to a judgment of this Court in a case of ***Dr. Pushpa Devi and others v. BPS Mahila Vishwavidyalaya and others, passed in CWP No. 2372 of 2011, decided on 04.10.2013*** whereby this Court was dealing with a case of Guest Lecturers appointed in different degree subjects. The writ petition was allowed and direction was given to the respondents to grant the petitioners remuneration @ Rs.1000/- per lecture subject to a maximum of Rs.25000/- per month w.e.f the date of their appointment

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without prejudice to other legal rights of the petitioners or the respondents.

LPA filed against the above said judgment was also dismissed by this Court on 25.02.2015 vide LPA No. 137 of 2014.

Learned State counsel has argued that the petitioners have not been appointed against the regular sanctioned post.

However, this plea of the State Government is liable to be rejected as the petitioners have been selected by duly constituted Selection Committee and are working on the post of Lecturers/Assistant Professors since 2013. The respondents cannot deny the minimum pay scale to the petitioners, as it is the State who has to take steps to sanction the above said posts, as the petitioners are working on the post for the last about 3 years.

Thus, all the three questions are answered in favour of the petitioners.

Applying the ratio of the above mentioned judgments, the writ petition is allowed and petitioners are allowed to continue to work on their post till the regular selections are made and they are entitled to get the salary of the vacation period and remuneration @ Rs.1000/- per lecture subject to a maximum of Rs.25000/- per month.

However, the respondents are at liberty to verify the

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qualifications of the petitioners as per UGC guidelines and can take appropriate steps to dispense with the services of the petitioners, who are not qualified.

However, it is made clear that the contractual employees shall work to the satisfaction of the respondents and in case posts are abolished or their work and conduct is not found satisfactory, their services can be dispensed with by the respondents.

05.05.2016 (**RITU BAHRI)**
G Arora **JUDGE**

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