

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

Date of decision: 21.04.2017

1. CWP-14887-2013

Swarna Singh and others

...Petitioners

Versus

Pepsu Road Transport Corporation, Patiala and another

...Respondents

2. CWP-22210-2013

Manpreet Singh and others

...Petitioners

Versus

Pepsu Road Transport Corporation, Patiala and another

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr.Vikas Chatrath, Advocate,
Mr. Kushkaran Kumar, Advocate,
Mr. Pranav Grover, Advocate, and
Mr. Jai Inder Pal Singh, Advocate,
for the petitioners.

Mr. Harsh Aggarwal, Advocate,
for the respondents.

JAISHREE THAKUR, J.

1. By this order this court proposes to dispose of the above mentioned two writ petitions as the facts and the question of law involved, are similar. For brevity facts are being taken from ***CWP No. 14887 of 2013***.

2. The instant writ petitions have been filed seeking a writ in the nature of mandamus to regularise the petitioners' services in view of Pepsu Road Transport Corporation (Conditions of Appointments & Service)

Regulations, 1981 with grant of consequential benefits and for issuance of

writ in the nature of certiorari for quashing the impugned terms and conditions of the contract which contemplate grant of commission rather than the salary even though they are performing duties for 8 hours and to grant minimum of pay scale as per the Resolution of the Board of Directors dated 02.12.2004 (Annexure P-11) especially when the daily wagers/part time workers have been granted the same on the principle of 'equal pay for equal work' and to fix the pay of the petitioners at par with a regular appointee. It is also prayed that the services of the petitioners be not terminated and that they be allowed to discharge their duties under the contract.

3. Brief facts, the petitioners herein are working as Advance Booking Agents with Punjab Roadways Transport Corporation on contract basis. They were appointed on contract. As per the conditions for conducting booking for PRTC buses the Booking Agents would have to execute a contract with PRTC with time specified to be between 4.30 a.m. to 10.30 p.m. with duties to be performed as specified by the Controlling Officer. The petitioners herein seek regularisation of their services on the basis of policies issued from time to time with the relief that their pay be fixed at par with regular employees on account of the fact that they are performing the same duties as regular employees.

4. Learned counsel for the petitioners relies upon a decision rendered in *State of Punjab and others vs. Jagjit Singh and others, 2017 (1) SCC 148* to contend that the petitioners who are discharging similar duties and responsibilities as are being discharged by regular employees holding the same/corresponding posts would be entitled to the same minimum pay scale. It is also submitted that the doctrine of lifting the veil

should be applied to see the exact nature of work done of the petitioners and then to make a comparison.

5. Per contra, learned counsel appearing on behalf of the respondents–Corporation contends that the petitioners herein were appointed on contract and they are not employees of the PRTC. The petitioners are paid commission and the percentage of the commission varies from stand to stand as per the bus stand that have been classified in classes A, B and C Class bus stands depending on the volume of traffic. The petitioners being employed on contract, at best are only Commission Agents. Advance Bookers were engaged in view of a scheme approved by the Board of Directors in its meeting held on 12.03.2003. PRTC had been engaging staff through Outsource Agencies in the categories of Drivers, Conductors, watch & ward staff and as the experiment had proved to be successful, it was decided to engage Advance Bookers as well. Moreover, there are no sanctioned posts of Advance Bookers.

6. I have heard learned counsel for the parties and have gone through the record with their able assistance.

7. The question that arises for consideration would be whether the petitioners herein, who are admittedly working on full time basis and Advance Booking Agents on commission basis can claim the benefit of a regular pay on par with employees of the PRTC on the principles of 'equal pay for equal work'.

8. The petitioners are discharging duties from 4.30 a.m. to 10.30 p.m. which are longer hours than those who are on the regular rolls of PRTC. Admittedly, they are not regular employees or daily wagers/adhoc employees of PRTC but are engaged as Advance Bookers on a commission

basis on set terms and conditions which were duly incorporated in their agreement / contract “*The conditions for conducting advance booking of PRTC buses on commission basis*” and Commission is as settled by the Corporation, depending upon the volume of the traffic. They may not work on that date or a particular time, they are not governed by any service law or labour laws.

9. An argument has been raised that the petitioners are commission agents and not contractual employees, hence not entitled to 'equal pay for equal work' as regular employees. It is argued that petitioners would not be under the effective control of the Corporation. Even though, there is no service rule applicable to the petitioners but eventual control over their functioning is in the hands of the respondent-Corporation. As per the terms and conditions laid down in Annexure P-12, the Corporation has the power to impose penalty equivalent to ten times of the amount of less issue of the tickets, in case lesser value of tickets is issued to any passenger than the actual bus fare. Further, in case the Advance Booking Agent charges excess bus fare from the commuters, a penalty of ten times of the excess amount can be imposed upon the agent. The intent and import of the agreement has to be looked at. It was argued that the principle of lifting of the veil should be applied to see what and how the Corporation exercises control over the functioning of the petitioners. In this regard reliance has been placed on a judgment rendered in ***Secretary, H.S.E.B. vs Suresh and others, (1999) 3 SCC 601*** where the Electricity Board gave a contract to a Contractor to maintain plants and stations. The Contractor in turn employed 42 persons for the purpose and the control of the employees remained with the Board, the services were terminated after the employees had completed

240 days. The termination order was set aside by the High Court by applying the principle of lifting the veil by holding that the employees were entitled to reinstatement with continuity of service and this was upheld by the Supreme Court. However, the Supreme Court upheld the judgement of the High Court on the basis that the evidence had been led before the Labour Court to depict the overall control of the working of the contract labour including administrative control was with the Board with a further observation that finding of the fact arrived at by the Labour court can not otherwise be interfered with while exercising powers under Article 226 of the Constitution of India. Therefore, relying upon the principal as laid down in *Secretary, H.S.E.B. vs. Suresh and others, (supra)* and on lifting the veil, it cannot be said that there is no effective control of the respondent Corporation over the functioning of the petitioners.

10. The argument that the petitioners are mere commission agents and not contractual employees, not working against a definite post and would thus not be entitled to equal pay for equal pay, is an argument not sustainable. It is the admitted case of the respondent corporation that the petitioners are working on a contract basis. The respondents herein have full effective control over the working of the petitioners as has been noted herein above. The payment made to them is as per the number of tickets sold, but what cannot be ignored is that work hours have been fixed as per clause 9 of the agreement to be between 4.30 a.m. to 10.30 p.m. Remuneration is in the form of commission based upon the number of tickets sold, which depends upon the volume of the traffic on a particular day on the particular sector. The volume of traffic or the number of persons buying tickets is not in the realm of control of the petitioners. Why should

the petitioners be put at disadvantage only on account of the fact they are getting commission instead of a regular salary/ wage especially when they are putting in equal number of hours and performing duties of a regular employee? The term 'commission' has several meanings and as per the Cambridge Advanced Learners Dictionary Fourth Edition the term 'Commission' has been defined to mean : *“a payment to someone who sells goods that is directly related to the amount of goods sold, or a system that uses such payments”*. The term salary /wage would mean payment for the work done. In the given circumstances, when the Corporation is having an effective control over the working of the petitioners and they are bound by the terms of the contract entered into, the term 'commission' would also be interchangeable in the instant matter as payment for work done. It is to be appreciated that the petitioners though employed on contract and on commission discharge the duties of Ticket Vendors of the Corporation and without their valuable input passengers would be hardly ticketed or put to great inconvenience.

11. As regards the argument raised that there are no comparable sanctioned posts for Advance Booking Agents and, thus, no comparison can be made, this court places reliance upon a judgment rendered by Hon'ble Supreme Court in ***State of Haryana vs Tilak Raj 2003 (6) SCC 123*** wherein it was held :

“11. A scale of pay is attached to a definite post and in case of a daily-wager, he holds no posts. The respondent workers cannot be held to hold any posts to claim even any comparison with the regular and permanent staff for any or all purposes including a claim for equal pay and allowances. To claim a

relief on the basis of equality, it is for the claimants to substantiate a clear-cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with the other group vis-à-vis an alleged discrimination. No material was placed before the High Court as to the nature of the duties of either categories and it is not possible to hold that the principle of “equal pay for equal work” is an abstract one.

12. *“Equal pay for equal work” is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula.”*

But, despite holding that the petitioners in the case aforesaid would not be entitled to “equal pay for equal work”, the Supreme Court did direct the State of Haryana to pay minimum wages as prescribed for such workers. In the instant case, though there is nothing on the record to show that the petitioners have counter parts working against a regular post and drawing a particular salary, there are no doubts, the petitioners are working as Advance Booking Clerks since 2003 against regulars hours and cannot be denied minimum wages by holding them to be mere commission agents.

12. The Apex Court in ***Jagjit Singh and others*** case (supra) delineated upon the law as settled regarding the principle of “equal pay for equal work” and came to hold as under:

“Having traversed the legal parameters with reference to the

application of the principle of 'equal pay for equal work', in relation to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of 'equal pay for equal work' summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were

being discharged by regular employees. It is not the case of the appellants, that the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State that any of the temporary employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post."

13. The law as laid down in **Jagjit Singh and others** case (supra) and in the case of **State of Haryana vs Tilak Raj** (supra) is applicable upon the petitioners who are, admittedly, contractual employees and discharging duties of a regular employee. In view of the above, once the law is settled in this regard that those persons who are daily wager/ad hoc, contractual employees and the like would be entitled to the minimum pay, the same would be made applicable to the petitioners.

14. Another contention has been raised that the services of the petitioners should not be terminated as they have been working as Advance Bookings Agents for a considerable length of time. The law in this regard is no longer *res integra*. It is well settled that a set of contractual employees cannot be replaced by another unless it is found by the authorities that the persons working on contractual basis are not working satisfactorily. Of course, contractual employees can always be replaced by regularly selected

persons. Therefore, the writ is allowed to the extent that the respondent State shall not replace the petitioners by other contractual employees unless of course their work is not satisfactory and if there is a decision to employ regular candidates.

15. As regards the contention raised for regularization of their services the State Government has enacted the Punjab ad hoc, Contractual, Daily Wage, Temporary, Work Charged and Outsourced Employees Welfare Act, 2016. Section 4 of the Act of 2016 clearly specifies that the persons who have worked on ad hoc, contractual, daily wage, temporary or work charged basis under the State Government or its entities for a continuous period of not less than three years would be entitled to regularization, the petitioners are at liberty to approach the Corporation for regularization of their services, if the law permits.

16. Therefore, in view of the above discussion, it is held that the petitioners shall be entitled to benefit of the minimum pay scale at par with the minimum of the pay-scale of regularly engaged Government employees.

17. The writ petition stands allowed partially in the aforesaid terms.

21.04.2017

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No.