

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

**CM No.6375-CWP of 2017 in/and
RA-CW No.231 of 2017 in
CWP No.19761 of 2015**

Date of decision : 28.11.2017

Sukhwinder Pal Singh and others

.....Petitioners

Versus

Punjab School Education Board and another

...Respondents

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. R. S. Kalra, Advocate for applicant/respondents.

Mr. K. L. Arora, Advocate for non-applicant/petitioners.

Mr. G. S. Bal, Senior Advocate with
Mr. ADS Bal, Advocate.

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DAYA CHAUDHARY, J.

CM No.6375-CWP of 2017

Through this application filed under Section 5 of the Limitation Act, 1963, the applicant-respondents seeks condonation of delay of 137 days in filing the review application.

For the reasons mentioned in the application, delay of 137 days in filing of the review application is condoned.

Application stands disposed of.

RA-CW No.231 of 2017

The present review application has been filed under Article 226

of the Constitution of India read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 for reviewing/recalling of judgment dated 10.11.2016 passed in CWP No.19761 of 2015. In the main writ petition, the prayer was for issuance of a writ in the nature of mandamus directing the respondents to grant minimum of the pay scale along with all allowances as revised from time to time and arrears of salary for a period of 3 years and 2 months prior to filing of the writ petition to the petitioners who were working as Packers, Helpers and Sweeper-cum-Chowkidar on temporary basis in the respondent-department. Said petition was heard along with other connected petitions and ultimately it was allowed vide judgment dated 10.11.2016 in terms of judgment of Hon'ble the Apex Court rendered in case ***State of Punjab and others Vs. Jagjit Singh and others 2016(4) SCT (SC) 641***. The relevant portion of the said judgment is reproduced as under : -

“48.....As we have already noticed above, the Constitution Bench unambiguously held, that ***on the issue of pay parity***, the High Court ought to have directed, that the daily wage workers be paid ***wages equal to the salary***, at the lowest grade of their cadre. This deficiency was made good, by making such a direction.

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.

57.....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.

58. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding, that all the concerned temporary employees, in the present bunch of cases, would be entitled to draw wages at the minimum of the pay-scale (at the lowest grade, in the regular pay-scale), extended to regular employees, holding the same post.”

Notice in the review application was issued.

Learned counsel for the review applicants/respondents submits that complete facts were not brought to the notice of the Court and the writ petition was allowed in terms of decision of ***Jagjit Singh's*** case (supra) and the petitioners were allowed to get arrears for the period of 3 years and 2 months prior to filing of the petition. Learned counsel also submits that the petitioners had already been given minimum of the pay scale of the lowest grade in the regular pay scale. Learned counsel also submits that under similar circumstances some of the similarly situated persons filed CWP No.15684 of 2003 and same relief was granted to the petitioners in that

case. Subsequently, a review application No.246 of 2015 was filed on the same grounds as have been raised in the instant review application, which was disposed of vide order dated 15.12.2016. The order passed in the main petition was modified to the limited extent, clarifying that the non-applicants/petitioners would not be entitled for the same regular pay scale which was being granted to their regular counterparts. Non-applicant/petitioners were held entitled only to the minimum of the pay scale (at the lowest grade, in the regular pay scale) without any allowance attached thereto.

Learned counsel for non-applicants/petitioners submits that the petitioners were rightly held entitled for minimum wages and for arrears for the period of 3 years and 2 months prior to filing of the writ petition. Learned counsel also submits that minimum wages have been defined and as per judgment of Hon'ble the Apex Court, they were entitled for minimum of the pay scale given to the regular employees. The order was passed in presence of counsel for the applicant/respondents and as such no ground is made out to review order dated 10.11.2016. In support of his contentions, learned counsel has relied upon judgments rendered in ***CWP No.17003 of 2011 titled as Rupinder Kaur and others Vs. State of Punjab and others*** decided on 17.05.2017 and ***COCP No.2237 of 2017 titled as Jasmair Singh and others Vs. A. K. Sinha and others*** decided on 04.09.2017.

Heard arguments of learned counsel for the parties and have also perused the judgment dated 10.11.2016 passed in CWP No.19761 of 2015.

Admittedly, the petitioners filed CWP No.19761 of 2015 for direction to the respondents to grant them minimum of the pay scale plus all allowances as revised from time to time and also for grant of arrears of salary for a period of 3 years and 2 months prior to filing of writ petition on the ground that the petitioners were working for the last 15 years and are being paid fixed salary without paying any allowances. Said petition was allowed on the ground that same is squarely covered by the judgment of Hon'ble the Apex Court in ***Jagjit Singh's*** case (supra). Applicants/respondents were directed to grant same relief and arrears were restricted for a period of 3 years and 2 months prior to date of filing the main petition.

The relevant observation made by Hon'ble the Apex Court in Para Nos.76, 82 and 83 in judgment of ***Jagjit Singh's*** case (supra) is reproduced as under : -

“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.

XX XX XX XX

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.

In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding, that all the concerned temporary employees, in the present bunch of cases, would be entitled to draw wages at the minimum of the pay-scale (at the lowest grade, in the regular pay-scale), extended to regular employees, holding the same post."

A perusal of judgment of Hon'ble the Apex Court in ***Jagjit Singh's*** case (supra) shows that the petitioners were held entitled to the minimum of the wages of the pay scale but they were not entitled for the same regular pay scale which was being given to their regular counterparts.

Same issue was there in review application No.246 of 2015 filed in CWP No.15684 of 2003 and following order was passed in that review application : -

"Reverting to the peculiar fact situation of the case in hand, it is not in dispute that non applicants-petitioners were working on contractual basis. Although in the order dated 17.12.2014, under review, this Court did not issue any direction to the applicant/respondent-University to pay the benefit of regular pay scale to the petitioners-non applicants, yet in the peculiar facts and circumstances of the case, applicant-University is justified to seek review to the limited extent indicated above, so as to ensure that no ambiguity is left, while implementing the order.

In view of the above said undisputed fact

situation and respectfully following the law laid down by Hon'ble the Supreme Court in **Jagjit Singh's** case (supra), instant application is allowed. Order dated 17.12.2014 is modified to the limited extent, clarifying that non-applicants/petitioners would not be entitled for the same regular pay scale which was being granted to their regular counterparts. Petitioners/non-applicants shall be entitled only to the minimum of the pay scale (at the lowest grade, in the regular pay scale) without any allowance attached thereto.

With the above said observations made, instant review application is disposed of."

In the present case also, the facts are the same and review application has been filed on the same grounds. The non-applicant/petitioners are stated to be getting the minimum wages but the dispute is with regard to payment of the arrears for a period of 3 years and 2 months prior to the filing of the writ petition. Same issue was there before this Court in case **Dr. Vizender Singh and others Vs. Guru Jambheshwar University of Sciences and Technology, Hisar, 2017(2) SCT 235**. The relevant portion of said judgment as mentioned in Para Nos.30 and 31 is reproduced as under: -

"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 subjectwise/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."

In view of the facts and circumstances as mentioned above and by considering the admitted position that the petitioners were working on contractual basis and claimed relief in view of judgment of **Jagjit Singh's** case (supra) but directions were issued by this Court to grant arrears of pay for a period of three years and two months, whereas it was not the ratio of judgment of **Jagjit Singh's** case (supra) and as such it is a good ground to review order dated 10.11.2016.

Accordingly, order dated 10.11.2016 is modified to the limited extent that non-applicants/ petitioners would not be entitled for the regular pay scale as well as arrears which are being granted to their regular

counterparts. Non-applicants/ petitioners shall be entitled only to the minimum of the pay scale (at the lowest grade in the regular pay scale) without any allowances attached with that regular pay scale.

With the aforesaid observation/modification, the instant review application is partly allowed as the petitioners are already getting minimum of the pay scale but they are not held entitled for arrears for the period of 3 years 2 months.

28.11.2017

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No