

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

CWP No.18242 of 2013 (O&M)
Date of decision: 08.01.2018

Ram Asra and others

..... Petitioners

Versus

State of Haryana and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL.
HON'BLE MR. JUSTICE B.S. WALIA.**

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Kuldeep Sheoran, Advocate for the appellants.

Mr. Samarth Sagar, Addl. A.G., Haryana.

B.S. Walia, J.

[1] Prayer in the writ petition is for the issuance of a writ of Certiorari to quash Rule 2(d) of the Haryana Civil Services (Revised Pay) Rules, 2008 dated 30.12.2008 (hereinafter referred to as the Rules) whereby employees working on contract basis were denied regular pay scales with a further prayer to quash action of the respondents in withdrawing the benefit of revised scales granted to the petitioners with effect from 01.01.2006 and also ordering recovery.

[2] Brief facts of the case leading to filing of the writ petition are that the petitioners were appointed as Sanskrit Teachers on contract basis after due advertisement and considering the claim of all eligible persons. Qualifications, duties and responsibilities of teachers working on contract basis are claimed to be the same as of regular Sanskrit Teachers. It needs noticing here that it has not been disputed either in the written statement or

by the learned Additional Advocate General, Haryana that the petitioners were appointed on contract basis after due advertisement and considering the claim of all eligible persons and further that the qualifications, duties and responsibilities of the teachers working on contract basis was the same as of the regularly appointed Sanskrit teachers. Details of date of appointment of the petitioners are as under:-

Petitioner No.	Appointment as	Initial date of appointment.	Subsequent date of appointment.	Present status.
1.	Sanskrit Teacher on contract basis.	13.11.1997 upto 22.09.1998	29.06.2004 by granting continuity of service.	Continuing in service as on date.
2.	Sanskrit Teacher on contract basis.	29.10.1994 upto 11.03.1995.	18.01.1997 upto 15.04.1997. 07.10.1997 upto 27.05.1998. 13.05.2005 by granting continuity of service w.e.f. 27.05.1998	..
3.	Sanskrit Teacher on contract basis.	17.11.1997 and upto 08.05.1998.	01.07.2004 by granting continuity of service.	..
4.	Sanskrit Teacher on contract basis.	10.11.1997 upto 27.05.1998.	Reinstated on 06.05.2005 by granting continuity of service.	..
5.	Sanskrit Teacher on contract basis.	10.11.1997 upto 26.05.1998.	Reinstated with continuity of service w.e.f. 01.07.2004.	..

[3] Action of the government in incorporating condition in the letters/orders of appointment restricting the same to 89 days as also in paying fixed emoluments to contractual employees was challenged by way of a writ petition titled as **Polu Ram and others vs State of Haryana & ors.** The same was allowed on 17.04.1998 and the judgment is reported as 1998 (4) RSJ 152. Action of the respondents incorporating condition in the letters/orders of appointment restricting the appointment to 89 days as also the condition of paying consolidated salary to the petitioners therein was declared, unconstitutional and struck down. Respondents therein were directed to allow the petitioners to continue in service subject to termination/

discontinuation on the ground of unsuitability/ unsatisfactory performance/ misconduct/abolition of sanctioned posts by following the rule of last come first go. Respondents were also directed to pay salary to the petitioners in the regular pay scales w.e.f. the date of their appointment/engagement.

[4] SLP was filed by the State of Haryana against the decision of this Court in **Polu Ram's case** (Supra) and vide interim order dated 22.11.2000 (Annexure P-1) it was directed that salary arrears be paid only from the date of impugned judgment while salary be paid on the basis of regular scale w.e.f. November, 2000 regularly subject to outcome of the SLP. Relevant extract of aforesaid order is reproduced hereunder:-

“We, therefore, vacate the stay. At the same time for relieving financial burden of the State we may observe that the State need to pay the salary arrears only from the date of the impugned judgment, and the arrears till now need be paid within three months from today. This is on condition that the salary will be paid on the basis of regular scale from the month of November, 2000 onwards regularly. This order will apply to all the Special Leave Petitions filed herein challenge of the common judgment of High Court. This arrangement is subject to the result of these Special Leave petitions”

[5] Pursuant thereto, Director Secondary Education, Haryana, Chandigarh issued communication dated 27.07.2001 to all District Education Officers in the State directing that all contract teachers be paid salary as admissible to regular teachers. It needs noticing here that pay scale of Sanskrit Teachers prior to 01.01.1996 was ₹1400-2600 revised to ₹5500-9000 with effect from 01.01.1996 which was further revised to ₹9300-34800 + 4600 GP with effect from 01.01.2006 and that pursuant to the decision of this Court as also

the interim orders issued by the Hon'ble Supreme Court the petitioners were granted regular scales.

[6] Grievance of the petitioners is that the Government of Haryana had framed Rules and by virtue of Rule 2(d), applicability thereof was excluded qua appointees, inter alia on contract basis. Rule 2(d) is reproduced hereunder :-

“2. Categories of Government Servant to whom these rules apply:-

(1) xxx xxx xxx

(2) **These rules shall not apply to:-**

(a) xxx (c)

(d) Persons paid otherwise than on monthly basis, including those paid on a piece-rate basis or on daily wages basis or on contract basis;

(e) xxx (h)”

[7] Pursuant to the framing of the Rules, the District Elementary Education Officer, Sonapat issued directions to all drawing and disbursing officers that contract Sanskrit Teachers were not entitled to regular pay scale whereupon all drawing and disbursing officers issued show cause notices to the petitioners for refixation of pay by rectifying mistake and recovery of payment made in excess. Copy of one of the identical show cause notice issued to one of the petitioners i.e. petitioner No.5 is attached along with the writ petition as Annexure P-4. Petitioners submitted replies to the show cause notices on identical lines and copy of reply submitted by petitioner No.4 is attached along with the writ petition as Annexure P-5.

[8] Disagreeing with the reply given, the Drawing and Disbursing officers decided to effect recovery from the salary of the petitioners and directed them to deposit excess amount paid to them failing which they were informed that monthly deduction would be made from their salary. Copy of intimation issued to petitioner No.4 is attached along with the writ petition as Annexure P-6. Similar intimations were issued to the other petitioners.

[9] Rule 2 (d) denying regular pay scales to contract teachers as also the action of the respondents directing deposit of excess payment made on account of grant of regular scales with effect from 01.01.2006 has been challenged inter-alia on the ground that the matter in issue is squarely covered by the decision of the Division Bench of this Court in **Polu Ram's case** (Supra). Even in the case of **Avtar Singh vs State of Punjab** (i.e. CWP No. 14796 of 2003) decided on 11.11.2011 (Annexure P-7), all contractual appointees appointed against regular sanctioned post after undergoing selection process had been held entitled to the minimum of the regular pay scale of the post held. Similar Rules had been quashed by a Division Bench of this Court in CWP No. 22516 of 2012 titled as **Mohinder Singh and others vs State of Haryana and others** decided on 01.04.2013 (Annexure P-8). Therefore, Rule 2(d) of the Rules (ibid) is liable to be declared unconstitutional. Further as the petitioners had been granted regular scales in compliance of Court's order, therefore, withdrawal of benefit granted, on the face of it is illegal and unsustainable.

[10] That it needs noticing here that the decision of this Court in **Polu Ram's case** was reversed by the Hon'ble Supreme Court in case titled as **State of Haryana & ors vs Polu Ram & anr-(2010) 15 SCC 452** by accepting the plea that the respondents were not entitled to continue on the post after the expiry of the specified period on account of they having been

appointed on fixed terms as a stop gap arrangement. The SLP was allowed in the light of decision of the Hon'ble Supreme Court in **Secretary, State of Karnataka & ors vs Uma Devi (3) & ors-(2006) 4 SCC 1** primarily qua non entitlement of contractual appointees to continue on the post after the expiry of the specified period. Qua the entitlement of a contractual appointee to be given the minimum of the pay scale the matter was not specifically adverted to though in paragraph No. 51 of the judgment, entitlement of daily wagers to be paid wages equal to the salary and allowances that were being paid to to the regular employees of their cadre in government service, with effect from the dates from which they were respectively appointed was dealt with and the directions of the High Court modified by directing payment of wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court and no other allowances. Relevant extract from the aforesaid judgment is reproduced hereunder:-

“55.High Court has directed that those engaged on daily wages, be paid wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively appointed. The objection taken was to the direction for payment from the dates of engagement. We find that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question

before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called and were entitled to any other benefit. They had also been engaged in the teeth of directions not to do so. We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that is being paid to regular employees be paid to these daily-wage employees with effect from the date of its judgment. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily-wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily-wage earners, there would be no question of other allowances being paid to them.”

[11] At the time of arguments, learned counsel for the petitioners contended that the matter in issue is squarely covered by a recent decisions of Hon’ble the Supreme Court in **State of Punjab v. Jagjit Singh, (2017) 1 SCC 148** as well as **State of Punjab & ors. vs Rafiq Masih (White Washer) etc-2015 (4) SCC 334**.

[12] Learned counsel for the petitioners has referred to paragraph Nos. 60 and 61 of the decision in **Jagjit Singh’s case** (Supra) to contend that in view of the admitted factual position of the petitioners having been appointed on contract basis after due advertisement and considering the claim of all eligible persons, besides, qualifications, duties and responsibilities of the teachers working on contract basis being the same as of other regular selected and appointed Sanskrit Teachers, the petitioners would be entitled to draw wages at the minimum of the pay scale i.e. at the lowest grade in the

regular pay-scale extended to regular employees, holding the same post. Relevant extract of the decision in **Jagjit Singh's case (Supra)** is reproduced as under:-

“60. 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 employees concerned (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” summarised by us in para 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 temporary employees concerned 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 summarised by us in para 42 hereinabove. There can be no doubt, that the principle of “equal pay for equal work” would be applicable to all the temporary employees concerned, so as to vest in them the right to claim wages on a par with the minimum of the pay scale of regularly engaged government employees holding the same post.

61. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding that all the temporary employees concerned, 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.”

[13] Learned counsel for the petitioners has also referred to paragraph No.12 of the decision of the Hon’ble Supreme Court in **Rafiq Masih’s case** (Supra) in support of the plea that the petitioners belonging to Class III services are entitled to protection against recovery of the payment made in derogation of the Rules. Paragraph No.12 of the decision of the Hon’ble Supreme Court in **Rafiq Masih’s case** (Supra) is reproduced as under:-

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few

situations, wherein recoveries by the employers, would be impermissible in law:-

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

[14] However, the decision in **Rafiq Masih's case** (Supra) has been considered by Hon'ble the Supreme Court in **High Court of Punjab & Haryana vs Jagdev Singh, (2016) 14 SCC 267** and clarified that where an officer to whom the payment was made at the first instance after putting him to notice that any payment found to have been made in excess would be required to be refunded, such officer would be bound by the undertaking given by him. Relevant extract of the aforesaid decision is reproduced as under:-

"10. In *State of Punjab v. Rafiq Masih*² this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made

by an employer, in the following situations, a recovery by the employer would be impermissible in law: (SCC pp. 334-35)

(i) Recovery from employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

(emphasis supplied)

11. The principle enunciated in Proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

12. For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable installments. We direct that the

recovery be made in equated monthly installments spread over a period of two years.”

[15] We have considered the submissions of learned counsel and in view of the admitted position referred to above are of the considered view that Rule 2 (d) of Rules 2008 to the extent it excludes applicability of the Haryana Civil Services (Revised Pay) Rules, 2008 to the persons appointed on contract basis is liable to be declared unconstitutional and be struck down in the case of employees appointed on contract basis after due advertisement and considering the claim of all eligible persons and who are having same qualifications, duties and responsibilities as of teachers appointed as regular Sanskrit teachers. We hold accordingly.

[16] However, as regards challenge to the recovery we are of the view that since payment was made to the petitioners in terms of the interim order of the Hon’ble Supreme Court dated 22.11.2000 in **Polu Rams case** (Supra), the petitioners cannot resist the recovery in the light of decision in **Rafiq Masih’s case** (Supra) in view of the later decision of the Hon’ble Supreme Court in **Jagdev Singh’s case** (Supra).

[17] Accordingly, in view of the decision of the Hon’ble Supreme Court in **Jagjit Singh’s case** (Supra), the petitioners as contractual employees would be entitled to the minimum of the pay scale at the lowest grade in the regular pay scale extended to regular Sanskrit teachers with effect from the due date. However, excess payments made to the petitioners in terms of the decision of this Court in **Polu Ram’s case** (Supra) decided on 17.04.1998 would not be immune from recovery. Accordingly, petitioners are bound to refund the excess payment received by them in view of the interim order of the Hon’ble Supreme Court dated 22.11.2000 in **Polu Rams case** (Supra). We also deem it appropriate to permit the petitioners to make a representation to the

authorities to effect recovery of the excess payments made to them in equitable monthly installments. In case of receipt of any such representation, the respondents would consider and pass appropriate orders in respect thereto.

[18] Writ petition allowed in the aforementioned terms.

(Rajesh Bindal)
Judge

(B.S. Walia)
Judge

08.01.2018
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1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.