

213

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 26.10.2018

CWP No. 6391 of 2016 (O/M)

Dr. Vishavdeep Singh and others

..... Petitioners

Versus

State of Punjab and others

..... Respondents

CWP No. 25306 of 2017 (O/M)

Dr. Kanwarpal Singh Sandhu and others

..... Petitioners

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. R.S. Bains, Advocate,
for petitioners in CWP No. 25306 of 2017.

Mr. H.P.S. Ishar, Advocate,
for petitioners in CWP No. 6391 of 2016.

Mr. H.S. Grewal, Additional A.G. Punjab.

-. -

-. -

KULDIP SINGH, J.

This judgment shall dispose of two abovenoted connected civil writ petitions as notification challenged by petitioners in both cases is same.

For brevity, facts have been taken from CWP No. 6391 of 2016.

FACTS

The Punjab Public Service Commission, Patiala, issued an advertisement on 19.3.2014 (Annexure-P-1), advertising 404 posts of Medical Officers (General). Present petitioners were among the candidates

who applied for the posts of said Medical Officers (General). Petitioners were selected and offered appointment letter on 10.8.2015 (Annexure-P-2), which contained a condition that petitioners shall be paid fixed emoluments during the probation period of two years including extension, if any, which will be equal to the minimum of the pay band on the new post and during probation, grade pay, annual increment or any other allowances, except travelling allowance, shall not be admissible to them. This was done on the basis of Government Notification dated 15.1.2015 (Annexure-P-3). As per terms of the appointment letter, the probation period shall be for two years, which can be further extended as per rules. Though, the minimum pay scale and allowances admissible to post of Medical Officers (General) is Rs. 52,000/- approximately, but due to said condition petitioners were being paid Rs. 13,000/-, after deductions. The petitioners have challenged notification dated 15.1.2015 (Annexure-P-3), vide which Punjab Government amended the Punjab Civil Services Rules, Volume 1, Part I (in short 'PCS Rules'), in which fixed monthly emoluments were defined, so as not to include any grade pay, annual increment or any other allowance, except travelling allowance, as per entitlement of post held by such employee. Further, Rule 4.1 of PCS Rules, Sub rule (1) was substituted as under :-

- '(1) Subject to the rule contained in this Chapter, a competent authority may fix the pay of a Government employee, but his pay shall not be so increased as to exceed the pay sanctioned for his post without the sanction of the authority competent to create a post in same cadre on a rate of pay equal to this pay when increased ;

Provided that the Government employee (except a member of service of the Punjab Civil Services (Judicial Branch) and the employees covered under clause (a) of rule 4.4), shall be

entitled to receive the emoluments, as specified in Rule 2.20-A, during the period of his probation ;

Provided further that if a Government employee falling under Clause (a) or Rule 4.4 is appointed to a post, his pay during the period of his probation shall not exceed the pay, which he was drawing on the post on which he holds lien ;

Provided further that when the services of a Government employee, are regularized, in that case the period spent on probation by him, shall not be treated to be the time, spent on such post, ;'

In this way, now a Government employee will be entitled to receive emoluments as per Rule 2.20-A of PCS Rules, which are fixed monthly emoluments and that the period spent on probation by him shall not be treated to be time, spent on such post.

Rule 2.20-A of PCS Rules provides as under :-

'Rule 2.20-A 'Fixed Monthly Emoluments' means the emoluments, drawn by a Government employee, but the said emoluments shall not include any Grade Pay, annual increment or any other allowance, except the travelling allowance as per entitled of the post held by such employee.'

The grouse of petitioners is that they are being paid almost one third salary during probation period and that similarly situated Medical Officers are getting regular salary including grade pay, annual increment and other allowances. Petitioners seek quashing of Notification dated 15.1.2015 (Annexure-P-3) and seek further direction to respondents to pay full salary to petitioners alongwith all other admissible allowances.

Respondents, in reply, have not disputed notification dated 15.1.2015 and substitution of Rule 4.1 of PCS Rules, as reproduced above. It was stated that petitioners are being paid basic salary of Rs. 15,600/- in accordance with condition mentioned in appointment letter. In view of

letter dated 22.9.2016, the Government has allowed Non Practicing Allowance at the rate of 25% in addition to basic pay to doctors appointed after issuance of notification dated 15.1.2015. Respondents also raised the plea of estoppel and took the plea that same condition was incorporated in advertisement.

ARGUMENTS

We have heard the learned counsel for parties and have also carefully gone through the file.

The copy of advertisement dated 19.3.2014 (Annexure-P-1) shows that when 404 posts of Medical Officers (General) were advertised, a condition was incorporated that they will be paid fixed emoluments equal to minimum of pay band without any grade pay or any allowance during the probation period of two years. The annual increment or any other allowance, except travelling allowance, will not be paid during probation period of two years.

Petitioners are aggrieved of two conditions, incorporated in notification dated 15.1.2015 (Annexure-P-3). First is the payment of fixed monthly emoluments, which means the basic pay during the period of probation without any grade pay, annual increment or any other allowance, except travelling allowance and second that period spent on probation shall not be treated to be time, spent on such posts.

Petitioners have sought protection of law and provisions of the Constitution of India.

There is no estoppel against law and one can always claim protection of Constitution of India, notwithstanding any contrary condition mentioned in the appointment letter.

Article 14 of the Constitution of India provides for equality

before law and equal protection of laws, which have been held by various Courts to include the principle of equal pay for equal work.

Chapter IV of the Constitution of India lays down certain directive principles of State policy.

Article 39 of the Constitution of India contained in said Chapter among others provides for equal pay for equal work for both men and women.

Considering the constitutional provisions, now, we would examine the law laid down by Apex Court.

The Constitutional Bench of Apex Court, in **Secretary, State of Karnataka and others Versus Umadevi and others**, 2006 (2) SCT 462, examined the question of wages, which were payable to the employees, who have rendered long years of service as temporary, contractual, casual, daily wage or on adhoc basis. In the said case, the employees, who had rendered service of more than ten years, being employed on temporary and daily wage basis, claimed the same benefits, as extended to regular employees in their cadre including wages equal to their salaries and allowances with effect from the date on which they were appointed. The High Court, while deciding the case, had relied on the decision, rendered by a three Judge Bench of Apex Court in **Dharwad District PWD Literate Daily Wage Employees Association Versus State of Karnataka**, (1990) 2 SCC 396 to hold that they are entitled to same benefits as extended to regular employees in their cadre with effect from the date from which they were appointed. The Apex Court, after having noticed the contention of rival parties on the subject of wages payable to daily wagers, recorded its conclusions as under :-

'55. In cases relating to service in the commercial taxes department, the 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. In view of our conclusion, that Courts are not expected to issue directions for making such persons permanent in service, we set aside that part of the direction of the High Court directing the Government to consider their cases for regularization. We also notice that the High Court has not adverted to the aspect as to whether it was regularization or it was giving permanency that was being directed by the High Court. In such a situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed

to that extent. If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of selection. But when regular recruitment is undertaken, the respondents in C.A. Nos. 3595-3612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time.'

In this way, the Constitutional Bench affirmed that daily wagers or temporary workers are entitled to wages, equal to wages paid to regular employees, though these were made applicable from the date of judgment by a Division Bench of the High Court.

The matter was examined in detail by Apex Court in **State of Punjab Versus Jagjit Singh and others**, 2016 (4) SCT 641. The Apex Court has referred to its observations made in **Dhirendra Chamoli Versus State of UP**, (1986) 1 SCC 637, which is reproduced as under :-

'This Court held, that it was not open to the Government to exploit citizens, specially when India was a welfare state, committed to a socialist pattern of society. The argument raised by the Government was found to be violative of the mandate of equality, enshrined in Article 14 of the Constitution. This Court held that the mandate of Article 14 ensured, that there would be equality before law and equal protection of the law. It was inferred therefrom, that there must be 'equal pay for equal work'. Having found, that employees engaged by different Nehru Yuvak Kendras in the country were performing similar duties as regular Class-IV employees in its employment, it was held, that they must get the same salary and conditions of service as regular Class-IV employees, and that, it made no difference whether they were appointed on sanctioned posts or not. So long as they were performing the same duties, they must

receive the same salary.'

The Apex Court also referred to principle of 'equal pay for equal work', enshrined in Article 39 of the Constitution of India. The case law on point from time to time was examined. The judgment of Apex Court in **State of Karnataka Versus Umadevi's** case (supra) was also examined. The Apex Court came to following legal principles with reference to principle of 'equal pay for equal work' :-

'(i) The 'onus of proof', of parity in the duties and responsibilities of the subject post with the reference post, under the principle of 'equal pay for equal work', lies on the person who claims it. He who approaches the Court has to establish, that the subject post occupied by him, requires him to discharge equal work of equal value, as the reference post (see – the Orissa University of Agriculture and Technology case, **Union Territory Administration, Chandigarh Versus Manju Mathur**, 2011 (1) SCT 830 : (2011) 2 SCC 452, the Steel Authority of India Limited case, and the National Aluminum Company Limited case).

(ii) The mere fact that the subject post occupied by the claimant, is in a "different department" vis-a-vis the reference post, does not have any bearing on the determination of a claim, under the principle of 'equal pay for equal work'. Persons discharging identical duties, cannot be treated differently, in the matter of their pay, merely because they belong to different departments of Government (see – the Randhir Singh case, and the D.S. Nakara case).

(iii) The principle of 'equal pay for equal work', applies to cases of unequal scales of pay, based on no classification or irrational classification (see – the Randhir Singh case). For equal pay, the concerned employees with whom equation is sought, should be performing work, which besides being functionally equal, should be of the same quality and sensitivity (see – the Federation of All India Customs and Central Excise

Stenographers (Recognized) case, the Mewa Ram Kanojia case, the Grih Kalyan Kendra Workers' Union case and the S.C. Chandra case).

(iv) Persons holding the same rank/designation (in different departments), but having dissimilar powers, duties and responsibilities, can be placed in different scales of pay, and cannot claim the benefit of the principle of 'equal pay for equal work' (see – the Randhir Singh case¹, **State of Haryana Versus Haryana Civil Secretariat Personal Staff Association**, 2002 (3) SCT 674 : (2002) 6 SCC 72, and the Hukum Chand Gupta case). Therefore, the principle would not be automatically invoked, merely because the subject and reference posts have the same nomenclature.

(v) In determining equality of functions and responsibilities, under the principle of 'equal pay for equal work', it is necessary to keep in mind, that the duties of the two posts should be of equal sensitivity, and also, qualitatively similar. Differentiation of pay-scales for posts with difference in degree of responsibility, reliability and confidentiality, would fall within the realm of valid classification, and therefore, pay differentiation would be legitimate and permissible (see – the Federation of All India Customs and Central Excise Stenographers (Recognized) case and the State Bank of India case). The nature of work of the subject post should be the same and not less onerous than the reference post. Even the volume of work should be the same. And so also, the level of responsibility. If these parameters are not met, parity cannot be claimed under the principle of 'equal pay for equal work' (see - **State of U.P. Versus J.P. Chaurasia**, (1989) 1 SCC 121, and the Grih Kalyan Kendra Workers' Union case).

(vi) For placement in a regular pay-scale, the claimant has to be a regular appointee. The claimant should have been selected, on the basis of a regular process of recruitment. An employee appointed on a temporary basis, cannot claim to be placed in the regular pay-scale (see – the Orissa University of Agriculture and

Technology case).

(vii) Persons performing the same or similar functions, duties and responsibilities, can also be placed in different pay-scales. Such as - 'selection grade', in the same post. But this difference must emerge out of a legitimate foundation, such as – merit, or seniority, or some other relevant criteria (see - **State of U.P. Versus J.P. Chaurasia**, (1989) 1 SCC 121).

(viii) If the qualifications for recruitment to the subject post vis-a-vis the reference post are different, it may be difficult to conclude, that the duties and responsibilities of the posts are qualitatively similar or comparable (see – the Mewa Ram Kanojia case, and **Government of W.B. Versus Tarun K. Roy**, 2004 (1) SCT 78 : (2004) 1 SCC 347). In such a cause, the principle of 'equal pay for equal work', cannot be invoked.

(ix) The reference post, with which parity is claimed, under the principle of 'equal pay for equal work', has to be at the same hierarchy in the service, as the subject post. Pay-scales of posts may be different, if the hierarchy of the posts in question, and their channels of promotion, are different. Even if the duties and responsibilities are same, parity would not be permissible, as against a superior post, such as a promotional post (see - **Union of India Versus Pradip Kumar Dey**, 2001 (1) SCT 462 : (2000) 8 SCC 580, and the Hukum Chand Gupta case).

(x) A comparison between the subject post and the reference post, under the principle of 'equal pay for equal work', cannot be made, where the subject post and the reference post are in different establishments, having a different management. Or even, where the establishments are in different geographical locations, though owned by the same master (see – the Harbans Lal case). Persons engaged differently, and being paid out of different funds, would not be entitled to pay parity (see - **Official Liquidator Versus Dayanand**, (2008) 10 SCC 1).

(xi) Different pay-scales, in certain eventualities, would be permissible even for posts clubbed together at the same hierarchy in the cadre. As for instance, if the duties and

responsibilities of one of the posts are more onerous, or are exposed to higher nature of operational work/risk, the principle of 'equal pay for equal work' would not be applicable. And also when, the reference post includes the responsibility to take crucial decisions, and that is not so for the subject post (see – the State Bank of India case).

(xii) The priority given to different types of posts, under the prevailing policies of the Government, can also be a relevant factor for placing different posts under different pay-scales. Herein also, the principle of 'equal pay for equal work' would not be applicable (see - **State of Haryana Versus Haryana Civil Secretariat Personal Staff Association**, 2002 (3) SCT 674 : (2002) 6 SCC 72).

(xiii) The parity in pay, under the principle of 'equal pay for equal work', cannot be claimed, merely on the ground, that at an earlier point of time, the subject post and the reference post, were placed in the same pay- scale. The principle of 'equal pay for equal work' is applicable only when it is shown, that the incumbents of the subject post and the reference post, discharge similar duties and responsibilities (see - **State of West Bengal Versus West Bengal Minimum Wages Inspectors Association**, 2010 (2) SCT 250 : (2010) 5 SCC 225).

(xiv) For parity in pay-scales, under the principle of 'equal pay for equal work', equation in the nature of duties, is of paramount importance. If the principal nature of duties of one post is teaching, whereas that of the other is non-teaching, the principle would not be applicable. If the dominant nature of duties of one post is of control and management, whereas the subject post has no such duties, the principle would not be applicable. Likewise, if the central nature of duties of one post is of quality control, whereas the subject post has minimal duties of quality control, the principle would not be applicable (see - **Union Territory Administration, Chandigarh Versus Manju Mathur**, 2011 (1) SCT 830 : (2011) 2 SCC 452).

(xv) There can be a valid classification in the matter of pay-

scales, between employees even holding posts with the same nomenclature i.e., between those discharging duties at the headquarters, and others working at the institutional/sub-office level (see – the Hukum Chand Gupta case), when the duties are qualitatively dissimilar.

(xvi) The principle of 'equal pay for equal work' would not be applicable, where a differential higher pay-scale is extended to persons discharging the same duties and holding the same designation, with the objective of ameliorating stagnation, or on account of lack of promotional avenues (see – the Hukum Chand Gupta case).

(xvii) Where there is no comparison between one set of employees of one organization, and another set of employees of a different organization, there can be no question of equation of pay-scales, under the principle of 'equal pay for equal work', even if two organizations have a common employer. Likewise, if the management and control of two organizations, is with different entities, which are independent of one another, the principle of 'equal pay for equal work' would not apply (see – the S.C. Chandra case, and the National Aluminum Company Limited case).

The Apex Court also referred to the case law where the principle of 'equal pay for equal work' was applied. The relevant extracts from said judgment are reproduced as under for ready reference :-

'(i) In the Dhirendra Chamoli case this Court examined a claim for pay parity raised by temporary employees, for wages equal to those being disbursed to regular employees. The prayer was accepted. The action of not paying the same wage, despite the work being the same, was considered as violative of Article 14 of the Constitution. It was held, that the action amounted to exploitation – in a welfare state committed to a socialist pattern of society.

(ii) In the Surinder Singh case this Court held, that the

right of equal wages claimed by temporary employees emerged, inter alia, from Article 39 of the Constitution. The principle of 'equal pay for equal work' was again applied, where the subject employee had been appointed on temporary basis, and the reference employee was borne on the permanent establishment. The temporary employee was held entitled to wages drawn by an employee on the regular establishment. In this judgment, this Court also took note of the fact, that the above proposition was affirmed by a Constitution Bench of this Court, in the D.S. Nakara case.

(iii) In the Bhagwan Dass case this Court recorded, that in a claim for equal wages, the duration for which an employee would remain (- or had remained) engaged, would not make any difference. So also, the manner of selection and appointment would make no difference. And therefore, whether the selection was made on the basis of open competition or was limited to a cluster of villages, was considered inconsequential, insofar as the applicability of the principle is concerned. And likewise, whether the appointment was for a fixed limited duration (six months, or one year), or for an unlimited duration, was also considered inconsequential, insofar as the applicability of the principle of 'equal pay for equal work' is concerned. It was held, that the claim for equal wages would be sustainable, where an employee is required to discharge similar duties and responsibilities as regular employees, and the concerned employee possesses the qualifications prescribed for the post. In the above case, this Court rejected the contention advanced on behalf of the Government, that the plea of equal wages by the employees in question, was not sustainable because the concerned employees were engaged in a temporary scheme, and against posts which were sanctioned on a year to year basis.

(iv) In the Daily Rated Casual Labour Employed under P and T Department through Bhartiya Dak Tar Mazdoor Manch case this Court held, that under principle flowing from Article 38(2) of the Constitution, Government could not deny a temporary employee, at least the minimum wage being paid to an employee in the corresponding regular cadre, alongwith dearness allowance and additional dearness allowance, as well as, all the other benefits which were being extended to casual workers. It was also held, that the classification of workers (as unskilled, semi-skilled and skilled), doing the same work, into different categories, for payment of wages at different rates, was not tenable. It was also held, that such an act of an employer, would amount to exploitation. And further that, the same would be arbitrary and discriminatory, and therefore, violative of Articles 14 and 16 of the Constitution.

(v) In **State of Punjab Versus Devinder Singh**, (1998) 9 SCC 595 this Court held, that daily-wagers were entitled to be placed in the minimum of the pay-scale of regular employees, working against the same post. The above direction was issued after accepting, that the concerned employees, were doing the same work as regular incumbents holding the same post, by applying the principle of 'equal pay for equal work'.

(vi) In the Secretary, State of Karnataka case, a Constitution Bench of this Court, set aside the judgment of the High Court, and directed that daily-wagers be paid salary equal to the lowest grade of salary and allowances being paid to regular employees. Importantly, in this case, this Court made a very important distinction between pay parity and regularization. It was held that the concept of equality would not be applicable to issues of absorption/regularization. But, the concept was held as applicable, and was indeed applied, to the issue of pay

parity – if the work component was the same. The judgment rendered by the High Court, was modified by this Court, and the concerned daily-wage employees were directed to be paid wages, equal to the salary at the lowest grade of the concerned cadre.

(vii) In **State of Haryana Versus Charanjit Singh**, 2006 (3) SCT 170 : (2006) 9 SCC 321, a three-Judge bench of this Court held, that the decisions rendered by this Court in **State of Haryana Versus Jasmer Singh**, (1996) 11 SCC 77, **State of Haryana Versus Tilak Raj**, 2003 (4) SCT 485 : (2003) 6 SCC 123, the Orissa University of Agriculture and Technology case, and **Government of W.B. Versus Tarun K. Roy**, 2004 (1) SCT 78 : (2004) 1 SCC 347, laid down the correct law. Thereupon, this Court declared, that if the concerned daily-wage employees could establish, that they were performing equal work of equal quality, and all other relevant factors were fulfilled, a direction by a Court to pay such employees equal wages (from the date of filing the writ petition), would be justified.

(viii) In **State of U.P. Versus Putti Lal**, (2006) 9 SCC 337, based on decisions in several cases (wherein the principle of ‘equal pay for equal work’ had been invoked), it was held, that a daily-wager discharging similar duties, as those engaged on regular basis, would be entitled to draw his wages at the minimum of the pay-scale (drawn by his counterpart, appointed on regular basis), but would not be entitled to any other allowances or increments.

(ix) In the Uttar Pradesh Land Development Corporation case³³ this Court noticed, that the respondents were employed on contract basis, on a consolidated salary. But, because they were actually appointed to perform the work of the post of Assistant Engineer, this Court directed the employer to pay the respondents wages, in the minimum

of the pay-scales ascribed for the post of Assistant Engineer.'

The principle of 'equal pay for equal work' was applied by the Apex Court in the latest judgment titled as **State of Haryana and another etc. Versus Mohinder Singh and others etc.**, 2017 (2) SCT 185.

Supreme Court in **Central Inland Water Transport Corporation Ltd. and another Versus Brojo Nath Ganguly and another**, AIR 1986 SC 1571; **Daily Rated Casual Labour employed under P and T Department through Bhartiya Dak Tar Mazdoor Manch Versus Union of India and others**, AIR 1987 SC 2342, has held that the State must act as a model employer. It cannot take undue advantage of the need of the employee, who does not have any real choice in the matter of employment due to economic compulsions. The payment of wages less than living wages which are provided by way of allowances, for employees who have been regularly selected and appointed on substantive posts, is unjust, unfair, unreasonable and violative of Article 14 of the Constitution of India. The Court acting as sentinel on the qui vive is under an obligation to prevent the contravention of the fundamental rights. Where the State has offered unfair terms of employment and the candidate accepts it taking up the job without demur, he cannot be held to have accepted the employment on such terms, which are unfair and unconstitutional.

Recently, a Division Bench of this Court in **Gurwinder Singh and others Versus State of Punjab and others** (arising out of CWP No. 8922 of 2017, decided on 13.9.2018), while dealing with similar clauses in the appointment letters, quashed same, while relying upon a Division Bench judgment of Rajasthan High Court in **Gopal Kumawat Versus The State of Rajasthan and others** (arising out of CWP No. 2963

of 2007, decided on 29.7.2018). In **Gopal Kumawat's** case (supra), similar amendment in the Rajasthan Civil Services (Amendment) Rules, 2006, was quashed by Rajasthan High Court wherein similar conditions were incorporated.

Now, in the light of abovenoted principle of 'equal pay for equal work', this Court will examine the case of present petitioners. Admittedly, petitioners were appointed by adopting due process by issuing an advertisement in the newspapers and they were appointed against existing vacancies. It is pity that the doctors, who spent best part of their life in acquiring the qualification of a doctor after spending huge money, are paid only Rs. 15,600/- for the probation period of two years, which can be extended by three years, which virtually means three years. Further, the Government has laid down that probation period shall not be included as the work done on the said post, meaning thereby that said probation period is excluded from total service.

We are of the considered opinion that said amendments/terms and conditions are patently illegal, against Articles 14 and 39 of Constitution of India as well as the law laid down by the Apex Court. These are unconscionable terms and conditions in making the appointments. It is nothing, but exploitation by the State Government of its subjects, who are hapless and are desperately seeking Government job but have been given the 'Hobson's choice'. Admittedly, in these cases, doctors, who are newly appointed and the doctors, who have completed their probation period, are having the same qualifications and are performing same duties and are appointed against same posts in the same department of State of Punjab. However, for the period of probation, new entrants are paid only the basic pay, in which now non practicing allowance is being also paid. More or less

is position of employees of other departments in the State, who are being appointed against existing vacancies and are paid only basic pay. Similarly situated doctors and employees, working in various departments of State, have also filed separate writ petitions, which are pending for adjudication in this Court.

In State of Haryana and another etc. Versus Mohinder Singh and others etc.'s case (supra), the Apex Court, while, applying the principle of 'equal pay for equal work' extended the benefit to all persons similarly situated as private respondents in said case, including those who have not approached the High Court or the Apex Court and has observed as under :-

'11. We feel ourselves persuaded, to direct the State Government, to pay arrears of wages, to all persons similarly situated as private respondents herein, in consonance with the impugned judgment, with effect from 1.4.2013, this would include those employees who had not approached the High Court or this Court, as well as, those who had entered into a settlement with the State Government, agreeing to accept arrears only with effect from 1.1.2014. Ordered accordingly.'

It has been brought to our notice that employees of various departments in Punjab Government, who have been on probation against existing vacancies, are being paid basic pay, in view of notification dated 15.1.2015, for the period of probation of two years, which is extended by one year to make it three years.

The impugned notification dated 15.1.2015 (Annexure-P-3) is found to be violative of Articles 14 and 39 of the Constitution of India and various laws, laid down by the Apex Court, as discussed above.

Consequently, we make the following order :-

Order

(i) Civil Writ Petition No. 6391 of 2016 and Civil Writ Petition No. 25306 of 2017 are allowed.

(ii) Notification dated 15.1.2015 (Annexure-P-3), so far as it substitutes Rule 4.1 of PCS Rules and provides for payment of only fixed monthly emoluments in terms of Rule 2.20-A of PCS Rules and also providing that period spent on probation by a Government employee shall not be treated to be the time, spent on such post, is hereby quashed.

(iii) All such employees shall be entitled to same salary as paid to regular employees with effect from the date of passing of this judgment.

(iv) It is directed that petitioners, who are working as doctors in various departments of State Government, against existing vacancies, including those doctors, who have not approached this Court and are working against existing vacancies, shall also be entitled to benefit of this judgment.

(v) No orders as to costs.

(A.B. CHAUDHARI)
JUDGE

(KULDIP SINGH)
JUDGE

26.10.2018
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes

