

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.9338 of 2014
Reserved on :19.12.2017
Date of decision:01.02.2018

Raksha Rani

....Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.S.S.Duhan, Advocate, for the petitioner.

Ms.Shruti Jain Goyal, AAG, Haryana.

Mr.S.S.Kharb, Advocate, for respondents No.2 to 4.

G.S. SANDHAWALIA, J.

This judgment shall dispose of 12 connected writ petitions, bearing CWP-9338, 12166, 9339, 9340, 9341, 9393, 9406, 9426, 9427, 12167, 9392, 9390 & 15346-2014, involving common questions of law and facts. However, to dictate orders, facts have been taken from CWP-9338-2014 titled *Raksha Rani Vs. State of Haryana & others*.

It is the pleaded case of the petitioner that she had joined on the post of Balsevika in the Creche Centre at Rambagh on 01.02.1995 with District Child Welfare Council, Bal Bhawan Ambala City and worked till 18.03.2014, when the impugned order was passed, relieving her from service by the District Child Welfare Officer-respondent No.4. Resultantly, challenge has been raised to the said order and for quashing the same and seeking reinstatement with all consequential benefits. In addition to that, minimum of the regular pay-scale without any allowance, is prayed for, in view of the Division Bench judgment passed in CWP-1286-1987 titled *Shakuntla Devi Vs. The Deputy Commissioner, Sirsa & another*, decided on 01.10.2012 (Annexure P-2).

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Challenge to the order dated 18.03.2014 (Annexure P-1) has been raised on the ground that the order was passed by an officer who was not the competent authority and the Deputy Commissioner, being the President of the District Child Welfare Council, was the competent authority. Grant-in-aid was obtained from Indian Council for Child Welfare, New Delhi and no decision had been communicated to close down the Creches and therefore, challenge was raised to the closing down. Similarly, for the grant of minimum pay-scale, reliance has been placed upon Full Bench judgment in **Avtar Singh Vs. State of Punjab 2012 (1) PLR 1**, to claim that the petitioner is entitled for the said benefits.

A perusal of the impugned order would go on to show that it was on account that the financial position of the District Council was not good, it was decided to close down the creche scheme being run under the grant-in-aid scheme. The additional grant of honorarium to Balsevikas could not be borne and therefore, decision was taken on 17.02.2014 to close the scheme of creches and surrender the staff along with the helpers and that they be relieved from service, with immediate effect. Resultantly, petitioner's services were dispensed with by giving one month's honorarium, in lieu of the notice period. The Executive Committee also noticed that in view of the judgment of the Division Bench in **Shakuntla Devi** (supra), 4 Balsevikas were getting pay-scales with allowances for which financial burden was Rs.3 lakhs and no grant was being received and others had also submitted their representations,

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for grant of pay-scales as was given to the said 4 persons and resultantly, the relieving order had been passed.

Respondent No.2-Haryana State Branch of Indian Council for Child Welfare, in its reply, took the plea that the petitioner was appointed temporarily on a fixed honorarium and the appointment conditions were clear that the same could be terminated by one month's notice on either side and honorarium of Rs.325/- was fixed per month. The additional grant-in-aid had not been received from the Indian Council for Child Welfare, New Delhi and Ministry of Women and Child Welfare, New Delhi. The financial burden of Rs.3 lakhs was there for the 4 Balsevikas because of the judgment of the Division Bench. Total arrear of Rs.21,87,140/- had been released to 20 Balsevikas. The financial position of the District Council not being good, the District Council was not in a position to bear the additional burden of honorarium of Rs.16 lakhs per annum from 21 Balsevikas from its own resources and therefore, the creche scheme was ordered to be closed and surrendered to the answering-respondent. The said respondent also surrendered the creches to the Indian Council for Child Welfare, New Delhi, the sanctioning authority of the creche programme. It was, in such circumstances, 21 Balsevikas along with helpers were relieved from service, with immediate effect. It was pleaded that the petitioners had been merely appointed temporarily on fixed honorarium and not on a regular pay-scale. The petitioners were appointed by respondent No.4 in the capacity of General Secretary of the District Child Welfare Society,

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Ambala and the same post is now District Child Welfare Officer. Even as per the National Creche Scheme for Children of Working Mothers, Government of India, applicable w.e.f. 01.01.2006 by Government of India, Department of Women & Child Development, Ministry of Human Resource Development, New Delhi, recurring grant of Rs.2000/- per month was allowed for 2 workers per creche as honorarium and with this much honorarium, no working Balsevika helper was willing to provide service to the creches. The answering-respondent had also surrendered these creches to the Indian Council for Child Welfare, New Delhi, the sanctioning authority of the Creche Programme. The order dated 18.03.2014 was, thus, passed after seeking the approval of the Executive Body and the petitioners being appointed on a fixed honorarium, had no right to continue in service.

In the written statement filed by respondent No.4, on behalf of respondents No.3 & 4, similar plea was taken that the appointment letter dated 02.02.1995 (Annexure R-4/1) would show that the appointment was purely temporary and on payment of honorarium of Rs.325/- per month.

Petitioner filed replication that services had been terminated in an illegal and arbitrary manner and the benefit of regular pay-scale had been granted to similarly situated employees. Petitioner was in service for the last more than 10 years and therefore, her services could not be terminated by giving one month's notice. No material had been placed on record of additional grant-in-aid which was sought from the Indian

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Council for Child Welfare, New Delhi and Ministry of Women & Child Development, New Delhi and whether the same had been declined. No option had been sought from the petitioner before terminating her services as to whether she was willing to work on the present honorarium being granted to her. A decision, thus, to close down the creches, was challenged. It is alleged that in other districts, the creches are still running and the petitioner is ready to work on monthly honorarium, as granted by the other districts, to the tune of Rs.3000/- per month, as on 11.07.2016.

The terms of appointment of the petitioner dated 02.02.1995 read as under:

“You are hereby informed that you have been appointed as Balsevika temporarily on contract basis at Balwadi Manmohan Nagar, Ambala City, under the Balwadi-cum-Nutrition Programme sponsored by the Govt. of India, being run by the District Child Welfare Council, Ambala, with immediate effect on the following terms and conditions:-

- i) Your appointment is purely on temporary basis and can be terminated at any time without any notice.
- ii) You will be allowed an honorarium of Rs.325/- per month.
- iii) You shall perform such duties as may be assigned by the competent authority.
- iv) You shall be responsible for the safety and upkeep of the property placed under your charge and accountable for the same. You shall further be liable to make good such loss as the Council may suffer on your account.
- v) You shall furnish such security in such manner as may from time to time be prescribed and execute

requisite bond in this connection.

If the above conditions are acceptable to you please report for duty within two days on receipt of this letter at Bal Bhawan, Ambala City, failing which this offer shall be deemed to be withdrawn.

Sd/-

O/o General Secretary”

The same were accepted by her and she was well aware that the appointment was purely temporary and could be terminated at any time, without any notice. Accordingly, honorarium was being paid and the appointment was under the Balwadi-cum-Nutrition Programme, sponsored by the Government of India, which was being run by the District Child Welfare Council, Ambala. As noticed, it has been clarified that initially, it was the General Secretary who had issued the appointment letter and now, it was the District Child Welfare Officer, Ambala, who was the competent person, as it was the same post. The argument, thus, raised that the Deputy Commissioner was the competent authority, as such, to dispense with the services of the petitioner, is without any basis. Even otherwise, the dispensation has been done on account of the financial crunch which has been faced by the Council on account of the fact that regularly appointed persons who had been appointed on 01.03.1973 were given running scale of Rs.110-225 and had earned increments but had not been paid increments, thereafter, from 1986 and in such circumstances, directions had been issued to pay the arrears of increments by the Division Bench and for payment of revised pay-scales, which have been given to other Balsevikas.

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The issue in the present case is, thus, different from what was before the Division Bench and the petitioners had been appointed temporarily on contract basis, on a fixed honorarium and never appointed on a regular pay-scale and there was no regular appointment. The petitioners are, thus, bound by their terms of appointment and the contract entered into as they were appointed temporarily on a fixed honorarium and it is their own case in the replication also that they be continued on honorarium, as such, which was being paid to them and are willing to continue as such. Reliance upon the Division Bench judgment, thus, would be of no help to the petitioners. The issue therein was totally different, in the opinion of this Court and not as has been projected by the petitioners.

While dealing with the issue of minimum pay scale, it is to be noticed that the Full Bench in **Avtar Singh's case** (supra) stands now over ruled by the Apex Court in ***State of Punjab and another vs. Jagjit Singh and others, 2016 (4) SCT 641***. The Apex Court in the said case, considered the question whether temporarily engaged employees which included daily wage ad hoc employees, employees appointed on casual basis and contractual employees were entitled to the minimum of the regular pay scale alongwith Dearness Allowance as revised from time to time on account of their performing the same duties which were discharged by those engaged on regular basis against sanctioned posts. It was accordingly held that the view taken in the Division Bench judgment of this court in **LPA No. 1024 of 2009, *State of Punjab vs. Rajinder***

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Kumar, decided on 30.08.2010, would prevail and the modification that the concerned employees will be entitled to the minimum of the pay scale to the category to which they belong and would not be entitled to allowances attached to the posts held by them. It was held that the factor that required determination was whether the concerned employees were rendering similar duties and responsibilities as have been discharged by regular employees holding the same corresponding posts. It is in such circumstances the relief was granted after recording so, on account of the admission by the counsel for the State that the said set of employees were doing the same duties and responsibilities which should have been discharged by regular employees. The relevant portion read as under:-

“52. 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.

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57. 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,

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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

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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.”

In the present case, there are no such specific averments qua this aspect as to what was the pay scale which was being paid as such to the regular employees and whether the petitioners were also doing the similar work and given the same duties. In the absence of such specific averments not having been made, the benefit as such cannot be extended as it is settled principle that it is on the basis of averments made and the stand taken by the State, the matter would have to be decided. A bald prayer as such for minimum wage on account of the judgment in Avtar Singh's case (*supra*) as such would not suffice and, therefore, the present relief is not liable to be granted.

The decision to close down the creches has been taken on account of the financial crunch and on account of the non-receipt of the grant from Union of India and the Indian Council for Child Welfare, New Delhi. Neither the said respondents have been impleaded as parties to take their view as to whether they are in a position to deal with the extra financial liability which the Council could not bear. Even otherwise, the decision of the Executive Council dated 17.02.2014, closing down the creches, has not been challenged. The closure is apparently based on a financial exigency which is a policy decision and it is not for this Court

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to go into the said aspect as to whether the respondents are in a position to bear the extra financial burden. In such circumstances, if the respondents have chosen to close down the creches and dispense with the services of the petitioners, the same cannot be said to be arbitrary or *mala fide* in any manner. Resultantly, there is no scope for interference in the said action of the respondents.

Accordingly, finding no merit in the present writ petitions, the same are, hereby, dismissed.

01.02.2018
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*