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

CWP No.8922 of 2017 (O&M)

Date of decision: September 13, 2018

Gurwinder Singh 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. D.S. Patwalia, Senior Advocate with
Ms. Gurjot Grewal, Advocate for the petitioners.

Ms. Anju Arora, Addl. AG Punjab.

Mr. Sehaj Bir Singh, Advocate for respondents No.2 to 4.

A.B. CHAUDHARI, J

By the present petition, the petitioners have sought a writ of certiorari for quashing Clauses 2 and 3(b) of the appointment letters dated 29.02.2016 (Annexures P-8 and P-9) and Clause 1 of the appointment letter dated 26.02.2016 (Annexure P-10) and have prayed for consequential relief in the matter of pay-scale and computation of services as probationers.

2. In support of the writ petition, learned Senior counsel for the petitioners submitted that the impugned notification and the appointment letters and in particular, the conditions therein that the probationers would be allowed only fixed pay (equal to minimum of pay band for the post and during the period of promotion shall not be paid any grade-pay, annual increments etc.) and their period of service during the probation shall not be counted is illegal. Learned Senior counsel for the petitioners vehemently

argued that the posts on which the petitioners have been appointed are admittedly sanctioned posts with the Government, and that is why they were advertised and filled in after due procedure was followed. The aforesaid conditions, in the appointment letters, are not only onerous but clearly violate the fundamental right of the petitioners under Article 14 of the Constitution of India. Learned Senior counsel relied on the decision of Rajasthan High Court in this connection in the case of **Gopal Kumawat** versus **The State of Rajasthan and others**, in D.B. Civil Writ Petition No.2963/2007, decided on 29.07.2015. He submitted that the provisions in the Rajasthan Service (Amendment) Rules, 2006, which were quashed by the Rajasthan High Court and the provisions in the present case are *pari materia*. There is no material difference as such. At any rate, according to him, the question that has been raised irrespective of the nature of the amendment made, is the violation of fundamental right of the petitioners. He, therefore, prayed for allowing the petition in terms of judgment cited supra of the Rajasthan High Court.

3. *Per contra*, learned counsel for the respondents agreed that the Division Bench of the Rajasthan High Court has in almost similar type of matters granted the relief to the petitioners in that petition. However, he submitted that the judgment of Rajasthan High Court is under challenge before the Supreme Court, and therefore, these petitions should be adjourned. He further pointed to us some difference in the matter of provisions in the Rajasthan Rules and the present Punjab Rules. He, therefore, prayed for adjournment of the writ petition *ad infinitum*.

4. We have heard learned counsel for the rival parties. We have

perused the entire record so also the judgment dated 29.07.2015 passed by the Rajasthan High Court in Gopal Kumawat's case supra. We have compared the provisions in question relating to the amendment to the Rules. The moot question before us is whether the terms and conditions put by the respondents are unconscionable and violative of Article 14 of the Constitution of India. We reproduce those conditions in the appointment letter dated 26.02.2016, pursuant to the notification and the amended Rule in the Punjab State:-

“1. *Pay:*

The notification no.7/204/2012-4F.P-1/66 dated 15.01.2015 received from Finance Department (Finance Personnel-1 Branch), Punjab Government has been adopted in toto by the P.S.P.C. vide its endst. no. 31532/31571/ P.R.C.-303/ 2006-Part-1 dated 10.04.2015 which is as under:-

- a. After direct recruitment, during probation period including period of extension in probation if any, an employee will be paid fixed emoluments which will be equal to minimum of the pay band of the said post and during the period of promotion he will not be paid any Grade Pay, Annual Increment or any other allowance except traveling allowance.*
- b. On successful completion of probation period, he will be entitled for minimum pay and all other allowances.*
- c. The period of probation including period of extension in probation if any, will not be counted towards the period of work in the pay scale.*

.....”

5. The above conditions have been mentioned in the appointment

order. In the case of **Central Inland Water Transport Corporation Ltd. and another** versus **Brojo Nath Ganguly and another**, AIR 1986 SC 1571, the Apex Court declared the terms in the appointment order as unconscionable terms of contract and also held that the State must act as a model employer and cannot take undue advantage of the need of the employee who does not have any choice in the matter of employment due to the economic compulsions.

6. In the present case, we find, upon reading of the above terms, that the State Government has given Hobson's choice to the petitioners. Due to economic compulsions, they did not have any alternative except to accept what the Government put to them. But then the above terms in the appointment order pursuant to the notification in question and the Rules clearly amount to unconscionable terms of contract. The State Government could not have provided for such terms in the appointment orders.

7. We have carefully gone through the Division Bench judgment of the Rajasthan High Court in Gopal Kumawat's case supra and we respectfully agree with the same. Instead of stating in our own words, we would quote the following paragraphs from the said judgment since we also hold the same view as has been taken in the said judgment:-

“13. In all these judgments, the Supreme Court and the Rajasthan High Court have 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.

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33. *We find the practice of payment of fixed remuneration without any allowances and benefit of increments to the probationers, who were appointed after adopting the regular selection process, on substantive posts, or even after following the selection process on ad hoc basis, as well as all those employees who are appointed on substantive posts, to be wholly illegal and arbitrary, and pernicious practice of forced labour.*

34. *We find no justification for the State Government, to adopt the practice of paying fixed remuneration to the probationers, which is not prevalent, either in the Central Government, or in any other States in the country. The Government of Rajasthan has adopted this evil practice of forced labour for its employees, taking advantage of the attraction of the Government service. The Notifications dated 13.03.2006, amending the Rules, are thus, declared to be unconstitutional, being violative of Article 14, 16, 21, 23 and 38 of the Constitution of India, and against the conscience of the Constitution of India.”*

8. As a sequel to the above findings recorded by the Rajasthan High Court, the Division Bench granted the reliefs in Paras 35 and 36 of the said judgment, which are quoted as under:-

“35. The writ petition is allowed. The Notification dated 13.03.2006, amending the Rajasthan Service Rules, 1951, and the Notification of the same date i.e. 13.03.2006, amending the

Rajasthan Civil Services(Revised Pay Scale) Rules, 1998- Fixed remuneration to probationer trainees, are hereby quashed. The State-respondents are directed to pay the entire differential amount of regular pay scale and allowances to the petitioner, after deducting the amount of fixed remuneration paid to him during the period of probation.

36. Now since by this judgment, we have declared the Notification dated 13.03.2006, amending the Rajasthan Service Rules, 1951, and the Notification of the same date i.e. 13.03.2006, amending the Rajasthan Civil Services(Revised Pay Scale) Rules, 1998- Fixed remuneration to probationer trainees, to be unconstitutional and consequently quashed the same, we direct that the State Government shall, pay to all its employees, appointed on regular or ad hoc basis under the statutory Rules on substantive posts, except the employees appointed on contract, daily rated or work charged employees, regular pay in time scale along with all allowances including Special Pay, Dearness Pay, Dearness Allowance, House Rent Allowance, City Compensatory Allowance, Non-Practicing Allowance, Non-Clinical Allowance, Rural Allowance, Project Allowance, Mess Allowance, Washing Allowance or any other allowance, as are admissible to a confirmed employee in the same department. The payment of these allowances will not be dependent upon the period of probation, or successful completion of the period of probation. The probationer-trainees will also be entitled to deductions towards General Provident Fund(GPF), State Insurance, and Travelling Allowance, as are admissible and payable to the regular employees. They shall also be entitled to annual grade increments for the period of probation, after confirmation and Casual Leave, as in the case of other regular employees.”

9. Since we are agree with the aforesaid judgment and since we

find that the present petition cannot be adjourned *sine die* merely because SLP against the judgment of the Rajasthan High Court in Gopal Kumawat's case supra is pending in the Apex Court as stated by the learned counsel for the respondents. In that view of the matter, we follow the said judgment and order of the Rajasthan High Court and consequently, we make the following order:-

ORDER

- (i) **CWP No.8922 of 2017** is allowed;
- (ii) Rule is made absolute in terms of prayer clause (i), (ii) and
- (iii), which are reproduced below:

“(i) *Civil Writ Petition under Articles 226/227 of the Constitution of India with a prayer that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction, including a writ in the nature of Certiorari, quashing Clause 2 and 3(b) of the appointment letters 29.02.2016 (P-8 & P-9) and Clause 1 of the appointment letter dated 26.02.2016 (P-10) as well as all similar/identical appointment letters issued to each petitioner herein to the extent that the said clauses are totally illegal, arbitrary and violative of Article 14 read with Article 16 of the Constitution of India and inconsistent with the clarificatory letter dated 15.10.2015 (P-6) and 20.11.2015 (P-7) vide which the notification relied upon by the respondents for imposition of such conditions has been held to be inapplicable.*

(ii) *It is further prayed that this Hon'ble Court may be pleased to issue a writ, order or direction including a writ in the nature of Certiorari quashing the illegal and arbitrary condition qua grant of only fixed monthly emoluments to the candidates during period of probation as well as not treating the time spent on probation as period spent against the substantive post itself, as inserted in the Advertisement No.CRA 284/2015 dated 08.05.2015 (P-4) by relying upon notification dated 15.01.2015. Further the aforesaid clause is violative of Article 14 read with Article 16 of the Constitution of India and inconsistent with the clarificatory letter dated 15.10.2015 (P-6) and the aforesaid condition did not form part of the earlier public notices dated*

16.07.2014 and 08.09.2014.

(iii) It is further prayed that this Hon'ble Court may be pleased to issue a writ, order or direction including a writ in the nature of Mandamus, directing the respondents to grant to the petitioners the regular pay scale along with all other emoluments like increment etc. from the date of their initial appointment with the further prayer to count the period spent on probation as regular service for the purpose of determination of total length of service under the Service Rule."

(iii) Respondents to act accordingly;

(iv) No order as to costs.

(A.B. CHAUDHARI)
JUDGE

(KULDIP SINGH)
JUDGE

September 13, 2018

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Whether speaking/ reasoned: **No**

Whether Reportable: **No**