

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

LPA-11-2018 (O&M)
Date of Decision: 10.05.2018

Sukhwinder Pal Singh & others

--Appellants

Versus

Punjab School Education Board & another

--Respondents

CORAM:- HON'BLE MR.JUSTICE AJAY KUMAR MITTAL,
ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. K.L. Arora, Advocate for the appellants.

TEJINDER SINGH DHINDSA.J

1. The instant appeal has been filed under clause X of the Letters Patent against the order dated 28.11.2017 passed by the learned Single Judge, whereby a review application preferred by the respondent-Punjab School Education Board (herein after to be referred to as the Board), has been accepted and the judgement dated 10.11.2016 passed in CWP No.19761 of 2015, has been modified.

2. Briefly, it may be noticed that the appellants herein, who were serving as Packers, Helpers and Sweeper-cum-Chowkidar on temporary basis with the respondent-Board, had filed the writ petition seeking issuance of a Writ of Mandamus to be granted minimum of the pay scale plus allowances as revised from time to time admissible to the regular counterparts. Further prayer was for grant of arrears of salary for a period of 3 years and 2 months prior to filing of the writ petition. The writ petition was allowed on 10.11.2016 in terms of judgement of the Apex Court in ***State of Punjab and others Vs. Jagjit Singh and others, 2016(4), S.C.T (SC), 641***. The operative portion of the judgement reads as follows:-

“In view of the above, the present petition is

squarely covered by Jagjit Singh's case (supra). Hence, the present petition is allowed in the same terms. However, the respondents are directed to grant same relief but the arrears to the petitioners shall be restricted for a period of three years and two months prior to the date of filing of this writ petition."

3. Review application preferred by the respondent-Board has been accepted by the learned Single Judge and the judgement dated 10.11.2016 has been modified vide impugned order dated 28.11.2017 in the following terms:-

"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 judgement 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 judgement 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."

4. Learned counsel appearing for the appellants has vehemently argued that the impugned order dated 28.11.2017 passed by learned Single Judge cannot sustain as it proceeds on a misreading of the judgement in **Jagjit Singh's** case (supra). As per learned counsel the relief granted by the

Apex Court in **Jagjit Singh's** case (supra) in favour of temporary employees was not only minimum of the pay scale admissible to the regular counterparts but the directions were for wages to be given at par with minimum of the pay scale of the regular employees and which in fact would translate to include all allowances as revised from time to time and made admissible to a regular employee. It is urged that since the concept of wages includes all allowances, there was no justification in having denied to the appellants the arrears for a period of 3 years and 2 months prior to filing of the writ petition by virtue of the impugned order dated 28.11.2017.

5. Having heard counsel for the appellants at length and having perused the case paper book, we are of the considered view that the instant appeal is without merit.

6. The issue with regard to the claim of equal pay for equal work raised by temporary employees had been considered by the Apex Court in **Jagjit Singh's** case (supra) and the dictum had been laid down in paras 57 and 58 of the judgement and which are reproduced hereunder:-

“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, 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 herein above. **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.***

7. Clearly the Supreme Court had granted to the temporary employees relief of minimum of pay scale at the lowest pay grade and not

the total pay extended to a regular employee. Furthermore, there were no directions issued with regard to payment of allowances to the temporary employees at par with regular employees. We find the impugned order dated 28.11.2017 passed by the learned Single Judge to be in consonance with the dictum laid down by the Apex Court in **Jagjit Singh's** case (supra).

8. On a factual basis the averments contained in para 11 of the review application filed by the respondent Board would be material. It was categorically averred that the pay scale of the Packers working on a regular basis is 4900-10,680+1800 (G.P)+240 (Special Pay) and the pay scale of Helper and Sweeper-cum-Chowkidar working on regular basis is 4900-10,680+1300 (G.P). It was further averred that the Board is already paying to the appellants the minimum of the pay scale of the regular counterpart inasmuch as Packers being granted Rs.6700/- against the minimum pay scale of Rs.4900/- and the Sweeper-cum-Chowkidar and Helpers are being granted Rs.6200/- against the minimum pay scale of Rs.4900/-. In the reply filed by the appellants to the review application there is no denial to the afore-noticed factual position. As such, it was an error apparent on record that stands rectified by passing the impugned order dated 28.11.2017 and by modifying the judgement dated 10.11.2016 originally passed while allowing CWP No.19761 of 2015.

9. We are also in agreement with the view taken by the learned Single Judge in the impugned order whereby appellants have been held not entitled to arrears for the period of 3 years and 2 months. It goes without saying that the question of arrears would arise only if a certain monetary relief is denied to an employee and by way of adjudication the same is directed to be released. In such an eventuality a prayer for arrears may also

be entertained and while examining the aspect of delay on the part of the employee in having agitated such claim, arrears may be restricted to a period of 3 years and 2 months prior to filing of the writ petition. In the present case the admitted position of fact is that the appellants were already being released wages by the respondent-Board at the minimum of the pay scale extended to their regular counterparts as per ratio laid down by the Apex Court in **Jagjit Singh's** case (supra). The claim, as such, of the appellants to be granted arrears for a period of 3 years and 2 months was not well founded. Modification of the judgement dated 10.11.2016 vide impugned order dated 28.11.2017 by the learned Single Judge to the afore-noticed extent is perfectly legal and valid.

10. For the reasons recorded above, no intervention in the matter is warranted.

Appeal is dismissed.

(AJAY KUMAR MITTAL)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

10.05.2018

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No