

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.14404 of 2012 (O&M)
Reserved on: 17.09.2019
Pronounced on: 18.10.2019

Jagdev Singh & Ors.

..... Petitioners

Versus

State of Punjab & Ors.

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Argued by: Mr. D.S. Patwalia, Senior Advocate with
Mr. A.S. Chadha, Advocate
for the petitioners.

Mr. P.S. Bajwa, Addl. AG Punjab.

Mr. Vikas Chatrath, Advocate
for respondents No.2 and 3.

ARUN MONGA, J.

1. Grievance of the petitioners, *inter alia*, is that even though they were from the very inception appointed on regular sanctioned posts through proper procedure and yet, instead of being paid salary in accordance with regular pay-scales, it was directed vide impugned order dated 06.07.2012 that their salary be instead paid on contract basis for a period of 3 years.

2. Succinct factual narrative first.

3. Vide an advertisement issued in February, 2011, applications were invited for filling up of various posts by Punjab School Education Board including Principal (on regular basis) and teachers (on contract basis). A perusal of letter/order dated 07.09.2010 (Annexure P-3) issued by

Government of Punjab would reveal that the said posts were all sanctioned posts for which approval had been granted by the State of Punjab. In the interregnum period of advertisement and issuance of the final appointment letters, the State of Punjab promulgated an enactment known as Punjab Civil Services (Rationalization of Certain Conditions of Service) Act, 2011. As per the said Act, all appointments made after coming into force of the said Act were to be governed by the provisions of the said Act. It would be apposite to re-produce the relevant of the same as below:-

“To rationalize certain conditions of service of Government employees to be appointed by direct recruitment to the services or posts in connection with the affairs of the State of Punjab and for the matters connected therewith or incidental thereto.

1. This Act may be called the “The Punjab Civil Services (Rationalisation of Certain Conditions of Service) Act, 2011-

2.(a) to (c) XXX

(d) “period of induction” means the period of three years commencing from the date of appointment of a person under this Act to a service or post, which is extendable up to five years;

3 to 6 XXXX

7(1) During the period of induction, a Government employee shall be entitled to receive all inclusive fixed monthly emoluments equal to the minimum of the pay band of the post to which he is appointed, but he shall not be entitled to receive the grade pay, if any, attached to the post.”

4. In the aforesaid premise, appointment letters were issued to the petitioners stating that their appointments were initially made for a period for 3 years on consolidated salary. It is the case of the petitioners that they were selected for appointment on regular basis. Notwithstanding, a condition had been imposed that in first 3 years of service, they would be

getting only fixed salary. Thereafter, they would be entitled for regular pay-scales. This was done due to the enactment of the Act, *ibid*.

5. Later on, State of Punjab, perhaps thought that the said Act was regressive and resultantly, an ordinance repealed the same through Punjab Civil Services (Rationalization of Certain Conditions of Service) Repeal Ordinance, 2011. Per ordinance, all appointments made after 05.04.2011 were entitled to emoluments/salary on regular basis. Vide an order dated 02.08.2011 (Annexure P-8) services of the petitioners were regularized in regular grade of pay with effect from the date of their joining. The petitioners contend that they were entitled to regular pay-scale with effect from the date of their joining in view of the fact that their services had been regularized. However, vide order dated 06.07.2011 assailed herein, Punjab School Education Board in contravention of the earlier order dated (Annexure P-8) directed that the petitioners be given salary on contract basis on their respective posts. Representations filed by the petitioners against the same yielded no headway and hence, the writ petition.

6. In the short reply filed on behalf of respondent No.1, dismissal of the writ petition has been sought on the ground that as per instructions dated 17.11.2011 issued by the State, the service of employees working on contract basis were required to be regularized on completion of three years of contractual service. Respondent No.2 regularized the services of the petitioners in violation of the government instructions and without obtaining the prior approval of the competent authority, therefore, the Government has already instructed respondent No.2 to review its decision.

7. In the return filed by respondents No.2 and 3, plea of estoppel has been raised. It is stated that the petitioners were selected and appointed

on the basis of an advertisement wherein it was specifically stated that they would draw fixed/consolidated remuneration. Having accepted the terms and conditions of the appointment, the petitioners are now estopped from claiming the benefits of regularization and regular pay-scale. The issuance of letter dated 02.08.2011(Annexue P-8) was not specifically denied, but it is claimed that regularization ought not to have been done by the Chairman in absence of any approval from the State Government.

8. I have heard the rival contentions and perused the pleadings along with the relevant record appended thereto.

9. Learned Senior counsel appearing for the petitioners strenuously argued that since the petitioners were appointed after due process of selection, through a proper advertisement, followed by *viva voce*, on the sanctioned posts and their appointments were, thus, regular from the very inception. In any case, per him, once Board by its own order dated 02.08.2011(Annexure P-8) had regularized the services of the petitioners with effect from the date of their initial appointment, there was no reason for dis-entitling them all the consequential benefits viz. Regular scale of pay with effect from the date of their initial appointment.

10. On the other hand, learned State counsel as well as learned counsel appearing for respondents No.2 and 3-Board have justified the denial of regular pay scale on the ground that before passing the order dated 02.08.2011(Annexure P-8) regularizing the services of the petitioners from the date of their initial appointment, no prior approval was sought by the State Government, which was otherwise mandatory.

11. To test the rival contentions, one would have to necessarily peruse the advertisement inviting applications for the post of Lecturers, on

which the petitioners were appointed. The relevant extract thereof is reproduced hereinbelow:-

“General appointments:- Following educational qualifications/ experience and other conditions/ instructions have been prescribed for filling up the vacant posts in the Model Senior Secondary Schools being run by the Punjab School Education Board in the rural areas

1. XXXX

2	Lecturer 14000/- lump sum per month	03 Chemistry-01 Economics-01 Commerce-01	Contract basis	1) Matric pass with Punjabi 2) Pre-Univ/ High Sec/ Senior Sec. pass with minimum of 55% marks 3) BA/ Bsc/BCom in Ist Division 4) MA/Msc/MCom in Ist Division 5) B.Ed or its equivalent qualification in Ist Divn. Preference 1. P.Hd. 2. M.Ed/M.Phil 3. Any other written work related to Edu.
---	---	---	-------------------	---

A perusal of above would reveal that petitioners were selected and appointed on a specific condition that they would draw fixed remuneration.

12. However, what makes the case of the petitioner curious is that respondent-Board lateron, vide an order dated 02.08.2011(Annexure P-8) regularized the services of the petitioner with effect from the date of their joining. The same necessarily resulted into *lis* as to the entitlement of the petitioners to seek regular pay scales with effect from the date of their joining. The plea of *estoppel*, raised by the respondent Board could have been available to them, had the order dated 02.08.2011, regularizing the services of the petitioners from the date of their initial appointment been not passed by the respondent Board. In that eventuality, position might have

been different. But once the respondent Board, of its own, proceeded to regularize the services of the petitioners, it cannot be permitted to raise the plea of *estoppel*. The conditions laid down in the advertisement thus stood superseded by passing order dated 02.08.2011, regularizing the services of the petitioners. An indefeasible right was created in their favor.

13. The respondents have questioned the order dated 02.08.2011 (Annexure P-8) on the ground that no prior approval was taken from the State Government, which exercises superintendence, direction and control over the Board by virtue of Section 21 of the Punjab School Education Board(Amended Act), 2005 and the same reads as under:-

“21(1) The State Government shall exercise superintendence, direction and control over the Board and its officers and may call for any information which it may consider necessary.

(2) If the State Government is of the opinion that the Board is not functioning properly in accordance with the provisions of this Act, and is abusing its powers or there is mismanagement, it may, by notification in the Official Gazette, supersede the Board:

Provided that the period of supersession shall, in no case, exceed one year.

(3) When the Board is superseded under subsection(2), the following consequences shall ensue, namely:-

(a) all members of the Board and its committees including the Chairman and the Vice-Chairman, shall, from the date of notification, vacate their offices;

(b) all powers, duties and function, which under the provisions of this Act or any regulations made thereunder, are exercised by the Board or any committee thereof or by the Chairman or by any other officer of the Board, shall be exercised and performed by such person(hereinafter referred to as the administrator), as may be appointed by the State

Government in this behalf:

Provided that the administrator may, subject to the control of the State Government, delegate any of its powers, duties or functions to such other person, as he may think fit; and

(c) all properties, including the Board Fund vested in the Board, shall until it is reconstituted, vest in the administrator.

(4) The State Government may, at any time appoint a committee consisting of such persons, as it may think fit to enquire into and report on any policy, administrative, financial or any other matter which the State Government may think fit in the interest of school education and functioning of Board. The State Government may, after considering the report of such committee, issue such directions to the Board, as it may think fit, and the Board shall comply with such directions.

(5) Copyright of all material developed, printed, published by the Board, shall vest with the State Government.

(6) The State Government may get any material pertaining to school education, published or printed from any agency as it may consider appropriate in public interest.”

14. A conjoint reading of aforesaid provisions, makes it abundantly clear that the superintending powers of the State under Section 21 of the Act comes into play only when it is found that the Board is functioning in violation of the provisions of the Act, *ibid*. In that event the State has been empowered to supersede the functioning of the Board. The control of the Government in exercise of powers under Section 21 of the Act cannot be extended to the decisions of the Board concerning the appointment and service conditions of its employees. Especially, when there is no dispute that the Board is an autonomous body created by a

legislative enactment, separate and distinct from the State Government.

15. In this context, reference may be had to **Amanpreet Kaur Dhillon Vs. State of Punjab & Ors.**, (CWP No. 28657 of 2013, decided on 01.04.2019). My Learned Brother Jitendra Chauhan, J. speaking for this Court while adverting to Section 21 of the Act and terming the action of the respondent Board to treat the service of the petitioner therein on contractual basis, as illegal, held as under:-

“Thus, it is evident that the control of the Government in exercise of powers under Section 21 of the Act cannot be extended to the decisions of the Board concerning the appointment and service conditions of its employees and there was no necessity to take approval from the Government, as claimed. The Board is an autonomous body and is having their own rules governing the appointment and service conditions of its employees and the condition of taking prior approval is only directory and not mandatory. The selection of the petitioner was made on the basis of recommendations of the Establishment Committee which were approved by the Board, which was the only requirement as contained in Punjab School Education Board (Employees Service) Regulations, 1988.

It is not the case of the respondents that the post on which the petitioner had been appointed and working has come to an end.

Thus, the action of the respondents in treating the petitioner as a contractual employee and proposing to dispense her services is totally arbitrary and illegal. The plea taken by the respondents is totally misconceived and misplaced.”

I am in respectful agreement with the above view taken by this Court.

16. Adverting to the facts of case in hand, it is relevant to mention

here that the respondents have not pleaded or claimed that no proper procedure was followed while giving appointment to the petitioners. It is also not their case that the posts on which the petitioners are working, are no more available. But all of a sudden vide impugned order dated 12.07.2012(Annexure P-9), the respondent Board decided to grant salary to the petitioners on contract basis, without divulging any ground as to what prompted them to take this *volte face* stand. In my opinion, the petitioners cannot be made to suffer for no fault of theirs.

17. It was argued that vide letter dated 06.04.2013(Annexure R-III) the State Government had decided to decline approval to the decisions taken by the Board. A perusal thereof reveals that the State Government vide order dated 06.04.2013, in general, decided not to grant accord/approval to those decisions taken by the Board, which were ostensibly *dehors* the Government Policy. But nothing was said as to how the decisions of the Board were against Government Policies.

18. Even otherwise, the State Government lost sight of the fact that the petitioners were appointed after participating in the selection process and not as a back door entrant. Cogent and convincing reasons had to be assigned while declining to grant approvals. In a sheer cryptic and non-speaking manner, the approvals were denied in general to all the decisions of the Board, which cannot thus be sustained in the eyes of law, on that ground alone.

19. A perusal of letter/ instructions dated 17.11.2011(Annexure R-II) issued by the State of Punjab would make it evident that a decision was taken to regularize the services of the daily wagers/ contractual employees with the clear-cut stipulation that the names of employees be recommended

by only those institutions who can bear their financial burden at their own level and no financial assistance was to be provided by the State Government. The Board in its wisdom had regularized the services of the petitioners by virtue of order dated 02.08.2011(Annexure P-8). There was thus, no reason for the State Government to decline approval to the decisions of the Board, especially, as noted above, when the Board is an autonomous body.

18. In view of discussion above and reasoning contained therein, the present civil writ petition is allowed. The impugned notice/order dated 12.07.2012 (Annexure P-9) is quashed. It is ordered that the petitioners be treated as a regular employees from the date of their initial appointments. They are held entitled to all the consequential benefits by treating them as a regular employees, for all intents and purposes. The arrears of salary treating them as a regular employee be disbursed to them with interest @ 6% with effect from the date of entitlement till actual disbursement. The necessary exercise be carried out within a period of three months from the date of receipt of certified copy of the judgment.

18.10.2019

Jiten

(ARUN MONGA)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No