

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

(251)

CWP-19043-2017

Date of Decision: January 31, 2019

Bishan Dass and others

..Petitioners

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Karambir Singh Kahlon, Advocate, for the petitioners.

Ms. Deepali Puri, Addl. A.G., Punjab.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the challenge is to the order dated 21.12.2015 vide which the claim of the petitioners for the grant of one pre-mature increment for non-participating in the strike held on 08.02.1978, has been declined.

Learned counsel for the petitioners states that the only reason given by the respondents in declining the claim is that the petitioners were working on adhoc and work charge basis and they were not entitled for the said pre-mature increment. The relevant portion of the impugned order is as under:-

“5. And where as the claim of the petitioners is not considerable as per Punjab Govt. letter No.7/15/78-2PP/34 dated 20-01-1979 vide which clarification has been issued that ad hoc and work charged employee whose services are not entitled to be regularized as per existing instructions w.e.f. 08-02-1978 or prior to that are not entitled to the premature increment.

6. And where as the petitioners, from Sr. No. 1 to 15 for not taking part in the 08-02-1978 strike are not entitled to grant premature increment. Hence the claim of the petitioners is rejected.”

Learned counsel for the petitioners states that the said reason which has been given by the respondents is contrary to the law laid down by this Court in **Ms. Sukhvarsha Vs. State of Punjab through Secretary Education Punjab, Chandigarh and others, 1997 (1) RSJ 823** wherein, even the adhoc employees were entitled for grant of pre-mature increment for non-participating in the strike.

Learned counsel for the petitioners further states that on relying upon **Ms. Sukhvarsha's case (supra)** a Division Bench of this Court in CWP No.17568 of 1996 decided on 09.04.1997 again held that no distinction can be made in respect of regular or adhoc employees for the grant of said pre mature increment. The relevant portion of the order is as under:

“Present petition has filed for issuance of a writ of mandamus directing the respondents to grant one pre mature increment to the petitioners in view of the instructions Annexure P-2.

Punjab Govt. employees went on strike on 08.02.1978. Govt. of Punjab circulated to its employees not to resort to strike on the said date. Despite the caution issued by the Govt. of Punjab certain sections of the non-gazetted employees resorted to strike on 08.02.1978. A large number of non-gazetted employees did not observe the strike and attended office in spite of obstructions. In appreciation of gesture of discipline shown by the employees who attended the office, the State Govt.

decided to extend the benefit of one premature increment as they were working on adhoc basis. Present petition has been filed for release of the premature increment.

Stand taken by the respondents is that this benefit could not be extended to the petitioners as they were not regular employees and were working on adhoc basis.

The point in issue is squarely covered by a decision of this Court in Ms. Sukhvarsha Vs. State of Punjab through Secretary Education Punjab, Chandigarh and others 1997 (1) RSJ 823 in which it was held as under:

“Government had sanctioned the grant of an additional increment to the employees who did not participate in strike on 08.02.1978. Petitioner at that time was working as an adhoc employee on which post. She was later on regularized w.e.f. 01.10.1980. Distinction made for grant of an additional increment for non-participation in the strike on the basis of being in adhoc service is unrealistic and discriminated. The Uniod had given a call to all its employees whether adhoc or regular to go on strike on 08.02.1978. Govt. had sanctioned the grant of an additional increment to those employees who did not participate in the strike. Petitioner did not take part in the strike and she could not be denied the additional increment for non-participation in the strike merely on the ground that she was working on adhoc basis on the said date. No discrimination could be made for the purpose of grant of the additional increment between the employees on regular basis and adhoc basis. Petitioner is thus, held entitled to the grant of additional increment for non-participation in the

strike on 08.02.1978. However, she will not be entitled to any arrears as she has approached the Government at belated stage. The benefit shall ensure for future.”

For the reasons stated in Miss Sukhvarsha case (supra), we accept this petition in terms of the aforesaid decision and hold that the petitioners shall be entitled to an additional increment for non-participating in the strike on 08.02.1978. However, they shall not be entitled to any arrears as they have approached this Court at a belated stage. The benefit shall ensure for the future.

No costs.”

Learned counsel for the respondents states that the department will reconsider the grant of the said benefit to the petitioners again, irrespective of the impugned order already passed in view of the settled principle of law noted above. Counsel for the respondents states that in case, the petitioners are found entitled for the relief in view of the settled principle of law, the petitioners will be granted the benefit of increment as being prayed by them.

Learned counsel for the petitioners has no objection for disposing of the present writ petition with a direction to the respondents to again consider the case of the petitioners for the grant of premature increment for non-participating in the strike held on 08.02.1978 in view of the law noted hereinbefore.

This petition is disposed of with a direction to the respondents to consider the case of the petitioners afresh ignoring the impugned order dated 21.12.2015 in the light of the decisions of this Court noted above and pass appropriate orders within a period of three months from the receipt of certified copy of this order.

In case, the petitioners are found entitled for, the benefit of increment will be released to them notionally but without any arrears.

January 31, 2019
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned: Yes
Whether reportable: Yes