

CWP No. 5374 of 2016 and connected petition

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

1.

**Date of decision : 23.04.2019
CWP No. 5374 of 2016**

Yash Pal and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

2.

CWP No. 6717 of 2016

Naresh Kumar and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Dinesh Kumar,
Advocate for the petitioner(s).

Mr. Hitesh Pandit, Addl. A.G, Haryana.

Mr. Anurag Goyal, Advocate,
for respondents Nos. 3 & 4.

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RITU BAHRI, J.

This judgment shall dispose of CWP No.5374 of 2016 and
CWP No.6717 of 2016 together as common questions of law and facts are
involved in both the petitions. For reference, facts are being taken from

Petitioners are seeking writ of certiorari for quashing the notification issued by the respondent-university vide endorsement dated 26.2.2016 (Annexure P-25), withdrawing the benefit of increments already granted to the petitioners pursuant to the resolution No.88 dated 28.3.2012 (Annexure P-7) and consequent revision/re-fixation of pay and recovery from their salary without issuing any show cause notice vide letter dated 31.12.2015 (Annexure P-22).

The petitioners were employed as Clerks on contract basis or on daily wage basis sometime in the year 1993 and were paid salary as fixed under the Minimum Wages Act, which is called DC rate. The State of Haryana issued Instructions dated 01.10.2003 (Annexure P-1) for regularizing the services of ad hoc employees/contract employees subject to fulfillment of certain conditions. Pursuant to Instructions dated 01.10.2003 (Annexure P-1), the University regularized the services of the petitioners, including all employees working on ad hoc/contract/daily wages basis w.e.f 01.10.2003. Copy of order dated 19.1.2004 regularizing the petitioners has been placed on record as Annexure P-2. The respondent-University framed a seniority list (Annexure P-3) in accordance with para 4 of the regularization policy dated 01.10.2003 of all the employees regularized in terms of the said policy and fixed the seniority irrespective of the nature of appointment on the basis of entry into service. Thereafter, the respondent-University issued a joint seniority list of clerks and Steno Typists dated 19.3.2012 (Annexure P-3/A) in which, names of the petitioners who were regularized w.e.f 01.10.2003 find mention from Sr. Nos.238 to 326. After

employees, though junior to the petitioners, were given the benefit of increments for the service rendered by them on ad hoc basis prior to their regularization and as such, the junior employees started getting higher pay than the senior employees, which caused unrest and discontentment among the senior employees-petitioners. Being aggrieved by the anomaly in fixation of pay as a result of juniors drawing higher salary than the seniors, the petitioners as well as Kurukshetra University Non Teaching Employees Association took up the matter with the University by making written representations dated 29.8.2005, 20.3.2006, 29.7.2008, & 24.3.2009 (Annexure P/4 Colly.). Similarly, the Kurukshetra University, Kurukshetra Non Teaching Employees Association also took up the matter with the University and submitted representations dated 22.3.2006, 05.03.2009 and 04.07.2011 (Annexure P-5 Colly.) for redressal of their grievance with regard to re-fixation of pay at par with the juniors.

The University took up the matter in the Executive Council of the University, which is the principle Executive Body, in its meeting held vide Agenda No.88 dated 23.03.2012 (Annexure P-6) and passed a resolution, which was communicated on 16.04.2012 (Annexure P-7). After passing of the said resolution, petitioners were asked to give affidavit(s) to the effect that they will accept re-fixation of pay subject to approval by the State Government and if, the case is rejected by the Government, the University will take the payment back so received by them. After furnishing the required affidavits, pay of the petitioners was fixed by granting them annual grade increments and the anomaly so created was removed. Thereafter the University sent the resolution (Annexure P-7) to

the Higher Education Commissioner, Haryana for obtaining and conveying the approval of the State Government for grant of annual increments to the employees, whose contractual services were regularized as per the Regularization Policy-2003. Thereafter, respondent-university sent various letters, including letters dated 30.05.2013 & 13.06.2013 (Annexures P-14 & P-15) to the Government for approval of its resolution (Annexure P-7). Consequently, the Director General, Higher Education, Haryana, vide letter dated 12.8.2013 (Annexure P-16), informed the respondent-university that annual increment is granted on regular pay scale and the ad hoc employees are appointed in regular pay scale of the post. Hence, ad hoc employee is entitled for annual increment, but the contract, daily wages employees are engaged on fixed or daily wages remuneration and they do not deserve to earn annual increments during the period they served on contract/daily wages. In response to the letter dated 12.8.2013 (Annexure P-16), petitioners again submitted a detailed representation dated 23.8.2013 (Annexure P-17) to the Vice Chancellor and requested him to reconsider and take up the matter with the State Government again for reconsideration. After the receipt of the letter dated 12.8.2013 (Annexure P-16), the University again took up the matter with the Director General, Higher Education, Haryana vide letter dated 14.10.2013 (Annexure P-18) for according approval of the State Government. Vide letter dated 10.2.2014 (Annexure P-19), Director General, Higher Education, Haryana asked the University to explain the circumstances under which the Executive Council of the University, vide resolution No.88 dated 28.3.2012, treated the contractual/daily wage period prior to their regularization, as ad hoc period

and allowed the benefit of annual increments notionally up to 31.03.2012 and actual w.e.f 01.04.2012. The University again examined the matter in detail and vide letter dated 21.03.2014 (Annexure P-20) stated that the resolution was passed to remove the anomaly, which was created while fixation of pay of the employees and converted the contractual appointment of the employees into ad hoc appointment with prospective effect on notional basis without any arrears of salary w.e.f 01.04.2012. The respondent-University again took up the matter with the Director General, Higher Education, Haryana through a letter dated 20.11.2015 (Annexure P-21). The Director, Higher Education, vide memo dated 31.12.2015 (Annexure P-22) again informed that the contract/daily wages employees are engaged on fixed or daily remuneration and they do not deserve to earn annual increments during the period they served on contract/daily wages. At the same time, the Kurukshetra University Non Teaching Employees Association took up the matter with the University to grant the benefit as per Resolution dated 28.3.2012. The State Government issued Instructions 23.02.2016 (Annexure P-24) for recovery of the excess amount paid to the Government employees and thereafter the University issued notification 26.02.2016 (Annexure P-25) for unilateral withdrawal of the increments already granted in pursuance of the resolution No.88 dated 28.03.2012 and has ordered to refix the pay of petitioners and effect recoveries.

On notice, reply has been filed by the Registrar, Kurukshetra University, Kurukshetra on behalf of respondents Nos. 3 & 4 justifying the re-fixation of pay on the ground that the petitioners had already submitted their affidavits at the time of passing of the resolution by the Executive

Council, to the effect that if the resolution passed by the Executive Council is not approved by the State Government, the University shall be entitled to recover the benefit being granted to them in view of the Executive Council decision No.88 dated 28.3.2012 and they shall have no objection to the said amount being deducted by the University. Once an affidavit is given by the employee concerned knowing this fact that all these benefits have been given subject to the approval of the Government, it cannot come in the mouth of the petitioners that the amount, once given, cannot be recovered. Since these benefits were given subject to submission of affidavits, University has a right to deduct the payment so received by the employees. The stand taken by respondents Nos. 1 & 2 in the written statement dated 5.12.2016 is that the annual increment is granted on regular pay scale and ad hoc employee is entitled for annual increment. But, employees appointed/engaged on daily wages/contract on a fixed salary or on daily remuneration do not deserve to earn annual increments during the period they served on contract/daily wages. They have referred to Section 12-A of the Kurukshetra Act which provides requirement of prior approval of the State Government. The respondents have placed on record a clarification issued by the University with the concurrence of Chief Secretary, Haryana conveyed vide U.O No. 6/47/2013-1GS1 dated 31.7.2013 (Annexure R-1). The Instructions R-1 clarified that benefit of annual increment has to be granted to the ad hoc employees but contract/daily wagers are not entitled to earn annual increments. Keeping in view the above said Instructions, the recovery is rightly being effected from the petitioners.

petitions deserve to be allowed.

At the outset, reference can be made to the instructions dated 01.10.2003 (Annexure P-1), whereby services of the petitioners were regularized. The condition for fixation of seniority of daily wage employees, Group-D, was as under:-

“4. The seniority of adhoc/contract or daily wage employee as regularized vis-a-vis the Group C and Group D employees shall be determined with effect from 1st October, 2003. The inter-se-seniority of such adhoc/contract or daily wage Group C and Group D employees shall be determined in accordance with the date(s) of their joining the post on adhoc/contract or daily wage basis. If the date of joining the post on adhoc/contract or daily wage basis by such adhoc/contract or daily wage employee is the same, then an older employee younger in age. If the date of appointment of the daily wage employee is the same, the direct recruit shall be senior.”

As per the above said rules, while fixing inter se seniority, the adhoc/contractual or daily wage employees were treated at par. It was the date of joining, which was made basis for fixing the seniority and if, the date of joining was same, then the older employee was to be given the benefit of seniority. Pursuant to the above said condition, after regularizing the services of the petitioners, joint seniority list of Clerks and Steno-Typists dated 19.03.2012 (Annexure P-3/A) was issued. As per said seniority list, the petitioners were senior to those employees, who were appointed on adhoc basis. However, an anomaly arose to the effect that persons, who were appointed on adhoc basis and were junior to the petitioners, were given the benefit of increments and the petitioners, despite being senior, were denied the said benefit on the ground that they were contract/daily wage employees. The respondent-University, vide resolution

dated 28.03.2012 (Annexure P-7) resolved to remove this anomaly, subject to giving of affidavits that re-fixation of pay will be subject to approval by the State Government and if, the case is rejected by the Government, the University will recover the excess amount so received by them. The petitioners were granted the above said benefit after giving affidavits. Finally, the respondent-University, vide notification dated 26.02.2016 (Annexure P-25), withdrew the benefit of increments already granted to the petitioners. This withdrawal was made on the basis of clarification dated 31.07.2013 (Annexure R-1) issued by the Chief Secretary, Haryana, relevant extract of which, reads as under:-

“2. Administration Department is intimated that annual increment is granted on regular pay scale and adhoc employees are appointed in regular pay scale of the post. Hence, adhoc employees are entitled for annual increment but the contract; daily wages employees are engaged on fixed or daily wages remuneration and they do not deserve to earn annual increment during the period they served on contract/daily wages. AD is advised to act accordingly.”

This Court is of the view that clarification dated 31.07.2013 (Annexure R-1) cannot stand on the principle of discrimination. Once, the Government had taken a conscious decision to give the benefit of seniority to all the employees at par with the adhoc employees, whether they are adhoc, contractual or daily wagers, subsequently the said benefit of increments cannot be restricted to those employees, who were appointed on ad hoc basis. The benefit of seniority has been given as per notification dated 01.10.2003 (Annexure P-1) for the purpose of pension, further promotion etc. Hence, denying the benefit of increments to the contractual/daily wage employees will create an anomaly of pay between

the senior and junior employees.

Keeping in view the above fact, notification issued by the respondent-University vide endorsement dated 26.02.2016 (Annexure P-25) is set aside along with Caluse 3 of resolution dated 28.03.2012 (Annexure P-7), whereby petitioners had been asked to give an undertaking to deposit back the payment so received by them.

Both the petitions i.e. CWP No.5374 of 2016 and CWP No.6717 of 2016 are allowed accordingly.

23.04.2019
ritu/ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No