

CWP Nos.27822 of 2018 & 11723 of 2019 (O&M)

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

Date of decision : 21.08.2019

1. CWP-27822-2018 (O&M)

Komal Dhanda and others

... Petitioners

Versus

Guru Jambheshwar University of Science & Technology,
Hisar

... Respondent

2. CWP-11723-2019 (O&M)

Vishal Kumar and others

... Petitioners

Versus

Guru Jambheshwar University of Science & Technology,
Hisar

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Anurag Goyal, Advocate and
Mr. J.P. Jangu, Advocate
for the petitioner(s).

Mr. Puneet Gupta, Advocate and
Mr. Arvind Seth, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

CM-11744-2019 IN CWP-27822-2018

Annexures P-10 & P-11 filed along with the application are
taken on record.

CM stands disposed of.

CM-9911-2019 IN CWP-27822-2018

Allowed as prayed for.

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CM-9912-2019 IN CWP-27822-2018

CM-11769-2019 in CWP-11723-2019

Separate written statements filed along with the applications are taken on record.

CMs stand disposed of.

MAIN CASES

This order of mine shall dispose of two writ petition bearing **CWP No.27822 of 2018** titled as **“Komal Dhanda and others V/s Guru Jambheshwar University of Science & Technology, Hisar”** and **CWP No.11723 of 2019** titled as **“Vishal Kumar and others V/s Guru Jambheshwar University of Science & Technology, Hisar”**.

However, the facts are being taken from CWP No.27822 of 2018.

Petitioners have approached this Court seeking following relief:-

"Civil Writ Petition under Articles 226/227 of the Constitution of India for the issuance of a writ in the nature of certiorari quashing the impugned condition in the letter of appointment i.e. Annexure P-3 (Colly) and other similar letters of other petitioners, wherein they are appointed on consolidated salary instead of minimum of the pay scale of the post of Assistant Professor in the respondent University.

Further for the issuance of a writ in the nature of mandamus directing the respondent to allow the petitioners to continue till the regular incumbent comes and they be not replaced by way of another set of contractual employees and be given minimum of the regular pay scale of the post of Assistant Professor with the salary of the vacation period also with all arrears from the date of their initial appointment till the date of realization of the amount of salary, with all other consequential benefits."

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This Court, vide order dated 23.02.2019, while issuing notice in the application, passed the following order:-

"Notice of the application for 09.07.2019.

In the meantime, the respondents shall not replace the petitioners by another set of contractual employees, except by way of joining of regularly selected candidates, subject to the condition that the work and conduct of the petitioners are satisfactory."

Mr. Anurag Goyal, learned counsel appearing on behalf of the petitioners submitted that in view of walk-in-interview for the post of Assistant Professor, conducted by the respondent-University, petitioners, fulfilling qualifications, applied for the aforesaid post, have been appointed, vide appointment letters dated 03.07.2018, on a consolidated salary of ₹30,000/-, on following terms and conditions:-

"1. You will not be entitled to claim regularization of service or regular pay scale.

2. Your appointment is liable to be terminated at any time without any notice.

3. You will be entitled only to casual leave as per University rules.

4. You will have to work in the department throughout the day and mark your presence on biometrics system. Whenever there are no classes, you will utilize your time for research work in the department or any other work assigned by university. Your expertise in the field or otherwise should benefit the students and the university."

It was next contended that petitioners are not being paid minimum pay scale at par with regular employees and there is an apprehension that they would be replaced with another set of contractual employees, therefore, there is a violation of judgment of Hon'ble the

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Supreme Court in *Hargurpratap Singh vs. State of Punjab and others* 2007(13) SCC 292. This Court, vide interim order dated 26.02.2019 passed in CM No.3124-CWP-2019, protected service of the petitioners to be not replaced by another set of contractual employees, except by way of joining of regularly selected candidates, subject to condition that the work and conduct of the petitioners be found satisfactory.

He further submits that petitioners are not being paid minimum regular pay scale i.e. equal pay for equal work, in view of law laid down by Hon'ble the Supreme Court in *"State of Punjab V/s Jagjit Singh" 2017 (1) SCC 148* as well as instructions dated 18.07.2019 issued by State of Haryana.

The attention of this Court has also been drawn to Annexure P-10, whereby Director General, Technical Education Department, Haryana had written a letter to the Universities for taking appropriate actions on point No.1 (ii), 8 & 10 in the light of Chief Secretary to Government of Haryana policies and sent action taken report and further, for point No.1(iii) and 1(iv), was also forwarded for kind perusal and necessary action. For the sake of brevity, Point No.1(iii) and (vi) reads as under:-

"iii) To provide 'Equal Pay for Equal Work' to contract faculty employed in universities like extension lecturers of Govt. Colleges.

iv) To include contractual employees employed on D.C. Rates in Para-2 instead of Part-I against Outsourcing Policy 2015."

In response to notice, the respondent has filed written statement and in para Nos.4 and 5, stated as under:-

"4. That the contents of Para No.4 of the writ petition filed by the petitioners are admitted being matter of record. Further, it

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is submitted that the Assistant Professors appointed on contract basis are being paid ₹ 30,000/- per month. The candidates having Ph.D Degree are paid ₹ 35,000/-. Now Seventh Pay Commission has been implemented in this University as conveyed by the State Govt. The matter relating to enhancement of salary of contractual teachers is under consideration of the University authorities.

5. That the contents of Para No.5 of the writ petition filed by the petitioners are wrong and hence denied. Further, it is submitted that it is wrong to say that the respondent University is going to replace the existing contractual faculty by another set of contractual employees. However, it may be mentioned here that due to introduction of various new courses in the university, requirement is being increased. The contractual faculty has been appointed according to need for the session 2018-19. The workload will be assessed again for the session 2019-20 according to the courses/subjects to be taught and if there is still requirement of teachers to meet the work load the contractual teachers appointed up to 31.05.2019 for the session 2018-19 will be considered for re-appointment and they will not be replaced with other as per the directions of the Hon'ble High Court issued in various other cases. As regards the minimum of the pay scale to be paid to the contractual teachers, it has clarified that the matter is already been still under consideration.

However, in para No.7, the respondent-University came out with a stand that it did not decide the issue relating to payment of increased wages in view of promulgation of 7th Pay Commission involving policy decision.

Learned counsel appearing on behalf of the respondent-University, submitted that the petitioners were appointed in the months of

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June & July 2018 and as far as grant of salary for the vacation period is concerned, it would be considered subsequently and at the moment, there is no intention of Universities from dispensing with the services and the University will assess the work load, work and conduct, qualification as well as funds and take decision, in accordance with law, by following principle of '*First Come Last Go*'.

I have heard learned counsel for parties and appraised paper book.

From the perusal of para Nos.4 and 5, it is evident that the University is contemplating to take decision with regard to implementation of the judgment rendered by Hon'ble Supreme Court in “Jagjeet Singh V/s State of Punjab” as well as instructions dated 18.07.2019.

Mr. Gupta, at this stage, submitted that the University would require two or three (2-3) months' time for implementation.

As regards the replacement, there is categoric averment of not replacing the petitioners, except for the aforementioned conditions, which have been informed by Mr. Gupta.

Viz-a-viz salary for vacation period, the petitioners shall not be denied the salary for vacation period, in view of settled law, in case, they continue to render services with satisfactory record.

Keeping in view the aforementioned facts and circumstances, I deem it appropriate to dispose of the writ petitions with the following directions:

1. The respondents-University shall take decision for equal pay for equal work, for grant of minimum pay scale at par with regular employees to the petitioners, within a period of three

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months, failing which, there shall be costs of ₹25,000/- to be recovered from the concerned Officer, who is responsible in not taking the decision.

2. The petitioners shall not be replaced with another set of contractual employees, except regular employees, subject to condition of having satisfactory record, qualification, work and conduct.
3. The respondent-University shall pay salary to the petitioners for vacation period.

21.08.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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