

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

CWP No.4881 of 2018 (O&M)
Date of Decision: July 03 , 2019

Varun Gupta

...Petitioner

Versus

The State of Haryana & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Ranjit Saini, Advocate,
for the petitioner.

Mr. Harish Nain, AAG, Haryana,
for the State.

AMIT RAWAL, J.

The petitioner has sought the indulgence of this Court for quashing the action of the respondents in denying the minimum of the pay scale as per notification of the Government and for issuance of a direction to grant the same.

It has been averred that vide letter dated 08.05.2013, petitioner was appointed to the post of Assistant at Headquarters on contractual basis and had been working on the said post at the salary of ₹ 10,000/- per month for four years, which was revised to ₹ 12,000/- per month w.e.f. 25.09.2017. However, the contract after 16.11.2017 was not extended and in such circumstances, approached this Court vide CWP No.21667 of 2017, which was, vide order dated 03.10.2017, allowed and direction was given to the respondents to reinstate the petitioner in view of the law laid down in

Hargurpratap Singh Versus State of Punjab & others, 2007(13) SCC

292, but was not given the minimum pay scale and in this regard submitted a representation dated 04.12.2017 (Annexure P-4). Matter was referred to the higher authorities for their approval.

Mr. Ranjit Saini, learned counsel representing the petitioner drew the attention of this Court to the instructions dated 03.11.2017 (Annexure P-6) issued by the State of Haryana, whereby such directions have been issued to pay the minimum regular pay scale to the contractual employees and even referred to the rates prescribed by the Deputy Commissioner, Panchkula (Annexure P-7), whereby the minimum pay scale was `16,500/-.

Mr. Harish Nain, learned Assistant Advocate General, Haryana representing the State submitted that such relief cannot be granted as the petitioner's appointment was under the scheme and there is no sanctioned post. He was allowed to work till regular candidates were appointed and, therefore, there was no cause of action to file the present writ petition. There is no minimum pay scale or any post mentioned in the scheme nor any rules prescribed the pay scales of the Assistant. After the order of this Court, the contractual period of the petitioner was extended for a period of another three years expiring on 16.11.2020, but did not deny the directions in the judgment relied upon by the petitioner.

In rebuttal, Mr. Saini drew the attention of this Court to Annexure P-1, the appointment letter which did not indicate that the appointment of the petitioner on contractual basis was under any scheme.

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

In **Hargurpratap Singh's case (supra)**, Hon'ble Supreme

Court while considering the case of relieving of the contractual employee, passed the following order:-

“(1) Leave granted.

(2.) The appellants in these cases were employed on ad hoc basis in several colleges in the State of Punjab. There being a threat of termination of their services, they filed writ petitions before the High Court seeking for the relief of regularisation, minimum pay scale and to continue in their present posts until regular appointments are made. All the reliefs were rejected by the High Court and so far as the relief relating to continue them in their present posts until regular incumbents are appointed, the High Court stated that the Government will have to follow its policy decision dated 23.07.2001.

(3.) We have carefully looked into the judgment of the High Court and other pleadings that have been put forth before this Court. It is clear that though the appellants may not be entitled to regular appointment as such it cannot be said that they will not be entitled to the minimum of the pay scale nor that they should not be continued till regular incumbents are appointed. The course adopted by the High Court is to displace one ad hoc arrangement by another ad hoc arrangement which is not at all appropriate for these persons who have gained experience which will be more beneficial and useful to the colleges concerned rather than to appoint persons afresh on ad hoc basis. Therefore, we set aside the orders made by the High Court to the extent the same deny the claim of the appellants of minimum pay scale and continuation in service till regular incumbents are appointed. We direct that they shall be continued in service till regular appointments are made on minimum of the pay scale. The appeals shall stand allowed in part accordingly.;

It is revealed that even the case of minimum pay scale was also ordered to be protected. It is settled law that the person, who is discharging

similar kind of duties as that of the regular incumbent, cannot be discriminated and denied the same minimum pay scale, which, in the instant case is ₹ 16,500/- odd amount.

It is strange that the department fully knowing the decision of the Hon'ble Supreme Court and the instructions dated 03.11.2017, which had not been denied in the written statement, refused to grant the relief compelling the effected person to approach this Court resulting into flood of cases of similar nature. The officers at the helm of affair should direct the concerned officials for addressing the grievance/cause of the effected employees. That cavalier or callous attitude cannot go unnoticed.

The appointment letter does not indicate the appointment of the petitioner on contractual basis under any scheme. The argument of the learned State counsel regarding the appointment under the scheme must fail.

Resultantly, the writ petition is allowed. Mandamus is directed to the respondents to pay the minimum pay scale to the petitioner from the date of joining and for the present period within a period of three months from the date of receipt of certified copy of this order, failing which it will entail interest @ 12% per annum. The petitioner, who has been compelled to approach this Court, is entitled to costs of ₹ 25,000/-, to be recovered from the salary of the Director General, Department of Women & Child Development-respondent No.2 for not addressing the issue of the petitioner.

July 03, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No