

(1)

CWP-2031-2016 & connected cases

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 21st January, 2020

CWP No.2031 of 2016

Harvinder Singh & others

...Petitioners

Versus

State of Punjab & others

...Respondents

(2)

CWP No.4929 of 2017

Gaurav Gagneja & others

...Petitioners

Versus

State of Punjab & another

...Respondents

(3)

CWP No.5326 of 2018

Amarpreet Singh & others

...Petitioners

Versus

State of Punjab & another

...Respondents

(4)

CWP No.7771 of 2018

Upasna Bedi & another

...Petitioners

Versus

State of Punjab & another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Kapil Kakkar, Advocate
for the petitioners in CWP Nos.2031 of 2016 and 7771 of 2018.

Mr. Ashish Goklaney, Advocate for
Mr. P.K. Goklaney, Advocate

CWP-2031-2016 & connected cases

for the petitioners in CWP No.4929 of 2017.

Mr. L.S. Lakhanpal, Advocate for Mr. K.S. Lakhanpal,
Advocate for the petitioners in CWP No.5326 of 2018.

Ms. Anu Pal, DAG, Punjab.

AUGUSTINE GEORGE MASIH, J. (ORAL)

By this order, I propose to dispose of these four writ petitions i.e. CWP No.2031 of 2016, titled as 'Harvinder Singh & others Versus State of Punjab & others', CWP No.4929 of 2017, titled as 'Gaurav Gagneja & others Versus State of Punjab & another', CWP No.5326 of 2018, titled as 'Amarpreet Singh & others Versus State of Punjab & another' and CWP No.7771 of 2018, titled as 'Upasna Bedi & another Versus State of Punjab & another'. With the consent of the counsel for the parties, facts are being taken from CWP No.2031 of 2016.

2. Petitioners have approached this Court praying for issuance of a writ of *mandamus* directing the respondents to grant them at least the minimum of the pay-scale as has been granted to the Masters/Mistress working in the same department as the petitioners, whereas the petitioners are being paid a consolidated salary of ₹ 6500/- per month, which is less than the rates fixed by the Deputy Commissioner under the Minimum Wages Act. To claim the said benefit, reliance has been placed upon the Full Bench judgment of this Court in **Vijay Sharma Vs. State of Punjab** 2002 (1) S.C.T. 931 as also the judgment of the Hon'ble Supreme Court in **State of Punjab & others Vs. Jagjit Singh & others** 2016 (4) S.C.T. 641, wherein it has been held that the principle of equal pay for equal work

would be applicable to all temporary employees as to vest in them the right to claim wages at par with the minimum of the pay-scale of regularly engaged Government employees holding the same post.

3. Briefly, the facts of the case are that the petitioners, in pursuance to an advertisement dated 09.09.2012 (Annexure P-1), wherein applications were invited to fill-up 5078 posts of Rural Associate Teachers in the Master Cadre in various subjects on contract basis on a consolidated pay of ₹ 6000/- per month was issued. Petitioners applied for the said posts. They participated in the selection process and in pursuance thereto, petitioners were selected and appointed to the post of Rural Associate Teachers in the Master Cadre vide appointment letters issued to them on 25.11.2014 (Annexure P-2). They continued to work with the respondents on the said pay as fixed in their contract. It has been asserted by the petitioners that although they were getting the pay as per the amount fixed in the contract but they are entitled to the minimum of the pay-scale as they were appointed through a regular selection process against the regular sanctioned posts. It is asserted that their appointments have been made on the basis of the recommendations made by the Recruitment Board, Education Department, Punjab. It is, on this basis, coupled with the Full Bench Judgment of this Court in *Vijay Sharma's* case (supra) as well as the Supreme Court judgment in *Jagjit Singh's* case (supra), counsel for the petitioners are claiming minimum of the pay-scale on the posts on which petitioners have been appointed and had been performing their duties.

4. On the other hand, learned counsel for the State has submitted

that the petitioners were appointed in pursuance to an advertisement which was issued by the respondents, wherein the terms and conditions of appointment were clearly laid down. Petitioners having accepted the said terms and conditions, joined the post on contract basis and therefore, were governed by the said contract. She states that it is not the case of the petitioners that the contract which was entered into between the petitioners and the respondents has been violated by the respondents in any manner and therefore, they are not entitled to the claim as has been put forth by them. It has further been submitted that on consideration of the claim of the petitioners and as per the recommendations made by the Competent Authority, they have been appointed on regular basis i.e. permanent and have been placed on probation for a period of two years. The decision so taken in this regard has been placed on record as Annexure R-1/T, dated 06.03.2019, which has been appended along with the additional affidavit dated 24.04.2019 filed by the Secretary to Government of Punjab, Department of School Education. She, therefore, contends that it is from the date of their appointment on regular basis that the petitioners would be entitled to the minimum of the pay-scale. Prayer has, thus, been made for dismissal of the writ petition.

5. I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the records of the case.

6. The facts as have been narrated above being not disputed, the only question which is required to be considered and decided is 'whether the

petitioners, who had been appointed on contract basis, would be entitled to the benefit of the minimum of the pay-scale as has been prayed by them in the present writ petition especially in the light of the fact that they had applied in pursuance to an advertisement where all the conditions of the appointment were made clear and they having accepted the said terms and conditions of the advertisement applied at the first instance and thereafter, accepted the appointment as well?'

7. At the first blush, the answer to this question appears to be in the negative, however, when seen in the context that the selection and appointment has been made in accordance with the statutory rules governing the services, which was in pursuance to the advertisement, which had been issued and the selection and appointment of the petitioners had taken place through the regular Educational Recruitment Board, which has been constituted by the Education Department, Punjab and they have been appointed, admittedly, against the regular sanctioned posts as per the statutory rules, the reason for putting them on contract basis is totally unjustified and no explanation whatsoever has come from the respondents as to why they were appointed on contract basis at the very first instance. It is not the case of the respondents that the appointments of the petitioners were made on contract basis as a stop gap arrangement, rather it is not in dispute that the appointments of the petitioners were made after following the due process of selection as per the statutory rules.

8. In the light of this factual background and keeping in view the judgment of the Hon'ble Supreme Court in *Jagjit Singh's* case (supra) as

also Full Bench Judgment of this Court in Vijay Sharma's case (supra), the claim as made by the petitioners deserves to be accepted.

9. In *Jagjit Singh's* case (supra), the Hon'ble Supreme Court had held in paras 54 to 58 as follows:-

“**54.** There is no room for any doubt, that the principle of ‘equal pay for equal work’ has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India, under Article 141 of the Constitution of India. The parameters of the principle, have been summarized by us in paragraph 42 hereinabove. The principle of ‘equal pay for equal work’ has also been extended to temporary employees (differently described as work-charge, daily-wage, casual, ad-hoc, contractual, and the like). The legal position, relating to temporary employees, has been summarized by us, in paragraph 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us, yet again.

55. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less

than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

56. We would also like to extract herein Article 7, of the International Covenant on Economic, Social and Cultural Rights, 1966. The same is reproduced below:-

“Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.”

India is a signatory to the above covenant, having ratified the same on 10.4.1979. There is no escape from the above obligation, in view of different provisions of the Constitution referred to above, and in view of the law

declared by this Court under Article 141 of the Constitution of India, the principle of ‘equal pay for equal work’ constitutes a clear and unambiguous right and is vested in every employee – whether engaged on regular or temporary basis.

57. Having traversed the legal parameters with reference to the application of the principle of ‘equal pay for equal work’, in relation to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of ‘equal pay for equal work’ summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against

posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State, that any of the temporary employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged

Government employees, holding the same post.

58. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding, that all the concerned temporary employees, in the present bunch of cases, would be entitled to draw wages at the minimum of the pay-scale (- at the lowest grade, in the regular pay- scale), extended to regular employees, holding the same post.”

10. The above judgment is a complete answer to the question posed in para 6 above as well as to the arguments raised by the counsel for the Sate as recorded in para 4.

11. In view of the above, these writ petitions are allowed and the petitioners are held entitled to the minimum of the pay-sale on the basis that they have performed their duties with effect from the date of their appointment. However, they will be entitled to the arrears, which will be w.e.f. 38 months prior to the date of filing of these writ petitions. The arrears, after adjustment of the amount already paid, be released to the petitioners within a period of eight weeks from the date of receipt of certified copy of this order. The claim of the petitioners with regard to interest is not accepted.

(AUGUSTINE GEORGE MASIH)
JUDGE

21st January, 2020
Harish

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