

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 29153 of 2017

Date of decision : 19-05-2020

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Pankaj and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Vijay Pal, Advocate for the petitioners.

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

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RITU BAHRI, J.

The petitioners were appointed as Pharmacists on contract basis in Urban Health Centre. They had been selected by Civil Surgeon, Hisar. They are seeking directions to the respondents to grant them minimum of the regular pay scale along with other allowances from the date of their initial appointment and to pay arrears @ 18% per annum.

Briefly stated, the facts of the case are that the petitioners were appointed as Pharmacists on different dates on contract basis in Urban

Health Centre by the Civil Surgeon, Hisar. The appointment letters of some of the petitioners are attached as Annexure P-2 (Colly.). Copy of the certificates issued by Haryana State Pharmacy Council regarding the registration of the petitioners as Pharmacist are annexed as Annexure P-1 (Colly.). The grievance of the petitioners is that in the appointment letter, it had been specifically mentioned that they will be paid consolidated honorarium @ Rs. 12,000/- per month. But later on the same had been reduced to Rs.9400/- per month vide letter dated 26.8.2010. Though, later on, the salary of the petitioners had been increased. For e.g. petitioner no.1 i.e Pankaj had been granted consolidated honorarium of Rs.15911/- per month as per the extension of contract dated 01.04.2017. Petitioners have prayed that they be paid arrears along with interest @ 18% per annum for the reduced amount. Further grievance of the petitioners is that they were engaged/appointed by Civil Surgeon on the basis of advertisement of the year 2009 and 2013 (Annexure P-5 Colly.) However, later on petitioners Pankaj, Sunil, Rajbir Singh had been placed under National Health Rural Mission. The petitioners have prayed that they be treated as the employees of Director General Health Services. Another grievance of the petitioners is that they have been paid salary of Rs.15911/- per month whereas the regular selected Pharmacists are getting net pay of Rs.34647/- and gross pay of Rs. 39,930/-. The petitioners have prayed that in view of the judgment of Hon'ble the Supreme Court in the case of ***State of Punjab & Others vs. Jagjit Singh and others 2016(4)SCT 641***, they be granted minimum of the regular pay scales along with other allowances.

On notice of the petition, reply has been filed by the respondents,

wherein, it has been submitted that the employees appointed on contractual

basis on consolidated salary are not entitled to claim salary and allowances available to the regular employees. They cannot claim parity with the regular employees on the ground of equal pay for equal work. First of all, their qualifications are not similar. Secondly, the type and nature of their work and also the quantity and time of work is not similar. Moreover, the hierarchy of promotions with whom parity is claimed is not similar. By referring to the judgments passed by Hon'ble the Supreme Court in the case of '*State Bank of India vs. M.R Ganesh Babu, 2002 (2) SCT 749*' and '*Secretary, State of Karnataka vs. Uma Devi & others, 2006 (4) SCC 1*' a stand has been taken that the petitioners are contractual employees and they cannot claim parity with permanent employees. The petitioners was appointed under the National Health Mission in which Government of India was having a share of 75% in the financial years 2013- 2014 and 2014-2015 and a share of 60% in the year 2015-2016. In this view of the matter, it has been further submitted therein that as for the smooth functioning of all the activities under National Health Mission, the budget has to be sanctioned by the Central Government thus for adjudicating the present controversy, the Government of India has to be impleaded as a necessary party. But, in this case Government of India has not been impleaded a party. Thus, the present petition deserves dismissal

Heard counsel for the parties and carefully perused the records of the case. In a judgment passed by Hon'ble the Supreme Court of India in the case of *State of Punjab & Others vs. Jagjit Singh and others 2016 (4)SCT 641*, it has been held that the principle of 'equal pay for equal work' is applicable to all 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. In paragraphs 5 & 6 of this judgment, it has been observed as under:

5. *The issue which arises for our consideration is, whether temporarily engaged employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), are entitled to minimum of the regular pay-scale, alongwith dearness allowance (as revised from time to time) on account of their performing the same duties, which are discharged by those engaged on regular basis, against sanctioned posts. The full bench of the High Court, while adjudicating upon the above controversy had concluded, that such like temporary employees were not entitled to the minimum of the regular pay-scale, merely for reason, that the activities carried on by daily-wagers and the regular employees were similar. However, it carved out two exceptions, and extended the minimum of the regular pay to such employees. The exceptions recorded by the full bench of the High Court in the impugned judgment are extracted hereunder:-*

“(1) A daily wager, ad hoc or contractual appointee against the regular sanctioned posts, if appointed after undergoing a selection process based upon fairness and equality of opportunity to all other eligible candidates, shall be entitled to minimum of the regular pay scale

from the date of engagement.

(2) But if daily wagers, ad hoc or contractual appointees are not appointed against regular sanctioned posts and their services are availed continuously, with notional breaks, by the State Government or its instrumentalities for a sufficient long period i.e. for 10 years, such daily wagers, ad hoc or contractual appointees shall be entitled to minimum of the regular pay scale without any allowances on the assumption that work of perennial nature is available and having worked for such long period of time, an equitable right is created in such category of persons. Their claim for regularization, if any, may have to be considered separately in terms of legally permissible scheme.

(3) In the event, a claim is made for minimum pay scale after more than three years and two months of completion of 10 years of continuous working, a daily wager, ad hoc or contractual employee shall be entitled to arrears for a period of three years and two months.”

6. The issue which has arisen for consideration in the present set of appeals, necessitates a bird's eye view on the legal position declared by this Court, on the underlying ingredients, which govern the principle of 'equal pay for equal work'. It is also necessary for resolving the controversy, to determine the manner in

which this Court has extended the benefit of “minimum of the regular pay-scale” alongwith dearness allowance, as revised from time to time, to temporary employees (engaged on daily-wage basis, as ad-hoc appointees, as employees engaged on casual basis, as contract appointees, and the like). For the aforesaid purpose, we shall, examine the above issue, in two stages. We shall first examine situations where the principle of ‘equal pay for equal work’ has been extended to employees engaged on regular basis. And thereafter, how the same has been applied with reference to different categories of temporary employees.

In view of the above mentioned judgment, the writ petition is allowed. The salary of the Pharmacists will be refixed at par with the minimum of the regular pay scales of the post of the Pharmacist. The arrears shall be restricted to a period of 38 months prior to the filing of this writ petition.

19-05-2020*ritu***(RITU BAHRI)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

No