

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

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**LPA No.683-2021 (O&M) with
LPA Nos.684 to 686 of 2021 (O&M)
Decided on : 22.11.2021**

Guru Jambheshwar University of Science & Technology & another

... Appellant

Versus

Ramesh Kumar and others

... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present: Mr.Puneet Gupta, Advocate, for the appellants.

Mr.R.K.Malik, Sr.Advocate
with Mr.Sunil Hooda, Advocate,
for the respondent in LPA-683-2021.

Mr.Shalender Mohan, Advocate,
for the respondents in LPA-686-2021.
(The proceedings are being conducted through video
conferencing, as per instructions.)

G.S. Sandhawalia, J. (Oral)

Challenge in the present set of appeals, bearing LPA-683 to 686-2021 is to the judgment passed by the Learned Single Judge dated 15.07.2021 whereby directions were issued to the appellant-University to pay salary of Rs.57,700/-, per month from October, 2019 onwards, after the decision taken by the appellant-University itself on 12.09.2019 (Annexure P-4) for the session 2019-2020. The same was based on the strength of the judgment of the Apex Court in **State of Punjab Vs. Jagjit Singh, 2016 (4) SCT 641**.

Counsel for the appellants has sought to distinguish the judgment of the Apex Court to the extent that the writ-petitioners/respondents herein were not appointed against sanctioned

posts for the session 2019-2020 and they were bound by the terms of the appointment and the agreement entered into inter-se the parties was binding and therefore, the Learned Single Judge was in error in issuing the said directions.

After hearing counsels for the parties, we are of the view that the present appeals are misconceived and without any basis. The appellant-University, inspite of having taken a decision as such to grant minimum of pay scales, is now questioning the same. A perusal of the paperbook would go on to show that vide advertisement given in the year 2019 (Annexure P-1), applications were called for appointment to the posts of Assistant Professors on contract basis in various departments. As per the said advertisement, Assistant Professors were to be appointed and paid salary from the contingency of the University/Department, ranging from Rs.30,000/- to Rs.35,000/- per month depending upon their qualifications, experience and suitability. In pursuance of the said advertisement, vide letter dated 02.08.2019 (Annexure P-2), appointment orders on contract basis upto 31.05.2020 were issued at the salary of Rs.30,000/- per month to the writ-petitioners, subject to signing of the contract of appointment. The Assistant Professors were also required to execute an agreement bond on stamp paper of Rs.15/- and the terms and conditions of the contract were to be applicable as per the said agreement of contract. It is pertinent to notice that the judgment of the Apex Court had already come on 26.10.2016 and inspite of that, the University has entered into the agreement (Annexure R-2), forcing the Assistant

Professors to sign on the dotted line, as per the appointment offer dated 02.08.2019 (Annexure R-1). The same was incorporated in the agreement (Annexure R-2) that there existed no post in the University against which the petitioners were being appointed and they were to continue till 31.05.2020 or till the workload, whichever is earlier. As per Clause 6, they were not entitled to claim regularization or regular pay-scales and as per Clause 15, the monthly salary was fixed @ Rs.30,000/-.

The State Government vide instructions No.16/36/2016-3GSII dated 03.11.2017, in view of the judgment of the Apex Court in Jagjit Singh (supra) decided to grant the benefit of 'equal pay for equal work' which communication was addressed to all Registrars of the University in the State of Haryana. The said instructions read as under:

“Subject: Application of “equal pay for equal work” in respect of specified categories of employees.

Sir/Madam,

Hon'ble Supreme Court of India in Civil Appeal No.213 of 2013 titled 'State of Punjab Versus Jagjit Singh' issued judgment dated 26.10.2016 which clarified that 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 if he qualifies the application of the parameters of the principle of 'equal pay for equal work' as summarised by Hon'ble Supreme Court of India in paragraph 42 of the said judgment.

State Government has considered the matter and decided as under:

- i) The principle of 'equal pay for equal work' shall be applicable to the contractual employees subject to

application of parameters of the principle of 'equal pay for equal work' as summarised in para 42 of the judgment. In respect of contractual pay, these employees shall be entitled to the minimum of the pay-scale of the categories to which they belong but would not be entitled to any of the allowances attached to the post.

ii) 'Equal pay for equal work' principle shall be initially applied to employees engaged under outsourcing policy Part-II w.e.f. 1.11.2017.

iii) A committee has been constituted vide notification No.16/36/2016-3GSII dated 6.10.2017 to decide on cases of other categories of employees (i.e. other than those covered in Part II of Outsourcing Policy) to whom this principle of 'equal pay for equal work' shall apply.

2. All the Departments/ Boards/ Corporations/ Autonomous bodies who have engaged manpower under Part-II of the outsourcing policy are advised to apply the principle of 'equal pay for equal work' in respect of employees engaged under Part-II of the outsourcing policy w.e.f. 1.11.2017.

3. In respect of application of the principle of 'equal pay for equal work' to any other category of employees, the concerned Departments/ Boards/ Corporations/ Autonomous bodies may approach the committee constituted for the purpose.

4. This issues with the concurrence of Finance Department vide their U.O.No.2/33/2017-1FG-I/32793 dated 03.11.2017.”

Apparently, on the strength of the said instructions and the recommendations of the Committee, keeping in mind the policy of the State Government, the University, under Section 11(5) of the University

Act, 1995, vide its notification dated 12.09.2019, issued the following notification:

“The Vice-Chancellor has been pleased to approve the following recommendations of the committee under the policy of State Govt. regarding “Equal Pay for Equal Work” under section-11(5) of the University Act, 1995 with immediate effect:-

1. That all those contractual factually who have been appointed till 2018-19 may be given the salary equal to the initial pay of a regular Assistant Professor under 7th Pay Commission i.e. Rs.57700/- p.m. against the vacant sanctioned teaching posts of the department concerned or other department as per the directions of the Government (if the candidates otherwise eligible as per the prescribed qualifications).
2. That for those contractual faculty working in the departments where there is no sanctioned post, the university will approach the Government to sanction the posts urgently as has already been requested to the Government so that directions of Haryana State Government may be fully complied.
3. That those appointed this year i.e. 2019-20 their salary be revised after sanction of the posts or after one year whichever is earlier.

REGISTRAR”

A perusal of the same would go on to show that for the non-sanctioned post, the University was to approach the Government for sanctioning of the post, so that the directions of the State Government could be complied with. It is not disputed that instructions have been issued by the State on 03.11.2017 to all concerned, to comply with the judgment of the Apex Court. In spite of that, distinction has now been

sought to be raised to deny the petitioners the necessary relief for the session 2019-2020.

The judgment of the Apex Court is crystal clear that once temporary/contractual employees possessing the qualifications prescribed for a regular post, are performing the duties and responsibilities discharged by the regular employees, they are entitled for the minimum of the pay-scales of the regularly engaged Government employee, holding the same post. Relevant portion of the judgment reads as under:

“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."

It has also been mentioned in para No.52 of the said judgment that they would be entitled to the minimum of the pay-scale but would not be entitled to allowances attached to the posts held by them. The University, in view of such instructions, rather could not have got any agreement executed contrary to the instructions of the State Government dated 03.11.2017 and therefore, reliance upon the agreements, as such, by counsel for the University is without any basis.

The necessary notification was, thereafter, issued on 12.09.2019 whereby

the petitioners were entitled for the said benefits and have been granted the same for the year 2020 onwards but have unnecessarily been denied the benefit for the year 2019-2020. In such circumstances, this Court is of the opinion that the directions issued by the Learned Single Judge do not suffer from any infirmity, which would warrant interference by this Court in the present letters patent appeals. Accordingly, the same are dismissed.

(G.S. SANDHAWALIA)
JUDGE

November 22, 2021
Sailesh

(VIKAS SURI)
JUDGE

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