

In the High Court of Punjab and Haryana, at Chandigarh

1.

Civil Writ Petition No. 19001 of 2015 (O&M)

Sudhanshu Gauba

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)
2.

Civil Writ Petition No. 8507 of 2016 (O&M)

Avneet Kaur and Others

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)
3.

Civil Writ Petition No. 8933 of 2016 (O&M)

Abhijot Kaur and Another

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)
4.

Civil Writ Petition No.11659 of 2016 (O&M)

Sangeeta Khurana

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)
5.

Civil Writ Petition No. 8035 of 2017 (O&M)

Mohammad Iqbal and Another

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)
6.

Civil Writ Petition No. 8524 of 2018 (O&M)

Bhawna Arora and Others

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

**Civil Writ Petition No. 19001 of 2015 (O&M) AND
Eight Other Connected Cases**

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7. Civil Writ Petition No. 8531 of 2018 (O&M)

Randhir Singh

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

8. Civil Writ Petition No. 7383 of 2020 (O&M)

Harleen Kaur and Others

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

AND

9. Civil Writ Petition No. 14156 of 2020 (O&M)

Sukheet Kaur

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

DATE OF DECISION: 01.04.2021

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Aman Chaudhary, Advocate
for the petitioner(s).

Ms. Maloo Chahal, Deputy Advocate General,
Punjab, for the respondents (In CWP-19001-2015,
CWP-8524-2018, CWP-8531-2018 & CWP-11456-2020)
and respondents No.1 and 2 (In CWP-8507-2016,
CWP-8933-2016, CWP-11659-2016 & CWP-8035-2017).

Mr. Harinder Sharma, Advocate
for respondent No.3 (In CWP-19001-2015, CWP-8507-2016
CWP-11659-2016, CWP-8933-2016 and CWP-8035-2017).

Mr. Ashok Bhardwaj, Advocate
for respondent No.3 (In CWP-7383-2020).

Anil Kshetarpal, J.

Through this judgment, nine writ petitions, wherein identical

relief has been sought, shall stand disposed of. The learned counsels

representing the parties are *ad idem* that these writ petitions can be conveniently disposed of by a common order.

In brief, the petitioners have prayed for the following reliefs:

- 1) a direction be issued to the respondents to pay to the petitioner minimum of the pay scale along with the dearness allowance.
- 2) a direction be issued to the respondents to pay the salary of the period of summer vacations.
- 3) the petitioners should not be replaced with another set of contractual employees.
- 4) In Civil Writ Petition No. 7383 of 2020, it is pleaded that the services of the petitioners should not be dispensed with even if they have not qualified the National Eligibility Test conducted by the University Grants Commission, which is essential for continuing on the post. On careful perusal of the prayer in the writ petition, it is apparent no such prayer has been made.

All the petitioners in this bunch of writ petitions were appointed on contractual basis. It is the stand of the respondents that the petitioners have been appointed by the Higher Educational Institute Society, which is a Society registered under the Registration Act, 1860. It is a self-financing Institute to impart education of information technology and related courses of B.C.A. and B.B.A. The Society does not receive any grant/financial aid from the Government.

This Court has heard learned counsel for the parties and with their able assistance, perused the paper books.

Learned counsel appearing for the petitioners contends that the petitioners are being exploited as they are being paid very minimal amount as emoluments. Still further, the petitioners are not being paid the salary for the period of summer vacations and the respondents are indulging in the policy of hiring and firing. He further submits that once the contractual employees have been appointed, the respondents have no right to replace them with another set of contractual employees. It is further contended that a large number of Assistant Professors without having qualified the National Eligibility Test, have allowed to continue in service, therefore, the petitioners should also be continued. He, in support thereof, relies upon various judgments passed by the Courts including the *State of Punjab and Others v. Jagjit Singh and Others AIR 2016 Supreme Court 5176*, *Rattan Lal and Others v. State of Haryana and Others (1985) 4 SCC 43*, *Hargurpartap Singh and Others v. State of Punjab and others (2007) 13 SCC 292*.

Per contra, learned counsel representing the respondents submitted that the petitioners are not working against the sanctioned posts and they have been employed by the Society in order to impart the knowledge of computers and information technology to the students. The respondent-Society does not get any grant-in-aid and is being managed with certain amount collected from the parents. He, hence, submits that the petitioners have no right to continue. He relies upon the judgment in *State*

Brij Mohan Lal v. Union of India and Others (2012) 6 SCC 502.

Having heard learned counsel for the parties at length, now this Court proceeds to evaluate the arguments of the learned counsels.

It is not in dispute that the petitioners have not been appointed against the sanctioned posts. Still further, it is also not in dispute that the petitioners have not been appointed by the State, rather they are employees of the Society. There is no relationship of employer-employee between the petitioners and the State Government. Keeping in view the aforesaid facts, the relief of the payment of minimum pay scale plus dearness allowance is not maintainable. It is not the case of the petitioners that the Society is paying the minimum pay scale plus dearness allowance to other similarly situated employees. The petitioners cannot claim parity with the public servants. Therefore, the judgment passed in the case of ***Jagjit Singh (supra)*** is not applicable. Still further, reliance can be placed on a recent judgment passed by the Supreme Court in ***State of Bihar and Others v. Bihar Secondary Teachers Struggle Committee, Munger and Others Law Finder Doc. Id # 1458154 SCC 245 = (2019) 18 SCC 301 = 2019 SCOnline SC 722*** wherein after discussing the judgment passed in ***Jagjit Singh (supra)***, the Supreme Court held that the Court should not ordinarily direct “equal pay for equal work”.

Next arguments of learned counsel is with regard to the payment of salary for the period of summer vacations. With greatest respect, the Society is not employing the petitioners against any sanctioned posts.

The judgment passed in the case of ***Rattan Lal (supra)*** is with regard to the

commencement of an academic year and their services were being terminated before commencement of the next academic year. The Court found that the State is indulging in hiring and firing policy, which is not appropriate. However, in the facts of the present case, the aforesaid judgment cannot be applied, particularly when the petitioners are not the employees of the State.

Next argument of learned counsel representing the petitioners is that the petitioners should not be replaced with another set of contractual employees. In the considered view of this Court, the judgment passed in the case of ***Hargurpartap Singh*** (*supra*), *with highest respect*, is not applicable. The petitioners are not the public servants. Still further, a Bench of larger strength in ***State of Maharashtra*** (*supra*) after discussing the terms of contract, has laid down that the contractual employees have no right to seek permanency and they cannot, after having been appointed on contractual basis, take a U-turn and challenge the terms of appointment. Hence, the petitioners cannot seek permanency once they have been appointed for a fixed term on contractual basis.

Next argument of learned counsel is that certain petitioners have not qualified the National Eligibility Test. Once they are not even qualified to be appointed, it would not be in the interest of the students to ensure their continuation in the service. Once the person is found to be not eligible to be appointed, then his engagement is wrong and therefore, they cannot be protected only on the ground that certain other teachers are continuing. This Bench does not find that a writ of mandamus can be issued

In view of the aforesaid discussion, finding no merit, these writ petitions are dismissed.

The miscellaneous application(s) pending, if any, in all the writ petitions, shall stand disposed of.

(Anil Kshetarpal)
Judge

Ist April , 2021
“DK”

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No