**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
(Sr. No. 108)**

**(1) CWP No. 2299 of 2022
Date of Decision : 07.11.2022**

Naveen Akharia and others

...Petitioners

Versus

State of Haryana and others

...Respondents

(2) CWP No. 3042 of 2022

Renu and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sajjan Singh, Advocate for the petitioners.

Mr. Harish Nain, Assistant Advocate General, Haryana.

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<u>Harsimran Singh Sethi J.</u>

By this common order, the writ petitions, details of which have been given above, are being disposed of as both the writ petitions involve the same question of law on similar facts.

For the purpose of this order, the facts are being taken from CWP No. 2299 of 2022.

In the present petition, the petitioner Nos. 1 to 7 were appointed on various dates on the post of Lab Attendant and petitioner Nos. 8 and 9 were appointed as Steno and Hostel Superintendent respectively, on which post the petitioners are working. The appointment of the petitioners is on contractual basis and the petitioners are to be paid on D.C. rates, which is clear from appointment letter of one of the petitioner, which has been appended as Annexure P-1. Though, the petitioners are to work on contractual basis till the joining of the regular employees, they are continuing in their service. The respondent-State of Haryana issued a Policy on 06.04.2015 (Annexure P-17), wherein, the guidelines were prescribed for outsourcing the services. There are two parts of the said Policy. As per part-I, the services/activities, which can be outsourced are those where there is a requirement of certain services for which there is no sanctioned post such as services of cleaning of the premises, horticulture work, housekeeping services, maintenance of buildings, transport services, courier services etc. As per part-II of the outsourcing Policy deals with the services which can be outsourced in respect of the sanctioned vacant post of Group-C and Group-D are given. In the said Policy, it has been envisaged that the outsourced employees, who are employed under part-II in respect of the services for which there is a sanctioned vacant post in Group-C and Group-D category, can be engaged on 50% of the initial pay (pay band + Grade Pay + Dearness Allowance as admissible from time to time) of fresh entrant regular employee after 01.01.2006, subject to the minimum of ₹8100/- per month or as fixed by the State Government (in General Administration Department) from time to time.

It is a conceded case that the petitioners, who have been appointed under the said part-II of the outsourced policy, are discharging their duties as of now.

After the issuance of the Policy dated 06.04.2015 (Annexure P-17), the Instructions were issued for enhancement of the wages/honorarium of the contractual/outsource person, which was issued on 11.09.2017 (Annexure P-18). By the said Instructions, the employees, who belonged to part-I of the outsource Policy, their existing pay was revised, for the category of unskilled employees, it was revised from ₹8100/- to ₹9258/-, for the category of semiskilled employees from ₹9000/- to ₹10,286/-, for those belonging to skilled category from ₹10,000/- to ₹11,429/- and in respect of highly skilled category from ₹11,000/- to ₹12,572/-. With respect to the employees, who were appointed under part-II of the Outsourcing Policy, the words "(pay in pay band + Grade Pay + D.A.)" as mentioned in the Outsourcing Policy was amended as "(entry level pay in the first cell of respective level of pay matrix + D.A.)".

The State of Haryana again revised the Policy in respect of the grant of the salary to the contractual employees under the Outsourcing Policy keeping in view the judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 213 of 2013 titled as ***State of Punjab and others Vs. Jagjit Singh and others,*** decided on 26.10.2016 by issuing a Notification dated 03.11.2017. In the said Instructions, a copy of which has been appended as Annexure R-1, it was decided by the respondent-State that the contractual employees, who are working under part-II of the outsource Policy, will be granted salary as per the Instructions dated 03.11.2017

(Annexure R-1), according to which, an employee was entitled for minimum of the pay scale of the post on which he/she is working but will not be entitled to any allowances attached to the said post. According to the said Policy, no allowance was admissible including the Dearness Allowance.

After the issuance of said Instructions dated 03.11.2017, the pay of the petitioners was revised and now the petitioners are only being paid the minimum of the pay scale of the post on which they are working and have not been extended the benefit of Dearness Allowance.

In the present petition, the prayer of the petitioners is that they should not be replaced by way of deputation or transfer of regular employees and they should be allowed to continue till the regular appointments are made and further that they should be granted pay along with the grant of Dearness Allowance as being admissible to the regular employees. While filing the writ petition, the petitioners placed reliance upon one of the order passed by the Principal, Govt. College, Sector-1, Panchkula, wherein, the Lab Attendants were given the initial of the pay scale of ₹19,900/- + Dearness Allowance even after the issuance of the Instructions dated 03.11.2017 (Annexure R-1). The petitioners further attached the order of the department of Public Works (Irrigation) dated 30.10.2018 (Annexure P-20), wherein also the contractual employees were being given the initial of the pay of post of Clerk + Dearness Allowance keeping in view which fact, the Co-ordinate Bench of this Court issued notice of motion and directed that there should not be any deduction from the salary of the petitioners.

Respondents have appeared and filed reply. In the reply, the respondents have stated that the prayer of the petitioners that they should be allowed to continue in service and should not be replaced with other contractual employees or by way of transfer of regular employees is only based upon apprehension and the petitioners are continuing in service. As per the respondents, nothing has been mentioned in the petition to show that the respondent-department is to terminate the services of the petitioners by replacing them with the employees on same terms and conditions or by posting regular employees at the place of the posting of the petitioners so as to throw the petitioners out of service. With regard to the prayer of the petitioners that they should be given the minimum of the pay scale along with Dearness Allowance, the respondents have relied upon the judgment of the Hon'ble Supreme Court of India in ***Jagjit Singh's case (supra)*** and submit that as per the settled principle of law, the contractual employees are only entitled for the minimum of the pay scale without there being any allowances attached to the said post and further submitted that in compliance of the said judgment, the Instructions dated 03.11.2017 (Annexure R-1) have been issued by the department hence, the petitioners are only entitled for the payment of their salary keeping in view the Instructions dated 03.11.2017 (Annexure R-1).

As far as the contention of learned counsel for the petitioners that certain colleges were granting the benefit of Dearness Allowance to the contractual employees, who were appointed under the outsourcing Policy part-II also, an affidavit has been filed by Deepak Kumar, Joint Director Administration, O/o the Director Higher Education, Haryana, Panchkula, wherein, it has been stated that due to mis-interpretation of the Instructions dated 03.11.2017 (Annexure R-1), certain colleges were granting the Dearness Allowance but, when the said fact came to the knowledge, Instructions were issued for rectification of the said mistake and as of now, the payment of the salary to the employees is regulated as per the Instructions dated 03.11.2017 (Annexure R-1). It has also been mentioned that certain employees are getting the Dearness Allowance keeping in view the interim order passed by this Court wherein, direction has been issued not to reduce their salary.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Certain facts are not in dispute such as the petitioners are working under part-II of the outsource Policy dated 06.04.2015 (Annexure P-17). It is also not disputed that for regulating the payment of the salary, keeping in view the judgment of the Hon'ble Supreme Court of India in ***Jagjit Singh's case (supra),*** the respondent-State of Haryana has issued Instructions dated 03.11.2017 (Annexure R-1), according to which, the contractual employees appointed under outsource Policy are only entitled for minimum of the pay scale attached with the post on which they are working and are not entitled for any allowances. The said Policy is inconsonance with the settled principle of law settled by the Hon'ble Supreme Court of India in ***Jagjit Singh's case (supra).***

That being so, it can be safely said that keeping in view the Instructions of the Government of Haryana dated 03.11.2017 (Annexure R-1), which have been issued in terms of the judgment of the Hon'ble Supreme Court of India in ***Jagjit Singh's case (supra),*** an employee, who is working on contractual basis is entitled for minimum of the pay scale of the post minus allowances. It is a conceded position that the petitioners are being paid the minimum of the pay scale of the post on which they are working. Their claim for grant of D.A., which is an allowance, is not admissible as per the Instructions dated 03.11.2017 (Annexure R-1). Even as per the settled principle of law in ***Jagjit Singh's case (supra),*** the petitioners, who are working on contractual basis under the outsource Policy part-II, are not entitled for any allowance. That being so, there is no infirmity in the action of the respondents in granting the petitioners the minimum of the pay scale but without Dearness Allowance keeping in view the terms and conditions of the appointment.

The argument of learned counsel for the petitioners is that petitioners are entitled for the benefit as envisaged under the outsource Policy dated 06.04.2015 (Annexure P-17), which is applicable upon them. A bare perusal of the said Policy dated 06.04.2015 (Annexure P-17) would show that as per the said Policy, the entitlement of the petitioners was assessed to be **50%** of the initial pay/minimum of the pay (pay in Pay Bank + Grade Pay + D.A.) on the post against which the contractual employee is working. The petitioners are now being paid the minimum of the pay scale – D.A., which is more than the pay envisaged under the Policy dated 06.04.2015 (Annexure P-17).

The further argument of learned counsel for the petitioners is that after the judgment of the Hon'ble Supreme Court of India in ***Jagjit Singh's case (supra),*** the respondents have enhanced the wages of the contractual/outsource employees vide Instructions dated 11.09.2017

(Annexure P-18) and, therefore, once a conscious decision was taken to enhance the wages after the decision in judgment of the Hon'ble Supreme Court of India in ***Jagjit Singh's case (supra),*** the said Instructions dated 11.09.2017 (Annexure P-18) has to be made applicable upon them instead of Instructions dated 03.11.2017 (Annexure R-1) as the Instructions dated 11.09.2017 were never superseded by the Instructions dated 03.11.2017 (Annexure R-1). Said argument of learned counsel for the petitioners is by mis-reading the Instructions dated 11.09.2017 (Annexure P-18). There is no mention in the said Instructions dated 11.09.2017 (Annexure P-18) by which, the minimum wages were increased stating that the same is being done keeping in view the judgment of the Hon'ble Supreme Court of India in ***Jagjit Singh's case (supra).*** It is also a conceded position that after the issuance of the said Instructions dated 11.09.2017 (Annexure P-18), the petitioners were being paid the salary as per the said Instructions till the same were again revised on 03.11.2017 (Annexure R-1). The grant of pay scale to the contractual employees is the prorogative of the employer subject to the condition that the same is not in contravention of the minimum wages prescribed under the act or the settled principle of law.

Keeping in view the settled principle of law by the Hon'ble Supreme Court of India in ***Jagjit Singh's case (supra),*** the respondents issued the Instructions dated 03.11.2017 (Annexure R-1) so that the wages are paid to the contractual/outsource employees in terms of the judgment of the Hon'ble Supreme Court of India in ***Jagjit Singh's case (supra).*** In the Instructions dated 03.11.2017 (Annexure R-1), it has been clearly noticed that the said Instructions have been issued to comply with the settled principle of law settled by the Hon'ble Supreme Court of India in ***Jagjit Singh's case (supra).*** That being so, the respondents were well within their right to issue Instructions revising the pay of the contractual employees so that there is no contravention of the settled principle of law. Hence, once the Instructions dated 03.11.2017 (Annexure R-1) have been issued, the petitioners cannot claim the salary on the basis of the previous Instructions dated 11.09.2017 (Annexure P-18) on the ground that Instructions dated 11.09.2017 (Annexure P-18) still remains in operation.

Learned counsel for the petitioners has argued that there is no clause in the Instructions dated 03.11.2017 (Annexure R-1) that the earlier Instructions dated 11.09.2017 (Annexure P-18) have been superseded. Hence, the petitioners are entitled to be governed by the Instructions dated 11.09.2017 (Annexure P-18) even after the issuance of the Instructions dated 03.11.2017 (Annexure R-1) even though both the Instructions operate on the same issue. The said argument is falicious for the reason that once subsequent Instructions have been issued on the same issue dated 03.11.2017 (Annexure R-1) and the subsequent Instructions have been issued in concurrence of the Finance Department, the latest Instructions are to be made applicable upon the employee. In paragraph 2 of the Instructions dated 03.11.2017 (Annexure R-1), the following has been mentioned :-

> *"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."*

It means that once it has been directed that the present Instructions are to be made applicable by all the Departments/Boards/ Corporations/Autonomous bodies, who have engaged manpower under Part-II of the outsourcing Policy, it is implied that the earlier Instructions dated 11.09.2017 (Annexure P-18) stand superseded. It cannot be said that two Instructions will operate on the same issue. The latest Instructions are very much clear and unambiguous wherein, the departments have been given direction to implement the same keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India in ***Jagjit Singh's case (supra).*** Hence, the claim of the petitioners that even after the issuance of the Instructions dated 03.11.2017 (Annexure R-1), the Instructions dated 11.09.2017 (Annexure P-18) will be applicable, is not at all correct and cannot be accepted.

The further argument, which has been raised by learned counsel for the petitioners is that some of the colleges were paying the Dearness Allowance even after issuance of the Instructions dated 03.11.2017 (Annexure R-1) and, therefore, the petitioners are being discriminated. By the affidavit dated 07/10.10.2022, the said issue has also been clarified by the respondents, wherein, it has been mentioned that though initially under some ambiguity, certain colleges had granted the Dearness Allowance along with the minimum of the pay scale but after the said fact was brought to the knowledge of the competent authority, Instructions were issued to all the Principals of the Government Colleges in the State of Haryana on 18.06.2019 that only minimum of the pay scale of the post is to be given and if any employee is given Dearness Allowance, the same be withdrawn.

Learned counsel for the respondents submits that keeping in view the Instructions dated 18.06.2019, no employee of the Department of Education is getting Dearness Allowance along with the minimum of the pay scale keeping in view the facts, the petitioners cannot contend discrimination qua the payment of their wages.

As far as the claim of the petitioners that they should not be replaced by transfer of the regular employees, the said prayer needs to be rejected keeping in view the judgment of the Co-ordinate Bench of this Court in CWP No. 17240 of 2016 titled as ***Anand Kumar Vs. State of Haryana,*** decided on 10.11.2017, wherein, the Co-ordinate Bench has already held that the post occupied by the contractual teachers/ staff is to be treated as a vacant for effecting the transfers as the regular employee has a preferential right to hold the post as compared to a contractual employee. Keeping in view the decision of the Co-ordinate Bench in ***Anand Kumar's case (supra),*** the prayer of the petitioners that they should not be replaced by regular employees, cannot be accepted. Even as per the transfer policy issued by the State of Haryana, in case, the contractual employee is to be replaced by a regular employee, the said contractual employee needs to be adjusted at a place, where he/she can before the joining of the regular employee. The said situation has not arisen in the present case as nothing has been brought to the notice of this Court that the petitioners have been disturbed from their present place of posting even during the transfer.

Keeping in view the above, as the employees, who are working under outsource Policy part-II, are only entitled to minimum of the pay scale without allowances, under Instructions dated 03.11.2017 (Annexure R-1), which is inconsonance with the settled principle of law settled by the Hon'ble Supreme Court of India in ***Jagjit Singh's case (supra)*** and the said payment is already being paid to the petitioners, no interference is called for by this Court in respect of the prayer of the petitioners for the grant of Dearness Allowance along with the minimum of pay scale.

The petitions are accordingly dismissed.

A photocopy of this judgment be placed on the file of another connected case.

November 07, 2022 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No