

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

**CR-1706-2022 (O&M)
Reserved on 29.11.2022
Pronounced on: 05.12.2022**

Secretary, DAV College Managing
Committee and another

....Petitioners

vs.

District Judge, Karnal and others

....Respondents.

CORAM:HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Akshay Bhan, Sr. Advocate with
 Mr. R.S. Cheema, Advocate and
 Mr. Rohit Nagpal, Advocate,
 for the petitioners.

 Mr. Sunil K. Nehra, Advocate with
 Mr. Viren Nehra, Advocate,
 for respondent No.2.

HARKESH MANUJA J.

By way of present revision petition, challenge has been made to an order dated 09.02.2022 (Annexure P-1) passed by the Executing Court, whereby objections filed at the instance of petitioners-judgment debtors, have been dismissed.

2. Facts of the case are that praying for relief of regularization of her services as well as for grant of regular pay scale for the post of Lab Attendant w.e.f. 03.08.1998, respondent No.2 invoked jurisdiction of Education Tribunal. Vide judgment dated 09.01.2020, the relief of regularization was declined, however, holding respondent No.2 to be entitled for being placed on the minimum pay scale of regularly appointed Lab Attendant. The operative para No.15 of judgment dated 09.01.2020 is

reproduced hereunder:-

“As an upshot of the discussion foregoing, the appeal is partly allowed. The claim of the appellant for regularization is not sustainable and is, therefore, declined. However, she is held entitled to be placed on minimum of the pay scale of the regularly appointed Lab Attendants without any allowances,. For that matter her claim to arrears on account of difference of pay is restricted to a period of 38 months before the institution of appeal. It is further held that for all intents and purposes, the appellant is to be considered in continuous service till date and, hence, entitled to the salary with arrears, to be paid with interest @ 10% per annum from the date of accrual till payment. It is made clear that in future the appellant shall be entitled to salary only if she marks her presence on biometric or in the register as prescribed by the college without demur. Memo of cost be prepared accordingly. Appeal file be completed and be consigned to record room after due compliance.”

3. Based on the judgment dated 09.01.2020, respondent No.2 approached the executing court for its enforcement thereby seeking the benefit of minimum of the pay scale of regularly appointed Lab Attendants. The petitioners filed their objections to the aforesaid execution application, which were dismissed by the Executing Court vide order dated 09.02.2022, the same has now been impugned by way of present revision petition.

4. It has been contended on behalf of the petitioners that the Executing Court while declining the objections has, in fact, travelled beyond the award passed by the Education Tribunal. It has been submitted that in fact as per the relief granted in favour of respondent No.2, she was only entitled for grant of minimum of pay scale of regularly appointed Lab

Attendants against the unaided post and she could not have been ordered to

be granted relief of the minimum of pay scale of regularly appointed Lab Attendants against the aided post. It has also been contended that once respondent No.2 was not entitled for grant of minimum of pay scale of regularly appointed Lab Attendants against aided post, the direction issued by the Executing Court as regards the grant of benefit of 7th pay commission was wholly uncalled for.

5. On the other hand, learned counsel for respondent No.2 submits that in view of specific relief granted by the Education Tribunal which was categorical as regards minimum of pay scale of regularly appointed Lab Attendants, no such distinction as alleged by the petitioners could be drawn now at this stage in execution proceedings, pertaining to the aided or unaided post. It has also been contended that in the absence of any application moved at the instance of petitioners for seeking modification of the judgment passed by the Education Tribunal, the impugned order warrants no interference.

6 I have heard learned counsel for the parties and perused the paper book. I am unable to accept the contentions raised on behalf of the petitioners. As discussed herein above, having been appointed on temporary basis as per D.C. rates, respondent No.2 approached the Education Tribunal, seeking relief of regularisation. Petitioners appeared and raised objections to the effect that respondent No.2 was engaged on adhoc basis against unaided post and thus was not entitled for the relief claimed. The Education Tribunal vide judgment dated 09.01.2020, though declined the relief of regularization, however, relying upon judgment of “State of Punjab vs. Jagjit Singh and others, 2016 AIR (Supreme Court) 5176, directed respondent No.2 to be placed on minimum of pay scale of

regularly appointed Lab Attendants without making any observation qua aided or unaided post. Meaning thereby that the specific plea raised by the petitioners of trying to create distinction between the persons appointed against aided post and those against Management quota post was not accepted by the Education Tribunal for the purposes of granting the relief of minimum of pay scale of regularly appointed Lab Attendants and no further challenge to it was ever made by petitioners.

7. While awarding the aforementioned relief, it has been categorically pointed out that the same was being granted on the basis of law laid down by the Hon'ble Supreme Court in case of Jagjit Singh's case (supra). On a careful and cumulative recording of the said judgment, it can be traced out that besides the claim of "equal pay for equal work" emerging from Article 39 of the Constitution of India, the concept of equality is also to be made applicable on the issue of pay parity and thus, by applying Article 14 of the Constitution of India even a temporary employee (differently designated as work-charge, daily wage, casual, ad-hoc, contractual, and the like), de hors the manner of selection and appointment can be directed to be paid wages equal to the salary at the lowest grade of a regular employee, discharging the same duties. Concluding paragraphs No. 54 & 55 from the judgment passed in Jagjit Singh's case (supra) are reproduced hereunder for reference:-

"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 herein above. 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 herein above. 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."*

8. Furthermore, a perusal of objection petition filed at the instance of petitioners, before the Education Tribunal shows that no such specific objection as now being sought to be canvassed was either pleaded or argued before the Executing Court. Further, as regards the grant of benefit of 7th pay commission, the same flow from the relief already granted by the Education Tribunal and thus, even calls for no interference.

9. More than that, it is now settled proposition of law that the Executing Court cannot go behind the decree and has to execute the same unless it is shown to be ex-facie nullity. Reference can be made to a

decision passed by Hon'ble the Supreme Court in case of "Haryana Vidyut Parsaran Nigam Limited and another vs. Gulshan Lal and others," 2009 (4) RCR (Civil) 880, relevant para No. 20 of the same is reproduced hereunder:-

"20. As indicated hereinbefore, for the purpose of allowing an objection filed on behalf of a judgment debtor under Section 47 of the Code of Civil Procedure, it was incumbent on him to show that the decree was ex facie nullity. For the said purpose, the court is precluded from making an indepth scrutiny as regards the entitlement of the plaintiff with reference to not only his claim made in the plaint but also the defence set up by the judgment - debtor. As the judgment of the Trial Court could not have been reopened, the correctness thereof could not have been put to question.

It is also well-known that an Executing Court cannot go behind the decree. If on a fair interpretation of the judgment, Order and decree passed by a court having appropriate jurisdiction in that behalf, the reliefs sought for by the plaintiff appear to have been granted, there is no reason as to why the Executing Court shall deprive him from obtaining the fruits of the decree."

10. In the case of Gulshan Lal's case (supra), the Hon'ble Supreme Court has further gone on to hold that even if one is not legally entitled for the relief, however, if a decree has been passed in his favour, while executing the same, court cannot go behind it. Relevant para No.22 of the same is reproduced hereunder for reference:-

"22. We are not oblivious of the fact that the respondents legally would not have been entitled to the reliefs prayed for by them. However, as a decree has been passed, we do not intend to go behind the same. The Executing Court shall, it goes without saying, execute the decree strictly in terms thereof."

11. Thus, in view of the discussion made herein above, I do not find any merit in the present revision petition, no material illegality or even irregularity has been committed by the Executing Court while passing the impugned order dated 09.02.2022, dismissing the objections filed at the instance of present petitioners and therefore, the same does not call for any interference in exercise of revisional jurisdiction by this Court.

12. Accordingly, the present revision petition being devoid of merit is, therefore, dismissed.

13. All pending application(s), if any, stand disposed of.

05.12.2022
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(HARKESH MANUJA)
JUDGE

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