

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

CWP No.12050 of 2015 (O&M)

Date of Decision:17.05.2022

Naveen Bala and others

.....Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Ms. Alka Chatrath, Advocate
for the petitioners.

Dr. Kiran Pal Singh, AAG., Haryana.

LISA GILL, J(Oral).

Prayer in this writ petition is for quashing of order dated 21.05.2012, Annexure P-7 and order dated 27.09.2012, Annexure P-9, whereby benefit of increment already granted to the petitioners *qua* adhoc/contract service, has been withdrawn.

It is submitted that initially all the petitioners were appointed as Sanskrit/ Hindi teachers on contract basis and thereafter they applied for the said posts on arising of regular vacancies. All the petitioners, it is submitted were appointed on regular basis on recommendation of Subordinate Service Selection Board. Details regarding the petitioners as narrated in the writ petition are under:-

“1. Petitioner no.1 was appointed as Sanskrit Teacher on contract basis on 25.10.1997 and continued without any interruption up to 24.10.2000. Petitioner no.1 was appointed on regular basis on the recommendations of Subordinate Service Selection Board and joined on 24.10.2000 and continuing on regular basis since then. A copy of the appointment order on contract basis dated

21.10.1997 is attached as Annexure P-1 and copy of the appointment order dated 20.10.2000 on regular basis is attached as Annexure P-2.

2. Petitioner no.2 was appointed as Sanskrit Teacher on contract basis on 08.10.1997 and continued without any interruption upto 15.10.2000. Petitioner no.1 was appointed on regular basis on the recommendations of Subordinate Service Selection Board and joined on 16.10.2000 and continuing on regular basis since then.
3. Petitioner no.3 was appointed as Hindi Teacher on contract basis on 04.10.1997 and continued without any interruption upto 30.04.2001. Petitioner no.3 was appointed on regular basis on the recommendations of Subordinate Service Selection Board and joined on 01.05.2001 and continuing on regular basis since then.
4. Petitioner no.4 was appointed as Hindi Teacher on contract basis on 03.10.1997 and continued without any interruption upto 18.10.2000. Petitioner no.2 was appointed on regular basis on the recommendations of Subordinate Service Selection Board and joined on 19.10.2000 and continuing on regular basis since then.”

It is not disputed that the petitioners were initially appointed as Sanskrit/ Hindi teachers on contractual basis at fixed remuneration of Rs. 3500/- per month. Thereafter, in terms of order dated 22.11.2000 passed in **CWP No. 18835 of 1997, titled Polu Ram and others Vs. State of Haryana and others**, regular pay scale was afforded to the petitioners. Petitioners were then appointed on regular basis on recommendation of Subordinate Service Selection Board w.e.f., 15.10.2000, 19.10.2000, 24.10,2000 and 01.05.2001 respectively in the pay scale of Rs.5500-9000. Stand taken by the department is that their pay was wrongly protected by taking into account service rendered by them as contractual employees. Pay of the petitioners should have been fixed as Rs. 5500/- instead of 5850/-.

District Education Officer, Sonapat, concluded that petitioners are not entitled to pay protection by taking into account their contractual service as said contractual service cannot be counted towards increment, hence recovery of the alleged excess amount was ordered on 10.01.2011.

Petitioners no.2 to 4, filed CWP No. 5469 of 2011, challenging the orders withdrawing the abovesaid benefit, which was disposed of on 04.01.2012, while observing that principles of natural justice were not complied with by the respondents before passing the impugned order, which has civil consequence, hence orders vide which salary of petitioners no.2 to 4 was re-fixed were quashed with liberty to the respondents to issue show cause notice to the petitioners and after taking into consideration the explanation, issue appropriate fresh orders in accordance with law.

Thereafter, order dated 21.05.2015, was passed in respect to petitioners no.2 to 4 while holding that benefit of previous service rendered by them on contractual basis, cannot be afforded and they cannot derive any benefit thereof. Show cause notice dated 29.08.2012 was issued to petitioner no.1 and similar treatment afforded to her vide order dated 27.09.2012.

Aggrieved therefrom, present writ petition has been filed by all the petitioners.

Learned counsel for the petitioners while relying upon decision dated 12.03.2013, passed in **CWP No. 2866 of 2009, titled Vinod Kumar son of Sh. Dhanna Ram Vs. State of Haryana and others** and decision dated 23.02.2018, passed in **CWP No. 21515 of 2015, titled Geeta Devi Vs. State of Haryana and others**, submits that the matter is squarely covered in favour of the petitioners. Miscellaneous applications were filed by the applicant-petitioners for preponement of hearing of the writ petition and for disposal of the same in terms of the decisions as above. State was

afforded time to state its position in respect to the abovesaid decisions. However, despite numerous opportunities neither any reply to the application was filed nor learned counsel for the State has any specific instructions in this regard. It is specifically recorded in the last order that arguments in the main writ petition would be heard today.

Perusal of order dated 12.03.2013 in Vinod Kumar's case (supra), which is stated to have attained finality, clearly reveals that matter is squarely covered in favour of the petitioners. It is observed in Vinod Kumar's case (supra) as under:-

“7. This Court is of the considered view that such distinction sought to be drawn between an employee working on 89 days basis and subsequently regularized under a policy of regularization as opposed to another employee who has also served on 89 days basis and thereafter has successfully negotiated a regular selection process and has joined on the regular post without any break is totally ill-conceived. The petitioner who chose to subject himself to a process of selection conducted at the hands of a premier recruiting agency of the State and having been so selected, cannot be put to a disadvantage and as such, cannot be seen on a lower pedestal as opposed to an employee who has taken benefit of a policy of regularization. Still further, the distinction sought to be drawn on behalf of the State to deny the benefit to the petitioner would pale into insignificance in the light of the specific admission made in the written statement to the effect that the petitioner prior to joining on 89 days basis possessed the requisite qualifications for the post of Instructor, the name of the petitioner having been duly sponsored by the Employment Exchange and only upon a Selection Committee having interviewed the petitioner, was he engaged on 89 days basis. The petitioner, as such, would be vested with a right to claim parity of treatment with the other petitioners in the cases of Vijay Bala and Promila (supra). It would be apposite to even

take note of memo dated 31.8.2004, Annexure P7, issued by the Director, Industrial Training and Vocational Education, Haryana wherein the respondent-Department has taken an affirmative decision as regards grant of annual increments to the Language Teachers/Instructors working on 89 days basis in the vocational Institutions.

8. For the reasons recorded above, the present writ petition is allowed. The impugned order dated 17.12.2008, Annexure P11, is quashed. The petitioner is held entitled to the grant of annual increments/earned leave/medical leave for the period 2.12.1997 to 29.11.2002 that he had served on the post in question on 89 days basis. It is, however, clarified that the benefit of actual arrears to the petitioner shall be confined to the period of 38 months prior to the date of filing of Civil Writ Petition No.14044 of 2008 that the petitioner had preferred first in point of time towards raising such claim.”

Learned counsel for the petitioners is unable to deny that petitioners are identically situated as the petitioners in the abovesaid case and there is indeed no distinguishing feature.

Keeping in view the facts and circumstances as above, order dated 21.05.2012, Annexure P-7 and order dated 27.09.2012, Annexure P-9, are quashed and this writ petition is disposed of in the same terms as in the case of Vinod Kumar (supra).

17.05.2022
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.