

CWP-1887-2019 (O&M)
CWP-16130-2019
CWP-2547-2019 (O&M)

2023:PHHC:160955
2023:PHHC:160956
2023:PHHC:160957

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

218/1+218/2+101 (3 cases)

CWP-1887-2019 (O&M)
Date of Decision: 28.11.2023

Kalyan Singh and Others ...Petitioners

Versus

State of Haryana and Others ...Respondents

With

CWP-16130-2019

Sandeep Kumar and Others ...Petitioners

Versus

State of Haryana and Others ...Respondents

And

CWP-2547-2019 (O&M)

Dr. Jagdish Duhan and Others ...Petitioners

Versus

State of Haryana and Others ...Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. R.K. Malik, Senior Advocate with
Mr. Kartikey Chaudhary, Advocate and
Mr. Digvijay Singh, Advocate for the petitioners
(in CWP-1887-2019)
Mr. Rajender Kumar, Advocate for the petitioners

(in CWP-16130-2019)

Ms. Bhawna Chaudhary, Advocate for
Mr. Vibhav Jain, Advocate for the petitioners
(in CWP-2547-2019)

Mr. Ravinder Bhudhwar, Addl. A.G., Haryana with
Ms. Tanushree Gupta, DAG, Haryana

TRIBHUVAN DAHIYA, J. (Oral)

These three petitions are being decided together as common questions of law on similar facts arise herein. Facts for adjudication of the matter are being taken from the petition, CWP-1887-2019.

2. This petition has been filed, *inter alia*, seeking a writ of *mandamus* directing the respondents to grant the petitioners minimum of pay scale admissible to regular Assistant Professors from 20.07.2017, the date from which they were directed to perform similar duty as being performed by their regular counterparts. At the outset, learned counsel for the petitioners, on instructions, submits that the petitioners forego their claim for grant of the minimum of pay scale from the date of engagement, i.e., 20.07.2017, and restrict their claim to grant of such benefit with effect from 03.11.2017.

2.1. The petitioners were employed as Extension Lecturers on lecture basis with the respondents as per guidelines dated 20.07.2017, Annexure P-1, 'Guidelines regarding engaging Extension Lecturers in Govt. College purely on temporary basis' (hereinafter referred to as 'the Guidelines'). It was decided to engage Extension Lecturers purely on temporary basis, if their workload was more than the prescribed norms of twenty-seven periods per week (non-practical subjects) and thirty periods per week (practical subjects).

The qualifications for engagement would be as prescribed for regular Assistant Professors.

2.2. The petitioners fulfilled the qualifications for appointment as Assistant Professors on regular basis as per the rules, and were performing similar duties and responsibilities which were performed by the regular Assistant Professors.

2.3. The Supreme Court vide judgment dated 26.10.2016 passed in Civil Appeal No.213 of 2013 titled *State of Punjab and others v. Jagjit Singh and others*, held that right of 'equal pay for equal work' vests in every employee, whether engaged on regular or temporary basis on fulfilment of the parameters laid down in paragraph 42 of the judgment. In compliance of the law laid down, the respondent Government issued notification/instructions, dated 03.11.2017, Annexure P-4, that the principle of 'equal pay for equal work' shall be initially applicable to contractual employees engaged under outsourcing policy Part-II with effect from 01.11.2017. Further, as per clause (iii) of the notification, a committee was ordered to be constituted to decide on cases of other categories of employees to whom the principle of 'equal pay for equal work' shall apply.

2.4. Accordingly, the government vide memorandum dated 27.06.2019, Annexure R-2, decided to implement the principle of 'equal pay for equal work' for contractual guest/extension lecturers working in Government Colleges of the State from the date of notification after ascertaining that workload allotted to them was at par with regular

Assistant/Associate Professors. The relevant part of the memorandum reads as under:

2. The individual (amongst extension lecturers) may be given this benefit from date of notification after ascertaining that he/she has been allotted full workload at par with regular Assistant/Associate Professors after the assessment of workload for this academic session.

It is made clear that only amount equal to the initial basic pay of a regular Assistant Professor is to be given to above mentioned beneficiaries and no allowances are to be paid. It is also made clear that contractual guest/extension lecturers may be allotted all additional duties (at par with regular Assistant/Associate Professor), however, duties involving financial responsibilities may not be allotted to them. Such incumbents will be paid remuneration of Rs. 57,700/- per month. However, all those incumbents who are NOT ELIGIBLE as per UGC/State Government norms will be paid a remuneration of Rs. 35,400/- per month and will be meeting complete workload and all other duties as well.

2.5. Based upon this memorandum, dated 27.06.2019, the respondents started paying minimum pay scale to the petitioners without dearness allowance with effect from 27.06.2019.

2.6. The petitioners' representation, dated 05.10.2018, seeking grant of minimum pay scale prescribed for the post of Assistant Professor with effect from 20.07.2017, the date they were engaged as Extension Lecturers against full workload, was not accepted, leading to filing of the instant petition.

3. Learned senior counsel contends that the petitioners, who are fully eligible to be appointed as Assistant Professors and have been engaged against full workload are entitled to minimum of the pay scale along with dearness allowance from the date of the notification dated 03.11.2017, whereby the respondents accepted the principle of 'equal pay for equal work' in terms of law laid down in *Jagjit Singh* case (*supra*). They are performing the similar duties and have same responsibilities as those of the regularly appointed Assistant Professors.

4. *Per contra*, the only argument raised by learned State counsel is that the claim is not admissible because the remuneration at the rate of ₹57,700 per month has been accepted from the date of the memorandum, i.e., 27.06.2019. This memorandum has been issued on the basis of recommendations of the committee constituted in terms of the notification dated 03.11.2017. Accordingly, the petitioners' right was first time acknowledged and accepted on 27.06.2019, and they are not entitled to claim the benefit from any date prior thereto. She also states that all the petitioners are regularly being paid remuneration in terms of the memorandum with effect from 27.06.2019. Secondly, she contends that as per the memorandum, benefit of remuneration at initial basic pay of regular Assistant Professor can only be granted after ascertaining that the incumbents have been allotted full workload at par with regular Assistant Professors. No such assessment has been carried out in the petitioners' case, as their claim for grant of benefit prior to 27.06.2019, was not considered.

5. Heard.

6. It has been settled by the Supreme Court in *Jagjit Singh* case (*supra*) that principle of 'equal pay for equal work' will be applicable even to temporary, daily wage, adhoc, casual or contractual employees on determining whether they were rendering similar duties and responsibilities as were being discharged by regular employees holding the same/corresponding post. On this basis, the respondents issued the notification, dated 03.11.2017, granting the benefit to contractual employees on the principle of 'equal pay for equal work', which reads 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 qualified the application of the parameters of the principle of 'equal pay for equal work' as summarized 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 summarized 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

-7-

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 Department/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-1/32793 dated 03.11.2017.

Sd/-Under Secretary, Protocol
for Chief Secretary to Government, Haryana

Endst. No. 16/36/2016-3GSII Dated, Chandigarh, the 03.11.2017

6.1. As contended by learned State counsel, in terms of the aforesaid notification, a committee was constituted for applying the principle of 'equal pay for equal work' to other categories of employees, and the committee identified Extension Lecturers as one such category of employees to whom

the principle shall apply. Accepting the recommendations the memorandum, dated 27.06.2019, was issued in terms thereof stipulating that the Extension Lecturers be given the benefit from the date of notification after ascertaining their workload, and be paid remuneration equal to the initial basic pay of a regular Assistant Professor without allowances. Still, the petitioners have been paid this remuneration only from the date of issuing the memorandum, dated 27.06.2019, and not from the date of notification dated 03.11.2017, which is unsustainable being irrational.

6.2. The memorandum has been issued to convey the decision of the committee, which was constituted in terms of the notification, dated 03.11.2017, only to identify other categories of employees on whom the principle of 'equal pay for equal work' will be applicable. It had no authority to independently decide upon applicability of the principle, which already stood decided by the notification itself. Consequently, the decision taken by the committee to identify the category of Extension Lecturers for equal pay, and circulated vide memorandum dated 27.06.2019, has to relate back to the date of notification, dated 03.11.2017, whereby the decision to pay remuneration based on the principle of 'equal pay for equal work' to contractual employees was taken. Therefore, the remuneration at the rate of initial basic pay of a regular Assistant Professor is to be given to the petitioners from the date of notification dated 03.11.2017, and not from the date of memorandum dated 27.06.2019, to which they are hereby held entitled.

7. It needs to be noted that minimum of the pay scale for the post of Assistant Professor, that the petitioners are entitled to, means the basic pay with grade pay and dearness allowance; it was so held by the Supreme Court in *Bahadur Singh and others v. Jaspreet Kaur Talwar and others*, 2022 SCC Online SC 1077, while dealing with contempt petition regarding implementation of the directions issued in *Jagjit Singh* case (*supra*). The relevant paragraph of the judgment reads as under:

4. Notably, the expression “pay” was considered by this Court in Contempt Petition (Civil) Nos.699-700 of 2015, *Tej Singh v. Sarvesh Kaushal*, arising out of decision dated 11.05.2015 in *Grah Rakshak, Home Guards Wel. Asso. v. State of H.P.* and connected matters, Civil Appeal No.2759 of 2015 Etc. In its order dated 04.05.2016 passed in said Contempt Petitions, this Court observed:

“After hearing learned counsel for the parties, we are of the opinion that the expression “minimum of the pay” mentioned in paragraph 22 is intended to mean not only the basic pay + grade pay, but also the dearness allowance that comes along with the basic pay and grade pay. This is in the context of the view expressed by this Court denying regular appointments to the petitioners, while taking into consideration the fact that the services of the Home Guards are used during an emergency and for other purposes and at the time of their duty they are empowered with the power of police personnel.

Accordingly, we make it clear that the word “minimum of the pay” used in paragraph 22 of the judgment and order dated 11th March, 2015 means the basic pay + grade pay + dearness allowances + washing allowance.”

8. In view of the discussion, all the petitions are allowed, directing the respondents to pay remuneration to the petitioners at the rate of initial basic pay, which includes basic pay, grade pay and dearness allowance, meant for a regular Assistant Professor with effect from 03.11.2017 to 26.06.2019, subject to ascertaining that each one of them was allotted full workload at par with that of a regular Assistant Professor during this period.
9. Pending miscellaneous application(s), if any, stand(s) disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

28.11.2023
Payal

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