

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-2042-2023 (O&M)
DECIDED ON: 12.07.2023

KULVINDER KUMAR AND ORS
.....PETITIONERS

VERSUS

PUNJAB AND HARYANA HIGH COURT AND ORS
.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL.

Present: Mr. R.K. Arora, Advocate and
Ms. Saguna Arora, Advocate
for the petitioners.

Ms. Gagandeep Kaur, Advocate
for respondents No.1 to 4.

Mr. Ferry Sofat, Addl. AG, Punjab
for respondent No.5.

VIKAS BAHL, J (ORAL)

1. This is a civil writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari/Mandamus for quashing the impugned replies dated 22.12.2020 (Annexure P-8) and 23.12.2020 (Annexure P-9) whereby the prayer of the petitioners to release them full salary with grade pay, increments and all other allowances from the date of their initial appointments on regular basis has been declined.
2. Learned counsel for the petitioners has submitted that the petitioners were initially appointed on regular basis during the year 2016-18

on the post of a clerk in the District Courts of Mansa, Bathinda and Faridkot. The petitioners were appointed in pursuance of the advertisement issued by this Court and rendered services till the year 2019, when they submitted their resignations with permission to take up other assignments offered to them in different Departments of the Punjab Government. Upon their selection through the Subordinate Service Selection Board, the petitioners had joined the said State Government Departments without any break. It is further submitted that the grievance of the petitioners in the present case is that at the time of their regular initial appointment, they were given fixed salary equal to the minimum pay band during the probation period and they were denied the benefit of grade pay and annual increments and other allowances except travelling allowance. This was in view of the Punjab Government notification dated 15.01.2015, vide which the Punjab Government had amended and substituted Sub-Rule (1) to Rule 4.1 of the Punjab Civil Services Rules, Volume I Part 1 so as to grant fixed monthly emoluments. It is contended that the said notification dated 15.01.2015, annexed as Annexure P-3 with the present writ petition, was challenged before this Court in CWP No.6391 of 2016 titled as “Dr. Vishavdeep Singh & Others versus State of Punjab and others” and the Division Bench of this Court vide judgment dated 26.10.2018, annexed as Annexure P-4 with the present writ petition, quashed the said notification dated 15.01.2015 and had held that all the employees shall be entitled to receive the same salary as has been paid to the regular employees. It is argued that the review application filed by the State has also been dismissed. It is further argued that identical conditions as are there in the appointment letters of the petitioners were also challenged in

CWP No. 8922 of 2017 titled as “Gurwinder Singh and others versus State of Punjab and others” which was also allowed on 13.09.2018 and the said judgment has been annexed as Annexure P-6. It is also submitted that the petitioners through their counsel had given a detailed notice dated 22.11.2020 to the respondents. Respondent No.2 and 3 while replying to the said notice vide Annexures P-8 and P-9, stated that since till date no instructions with respect to the amendment made in Rule 4.1 of the Punjab Civil Services Rules and regarding probation period have been received from the Government of Punjab, thus, the prayer of the petitioners could not be accepted.

3. Learned counsel for the petitioners has further submitted that Division Bench of this Court, in a bunch matter, had passed a judgment dated 16.02.2023 in CWP-17064-2017 and other connected matters in which challenge was made to the notification dated 15.01.2015 and all the similar notifications. It was held as under:-

“Accordingly, the Writ Petitions are allowed as under:

- (a) Notification No.7/204/2012-4FP1/60 dt.15.01.2015 having already been quashed in **Gurwinder Singh and others** (1 supra) and **Dr. Vishavdeep Singh and others** (4 Supra), there is no need to quash it again;*
- (b) Clarification No.7/204/2012-4FP.1/166 dt.15.01.2015 and notification GSR.3/Const/Article 309/AMD.(5)/2015 dt. 22.12.2015 to the extent they held that during period of probation or if increase in such period of probation, only fixed emoluments shall be paid to the employee, which shall be equal to the minimum of pay band of the service or post to which he is appointed and shall not include Grade Pay, Special Pay, Annual Increment or any other allowance except Travelling*

Allowance AND further directing that the period of probation shall not be treated to be the time spent on the time scale applicable to his post, are quashed;

- (c) Any conditions included in appointment letters issued to petitioners on the basis of the above notifications, are also quashed;*
- (d) The respondents are directed to grant to the petitioners the regular pay scale along with all other emoluments, allowances etc. from the date of their initial appointment and pay the arrears within three months from today;*
- (e) The respondents are directed to count the period spent on probation as regular services for the purpose of determination of the total length of service under the Service Rules.*
- (f) The validity of the notification No. GSR.56/Const./Art.309/AMD.(18)/2016 dt.05.09.2016 issued by the State of Punjab is left open for consideration in an appropriate case.*

Pending application(s), if any, shall stand disposed of.”

4. Learned counsel for the petitioners has further made a reference to the letter dated 24.05.2023 (Annexure P-11) issued by the Registrar General of this Court to the Assistant Registrar, Writs Branch in which it has been observed that this Court has decided to implement the judgment dated 16.02.2023 passed in CWP No.17064 of 2017 titled as “Ajay Kumar Singla and others versus State of Punjab and others”. The said letter dated 24.05.2023 is reproduced hereasunder:-

“From

*The Registrar General,
Punjab & Haryana High Court,
Chandigarh.*

To

*The Assistant Registrar,
Writs Branch.*

Dated, Chandigarh the 24th day of May, 2023.

Subject: CWP No. 11327 of 2023 titled as "Jasmeet Singh and others Vs. State of Punjab and Others" and CWP No.11343 of 2023 titled as "Hardeep Singh and others Vs. State of Punjab and Others" fixed for 24.05.2023.

Sir,

I am directed to refer on the subject cited above and to inform you that this Court has decided to implement the judgment dated 16.02.2023 passed in CWP No. 17064 of 2017 titled as "Ajay Kumar Singla & Ors. Vs. State of Punjab and Ors." For the employees posted in the Session Division in the State of Punjab with the condition that an undertaking taken from the employees to the effect that in case the judgment is set aside by the Hon'ble Apex Court at the instance of State of Punjab they shall refund the amount.

You are, therefore, requested to apprise the Hon'ble Bench about the facts mentioned above and also to intimate the Hon'ble Bench that view of the above decision this Court has not engaged an advocate to defend the above said writ petitions.

Sd/- 24.05.2023

Superintendent Grade-I (Litigation)

For Registrar General”

5. Learned counsel for the petitioners has also submitted that CWP No.11327 of 2023 has also been disposed of vide order dated 24.05.2023 passed by a Division Bench of this Court while taking into consideration the said letter issued by the Registrar General of this Court dated 24.05.2023. It is also contended that even CWP No.12807 of 2023 titled as “Aditya Thakur and others versus State of Punjab and others” has been disposed of vide order dated 07.07.2023 passed by a Division Bench of this Court while keeping in view the said communication. It is also argued that in view of the above, the petitioners also deserve the relief granted for which they have given the necessary undertaking. It is submitted that the impugned order deserves to be set aside and respondent Nos.2 to 4 are required to consider

the matter after considering the above said judgments and the communications made by the Registrar General of this Court to the Assistant Registrar. It is further contended that the same be done in a time bound manner and in case respondents No.2 to 4 come to the conclusion that the relief is to be granted to the petitioners, then the same be granted as expeditiously as possible.

6. Learned counsel appearing on behalf of respondents No.1 to 4 has not disputed the abovesaid aspects and has submitted that the matter would be reconsidered by respondents No.2 to 4 in light of the facts as stated by learned counsel for the petitioners.

7. Learned State counsel appearing on behalf of respondent No.5 has submitted that he has no objection to the said course of action.

8. Keeping in view the abovesaid facts and circumstances, the impugned replies/orders dated 22.12.2020 (Annexure P-8) and 23.12.2020 (Annexure P-9) are set aside and respondents No.2 to 4 are directed to reconsider the matter in light of the above said judgments and also in the light of the communication dated 24.05.2023 (Annexure P-11) made by the Registrar General of this Court to the Assistant Registrar and also the communication dated 02.06.2023 (Annexure P-13) by the Registrar General of this Court to all the District and Sessions Judges in the State of Punjab, within a period of two months from the date of receipt of certified copy of this order. In case, they are of the opinion that the petitioners deserve this relief on the basis of the same, then the necessary relief be granted to the petitioners as expeditiously as possible.

9. In view of what has been observed above, the present Civil Writ

Petition stands disposed of.

10. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

12.07.2023
Lavisha/Ashok

(VIKAS BAHL)
JUDGE

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