IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No.214 **CWP No.11201 of 2022**
Date of Decision: 29.09.2023

Suchitra and others .... Petitioners

Versus

State of Haryana and others ... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Anurag Goyal, Advocate for the petitioners.

Mr. Suneel Ranga, DAG, Haryana.

Mr. Harmanjot Singh Gill, Advocate for respondents No.3 & 4.

Mr. Nitin Kaushal, Advocate for respondent No.6.

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TRIBHUVAN DAHIYA, J. (ORAL)

At the outset, learned counsel for the petitioners contends that he confines the prayer in the petition to a writ of *mandamus* directing the respondent-State to approve remuneration of ₹57,700 per month to the petitioners from the date of their entitlement being minimum of the entry level pay scale meant for the post of Assistant Professor as per 7th Pay Commission Resolution. So far as other prayers in the petition are concerned, the petitioners may be permitted to withdraw the same with liberty to make appropriate representation to the respondent authorities in that regard.

2. The prayer is accepted.

3. The petition *qua* the said reliefs is dismissed as withdrawn with liberty to the petitioners to move appropriate representation to respondents for redressal of their grievances.

4. Facts of the case in brief are, the respondent-University is a State University established under the Pandit Bhagwat Dayal Sharma University of Health Sciences Rohtak Act, 2008 (hereinafter referred to as 'the University Act'). It issued advertisements, Annexures P-1 to P-3, from time to time inviting interested candidates for walk-in interviews for the post of Assistant Professor to teach on hourly basis in its College of Pharmacy.

4.1. The petitioners being eligible appeared for interview in response thereof, they were selected by a duly constituted selection committee and appointed between August 2013 to October 2014, except petitioners no.9 and 10, who were appointed on 21.02.2019, vide letters Annexures P-4 to P-7. Ever since the appointment, they have been working in the College continuously on the salary given from time to time. Initially, they were appointed on a remuneration of ₹500 per hour with a maximum limit of ₹21,600 per month, irrespective of number of hours of teaching.

4.2. Since their counterparts in other State University/Guru Jambheshwar University of Science and Technology and Delhi Institute of Pharmaceutical Science and Research, who were working on contract basis were being paid higher remuneration, the petitioners raised a grievance in that regard to the University seeking higher remuneration on the ground of parity.

4.3. The University accepted their request and approved consolidated monthly remuneration of ₹40,000 to the teachers teaching twenty periods or more per week in the College, vide Executive Council Resolution dated 12.04.2017, Annexure P-10. But it was never paid to them.

4.4. After some time, the matter was again placed before the Executive Council on the request of the Principal, College of Pharmacy, that the *ad hoc* faculty members, like the petitioners, are not being paid salary commensurate to their position. On reconsideration of the issue, and keeping in view the principle of 'equal pay for equal work' for guest/contractual/extension lecturers, it was unanimously resolved by the Executive Council to recommend the Finance Department that the Assistant Professors working on hourly basis be paid on the analogy of their counterparts being paid in other State Universities at the rate of ₹57,700 per month. This is minimum of the regular pay scale for Assistant Professor in the College, i.e., ₹15600-39100 + GP ₹6000. The relevant extract of the Executive Council Resolution dated 21.05.2021, Annexure P-12, is reproduced hereunder for reference:

> On analyzing the information provided by the Principal, it is revealed that these faculty members were engaged (though on hourly basis) by following the duly prescribed procedure i.e. an advertisement was made, interviews were conducted by the Selection Committee of the University and the workload has been given to them is absolutely more than the workload prescribed by the Pharmacy Council of India and these faculty members are also being involved in all types of activities and works of the College of Pharmacy and are also performing all such duties which are assigned to them by the University authorities/Principal of the College as are being assigned to the regular faculty members of the College of Pharmacy. Meaning thereby, in no way these faculty members are less or different from the regular faculty members who are being paid full salary as per 7th CPC and these adhoc faculty members are not even being paid Rs.40,000/- as approved by the Executive Council of the University and are facing financial hardship. They are being

paid only Rs.21,600/- which is much less than the salary even of a Clerk.

On the contrary, the Program of B.Pharmacy and M.Pharmacy being run in the sister Universities, such as, MDU, KUK and GJU etc. and they are paying Rs.57,700/- (Annexure-42.48/F,G,H) to its faculty members.

In view of the above, the matter was placed before the Executive Council for consideration of the proposal for enhancement of salary/remuneration to the adhoc faculty to the extent of their counter-parts working in the sister Universities of the State for teaching the same programme.

The Executive Council considered the proposal in detail and resolved to recommend to the Finance Department (through AD) that the Assistant Professors working on hourly basis in the SDPGIPS, Rohtak shall also be paid remuneration/salary on the analogy of their counterparts being paid in sisters' Universities of the State. The Financial implication be also calculated and incorporated in the proposal before sending to the Government.

In the light of the FD instructions received vide No.6/83/2020-3PR(FD), 9724 dated 22.4.2021, the Executive Council further resolved that the employee(s) shall not be entitled for the revised/upgraded pay scale merely on the recommendations of the Executive Council to the Finance Department and these recommendations will not stand in any Courts of Law. The employee(s) will be entitled for the revised/upgraded pay scale only after receiving the approval from the Finance Department, Haryana.

4.5. In terms of this Executive Council Resolution dated 21.05.2021, the University calculated financial implications on account of revised remuneration of the petitioners, and submitted the same to the Director, Medical Education and Research, vide letter dated 22.06.2021, Annexure P-16.

4.6. Still, the enhanced remuneration was not approved or granted to the petitioners in terms of the Resolution dated 21.05.2021. And in response thereto, respondent no.2 requested the University to recruit faculty on regular basis instead of engaging guest/contractual faculty to be paid on hourly basis; this was conveyed vide letter dated 29.03.2022, Annexure P-14. The letter makes no mention about considering or approving the rate of remuneration for the contractual/guest faculty as recommended by the Executive Council.

4.7. The petitioners have placed on record an office order dated 04.02.2022, Annexure P-19, passed by another State University/Bhagat Phool Singh Mahila Vishwavidyalaya (for short 'the BPSMU'), in terms of its Executive Council Resolution, dated 15.11.2021, increasing the remuneration of the Assistant Professors possessing prescribed qualification to ₹57,700 per month.

4.8. A memo, dated 27.06.2019, issued by the Higher Education Department regarding implementation of the principle of 'equal pay for equal work' for guest/contractual/extension lecturers working in the government colleges in the State has also been placed on record as Annexure P-15. It is to the effect that the eligible extension lecturers are to be paid monthly remuneration of ₹57,700, equal to the initial basic pay of a regular Assistant Professor.

5. The University in its written statement has admitted the facts afore mentioned, and has stated that appropriate decision regarding payment of remuneration in terms of the Executive Council Resolution has to be taken by the State. Relevant paragraph no.3 of the preliminary submissions reads as under:

> However, to assist this Hon'ble court with regard to the issue of the petitioners for equal pay & equal work, it is submitted that the petitioners are appointed as Adhoc faculty in the Pharmacy College of the respondent university and are eligible/entitled for the "equal work equal pay" policy of the state of Haryana, therefore, the executive council of the respondent university in the 42nd Executive council meeting dated 21.05.2021, in the presence of the representative of Respondent No. 2 has passed the agenda to pay the remuneration of Rs.57,700 to the guest/Adhoc faculty of the Pharmacy College of the respondent university at the very entry-level, however, the same is pending since 2018 for the consideration of the State of Haryana. The minutes of the executive committee dated 21.05.2021 is attached herewith as Annexure R-3/1. The appropriate decision with regard to the remuneration of Rs.57,700 for petitioners is to be taken by the state of Haryana.

6. In the short reply filed by way of an affidavit of Deputy Director, Medical Education and Research, on behalf of respondents no.1 and 2, it has been stated that proposal regarding increase of salary on hourly basis of contractual faculty has been submitted to the competent authority/Government of Haryana in the month of January 2022, which is

under active consideration as per the applicable Rules. As and when the decision is taken, it will be communicated to the concerned quarters.

7. Learned counsel for the petitioners contends that the petitioners are seeking grant of revised remuneration in terms of the Executive Council Resolution dated 21.05.2021 from the due date. He further contends that the respondents have discriminated against the petitioners by not granting them the revised remuneration in terms thereof. The petitioners have been working for about ten years in the University as guest/contractual Assistant Professors, and non-payment of admissible remuneration to them is violative of the principle of equal pay for equal work as upheld by the Supreme Court in *State of Punjab and others v. Jagjit Singh and others*, 2017(1) SCC 148. It only amounts to undue harassment and exploitation, as they are being forced to work on lesser pay, which is humiliating and violative of their right to equality.

8. Learned counsel for the University has argued on the lines of stand taken in the written statement filed on its own. He has also submitted on instructions of Mr. Gajendra Singh, Principal of Pharmacy College PGIMS, Rohtak, that petitioners were appointed against sanctioned posts, and have been continuing in service since initial appointment.

9. Learned State Counsel has vehemently opposed the prayer made in the writ petition by submitting that as per the provisions of Section 18 of the University Act, it was mandatory for the University to take prior approval of the Finance Department in the matter. Since the pre-revised remuneration of ₹21,600 was paid to the petitioners without approval of the Finance Department, the University's request for further revision of remuneration cannot be considered being not feasible. In that regard he has referred to an observation, dated 08.09.2022, issued by the Office of the

Additional Chief Secretary to Government Haryana, Finance Department, which is taken on record as Annexure 'A'. The relevant part thereof reads as under:

> The pre-revised remuneration of ₹21,600 was without obtaining approval of Finance Department. As such, there may be no justification to consider the proposal for ex-post facto approval for revision of remuneration from ₹21,600 to ₹40,000 at this stage, when pre-revised remuneration of ₹21,600 itself was paid without concurrence of Finance Department and details regarding remuneration remained in existence from time to time/its ground and justification are not available with Finance Department.

10. Heard.

11. Undisputedly, the petitioners were engaged as Assistant Professor on hourly basis in the College of Pharmacy on the recommendations of a selection committee by following the prescribed procedure, and were eligible for the post. They have been appointed against sanctioned posts, and work-load assigned to them is more than what has been prescribed for regular faculty by the Pharmaceutical Council of India. They are also being involved in all types of activities and work in the College as regular faculty, who are being paid salary in the pay band of ₹15600-39100 + Grade Pay ₹6000. The Executive Council Resolution, dated 21.05.2021, records that their monthly remuneration of ₹21,600 is less than the salary of even a clerk in the University.

12. It is also settled as per law laid down in *Jagjit Singh* case (*supra*) that for application of the principle of 'equal pay for equal work' for temporary/contractual employees, the factor which requires determination is,

whether they are rendering similar duties and responsibilities as being discharged by their regular counter-parts holding same/corresponding posts. In case it is so, they will have a right to minimum of the pay scale of regularly engaged government employees holding the same posts. The relevant paragraph no.60 of the judgment reads as under:

> Having traversed the legal parameters with reference to the application of the principle of 'equal pay for equal work', in relation to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the employees concerned (before this Court), were rendering similar duties and responsibilities as were being discharged by regular employees holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of "equal pay for equal work" summarized by us in para 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted that during the course of their employment, the temporary employees concerned were being randomly deputed to discharge duties and responsibilities which at some point in time were assigned to regular employees. Likewise, regular employees holding substantive posts were also posted to

> discharge the same work which was assigned to temporary employees from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State that any of the temporary employees would not be entitled to pay parity on any of the principles summarised by us in paragraph 42 hereinabove. There can be no doubt, that the principle of "equal pay for equal work" would be applicable to all the temporary employees concerned, so as to vest in them the right to claim wages at par with the minimum of the pay scale of regularly engaged government employees holding the same post.

13. Even in the face of aforementioned facts and the law laid down, the State government has refused to approve revised remuneration to the petitioners in terms of the Executive Council Resolution, dated 21.05.2021. This is patently illegal and arbitrary. The petitioners have been appointed against sanctioned posts, there is no dispute about their possessing the requisite qualifications and discharging the same duties and responsibilities as discharged by the regularly appointed Assistant Professors in the College. Accordingly, they are entitled to the minimum of pay scale meant for the post. Non-payment of the same is oppressive, exploitative and amounts to taking undue advantage of petitioners' compulsion, whatever may be, to serve the College even on the existing terms. The government being a model employer cannot be seen permitting such exploitation tacitly or explicitly; its

action in not sanctioning the revised remuneration is, therefore, reprehensible, apart from being arbitrary. The action is discriminatory also, as the government has approved remuneration on the principle of 'equal pay for equal work' for contractual employees in other State departments and statutory bodies.

14. 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, as held/clarified by the Supreme Court in *Bahadur Singh and others v. Jaspreet Kaur Talwar and others*, 2022 SCC Online SC 1077, which 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 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:
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> "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."

15. The reliance placed by learned State Counsel on the Finance Department observations, dated 08.09.2022, is also inappropriate. At this stage, it is too far-fetched to contend that pre-revised remuneration of ₹21,600 to the petitioners was without approval of the Department and, for that reason, revised remuneration in terms of Executive Council Resolution dated 21.05.2021 cannot be accepted. It is to be noted that payment of pre-revised remuneration of ₹21,600 was never in dispute. Neither the Finance Department nor the Director General, Department of Medical Education and Research ever questioned the same or recommended it to be withdrawn. The University also, on its part, has not sought any *ex-post facto* approval for the pre-revised remuneration. Learned State counsel has not been able to show any document whereby any such approval was sought. In this factual background, there was no occasion for the Finance Department to decline payment of revised remuneration to the petitioners on the stated ground. It is, therefore, held that pre-revised remuneration of ₹21,600 being paid to the petitioners from the date of their initial appointment cannot be termed without concurrence of the Department, nor its further revision can be declined on that basis. Accordingly, there is no justification for the government to decline payment of revised remuneration/minimum of pay scale meant for the post of Assistant Professors to the petitioners.

16. In view of the discussion, the petition is allowed and the petitioners are held entitled to remuneration equivalent to the minimum of pay scale meant for regularly appointed Assistant Professor in the College of

Pharmacy, which includes basic pay, grade pay and dearness allowance. They shall also be entitled to arrears of difference in remuneration from 20.03.2019, i.e., thirty eight months prior to filing of the petition along with interest at the rate of six per cent per annum up to the date of actual payment. Respondents no.1 and 2 are directed to sanction/approve the same within four weeks from receiving a certified copy of this order, which will be paid to the petitioners by respondents no.3 and 4 within two weeks therefrom. Since the petitioners have been unduly and arbitrarily denied the payment of revised remuneration in violation of law and have been discriminated against, each one of them shall be entitled to costs of ₹25,000, which shall also be paid by respondents no.1 and 2 within the period stipulated above.

(TRIBHUVAN DAHIYA)
JUDGE

29.09.2023
Maninder

Whether speaking/reasoned : Yes
Whether reportable : Yes