

In the High Court of Punjab and Haryana, at Chandigarh

**Civil Writ Petition No. 15366 of 2012
And Other Connected Cases**

**Reserved On: 28.02.2023
Date of Decision: 14.03.2023**

Gurwinder Singh and Others

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Kapil Kakkar, Advocate
for the petitioners (In CWP-15366-2012 and CWP-20856-2017).

Mr. B.S.Bhalla, Advocate
for the petitioner(s) (In CWP-4089-2013).

Mr. H.C.Arora and Ms. Sunaina, Advocates
for the petitioner(s) (In CWP-16481-2015, CWP-2229-2017
and CWP-2085-2023).

Mr. Naresh Kumar, Advocate
for the petitioner(s) (In CWP-27226-2016).

Ms. Supriya Garg, Advocate
for the petitioner(s) (In CWP-4511-2017).

Mr. Manjinder Singh Bhullar, Advocate
for the petitioner(s) (In CWP-25036-2017).

Mr. Ashish K. Gupta, Advocate
for the petitioner(s) (In CWP-25539-2017).

Mr. Vikas Chatrath, Advocate
for the petitioner(s) (In CWP-5647-2019).

Mr. R.K.Kapoor, Additional Advocate General,
Punjab.

Mr. Shekhar Verma, Advocate
for the respondent No.2.

Mr. Gagandeep Singh, Advocate
for the respondent No.2 (In CWP-15366-2012).

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Mr. Anupam Singla, Advocate
for the respondent No.2 (In CWP-4089-2013),
for the respondent No.3 (In CWP-16481-2015),
for the respondent No.2 (In CWP-27226-2016),
for the respondent No.3 and 4 (In CWP-4511-2017),
for the respondent No.2 (In CWP-2229-2017),
for the respondent No.2 and 3 (In CWP-25539-2017), and
for the respondent No.2 (In CWP-5647-2019).

Mr. Arshdeep Bhullar, Advocate
for the respondent No.3 and 4 (In CWP-25036-2017).

Anil Kshetarpal, J.

1. This judgment shall dispose of a batch of the writ petitions (the details whereof are given at the foot of the judgment) filed by the employees of Punjab Information & Communication Technology (ICT) Educational Society (hereinafter referred to as “the Society”). In substance, the petitioners pray for the following reliefs:

- I) Directions be issued to the respondents to grant the pay scale payable to the Vocational Masters working in the Education Department to the petitioners; And
- II) To grant all the admissible benefits as provided under the Punjab Civil Services Rules Volume I, II and II, such as grant of proficiency step up, assured career progression scheme, different kinds of leaves (earned/medical), medical reimbursement, groups insurance scheme, interim relief of 5% (as given to the other employees of the State Government).

2. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-books.

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3. In the opinion of this Bench, the following issues arise for consideration:-

- i) Whether the employees of the Society are appointed on the civil posts?
- ii) If the answer to issue No.(i) is affirmative, then, whether the petitioners are entitled to the directions to pay them the same pay scale as paid to the Vocational Masters in the different subjects employed by the State Government and to award them the same benefits including the benefit of proficiency step up, assured career progression scheme, different kinds of leaves (earned/medical), medical reimbursement, groups insurance scheme, interim relief of 5% (as is paid to the other employees of the State Government)?

Issue No.(i)

4. At the outset, it must be noticed that the respondent-Society is wholly owned and governed by the State Government, however, it is nonetheless an autonomous body which is distinct from the government. Such autonomous bodies may fall within the expression “the State” to come within the scope of Article 12 of the Constitution of India, however, these autonomous bodies are body corporates having a distinct legal identity. Article 12 of the Constitution of India while explaining the scope of the expression “State” provides that it includes “all local and other authorities within the territory of India or under the control of the government”. Such a

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broad definition has been given for the purposes of Chapter III and IV of the Constitution of India and for no other purpose as provided in Article 12 itself.

5. The services under the Union and the State are governed by Chapter-I of Part XIV of the Constitution of India. Article 309 of the Constitution of India enables the President or such persons as he may direct in case of services in connection with the affairs of the Union and the Governor of a State or such persons as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment and the conditions of service of persons so appointed. Article 311 of the Constitution of India lays down the broader guidelines for dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or State. The employees employed by the Union of India or a State are known as the persons holding civil posts. The employees of the public sector undertakings, autonomous bodies, government companies do not hold the civil posts under the Union or State. There is a mark distinction between the legal position of the employees of the Union of India and State on one hand and the employees of the autonomous bodies on the other hand. While dealing with the cases of the employees employed on the civil posts, the Supreme Court in *State of Mysore v. H.Papanna Gowda and Another (1970) 3 SCC 545* has drawn a distinction. In this case, the question which arose was “Whether an employee holding a civil post can forcibly and permanently be shifted to a University?” The Supreme Court held that an employee holding a civil post

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cannot be shifted to a University which is an autonomous body against his wishes or without his consent. An autonomous instrumentality, though regarded as instrumentality of the State and thus, fall under the scope of the authorities under Article 12 of the Constitution of India, yet it has its own distinct personality separate from the government. In view of the aforesaid discussion, the petitioners are not the employees working under the State. Thus, the answer to issue No.(i) is answered in negative.

Issue No.(ii)

6. Now, let us shift our focus to issue No.(ii). The petitioners claim that though they have been employed by the society, however, they are working as Computer Faculty in the government schools. Hence, they pray for grant of pay scale which is equivalent to the pay scale of Vocational Masters in different subjects working under the Punjab Government. The Council of Ministers has taken a conscious decision not to treat them equivalent to the Vocational Masters and their pay scales have not been equated with that of the Vocational Masters.

7. As far as the prayer of the petitioners for seeking directions to the respondents to pay the same pay scale as payable to the Vocational Masters in different subjects is concerned, it would be noticed that the Vocational Masters are employed by the State, whereas, the petitioners are the employees of the Society. There is a conscious decision by the competent authority not to equate the salary of both the posts. The equation of salary is a complex job of the expert bodies wherein the various aspects of the matter are required to be examined before the equation can be ordered.

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SCC 301, the Supreme Court, after analyzing the various judgments on the subject, has culled out the following tests before the Court orders equation of pay scale:-

“96. Analysis of the decisions referred to above shows that this Court has accepted following limitations or qualifications to the applicability of the doctrine of ‘equal pay for equal work’:-

- i) The doctrine of ‘equal pay for equal work’ is not an abstract doctrine.*
- ii) The principle of ‘equal pay for equal work’ has no mechanical application in every case.*
- iii) The very fact that the person has not gone through the process of recruitment may itself, in certain cases, makes a difference.*
- iv) The application of the principle of ‘equal pay for equal work’ requires consideration of various dimensions of a given job.*
- v) Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere.*
- vi) Granting pay scales is a purely executive function and hence the court should not interfere with the same. It may have a cascading effect creating all*

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kinds of problems for the Government and authorities.

vii) Equation of posts and salary is a complex matter which should be left to an expert body.

viii) Granting of pay parity by the court may result in a cascading effect and reaction which can have adverse consequences.

ix) Before entertaining and accepting the claim based on the principle of equal pay for equal work, the Court must consider the factors like the source and mode of recruitment/appointment.

x) In a given case, mode of selection may be considered as one of the factors which may make a difference.”

8. In the considered opinion of this Court, the petitioners have failed to produce sufficient material to show that they fulfill these parameters.

9. As regards the prayer of the petitioners that they should be granted all the benefits which are payable to the government employees and the Punjab Civil Services Rules should be made applicable upon them, it would be noted that the said rules are notified by the government in the exercise of the powers under the proviso to Article 309 of the Constitution of India. The aforesaid rules are applicable upon all the government employees belonging to the categories specified therein. Rule 1.2 of the Punjab Civil

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Services Rules Volume I reads as under:

“1.2. (1) Except as otherwise provided in rule 1.4 infra or in any other rule or rules these rules shall apply to all Government employees belonging to the categories mentioned below, who are under the administrative control of the Punjab Government and whose pay is debitable to the Consolidated Fund of the State of Punjab:

- (1) Members of State Services, Group “A” and Group “B”;*
- (2) Members of State Services, Group “C”;*
- (3) Members of State Services, Group “D”;*
- (4) Holders of Special Posts; and*
- (5) any other Government employee or class of Government employees to whom the competent authority may, by general or special order, make them applicable:*

Provided that the rules in Part I-Pensions and the Punjab General Provident Fund Rules contained in Volume-II of these rules called the Punjab Civil Services Rules, Volume-II shall not apply to the Government employees who are appointed to the posts mentioned in categories (1) to (5) above on or after the 1st January, 2004. They shall be covered by new “Defined Contributory Pension Scheme” to be notified by the State Government.

Note 1.—*Unless stated to the contrary in any rule or rules or the*

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contrary is apparent from the context, the term “Government employee” includes also a temporary or an officiating Government employee.

***Note 2.**—The Speaker of the Legislative Assembly has agreed under Article 187 (3) of the Constitution that until a law is made by the Legislature of the State under Article 187 (3) of the Constitution or rules are framed by the Governor in consultation with the Speaker of the Legislative Assembly under clause (3) of Article 187 of Constitution of India, these rules and amendments thereto, if any (after prior consent of the Speaker), shall apply to the Secretariat staff of the Punjab Legislative Assembly.*

***Note 3.**—The Chief Justice of the Punjab High Court has agreed to the application of these rules as amended from time to time in case of officers and employees of the Punjab High Court.*

***Note 4.**—The Chairman, Punjab Public Service Commission has agreed to the application of these rules as amended from time to time, in the case of officers and employees of the Punjab Public Service Commission.*

(2) Government employees to whom these rules apply shall continue to be governed by these rules while on temporary transfer to another state Government or Central Government or while on foreign service within India, unless it be otherwise provided in these rules. In the case of Government employees on foreign service outside India (including service with United

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Nations Agencies within or outside India) or on temporary transfer to the Armed forces of the Union, these rules shall apply only to the extent provided in the terms and conditions of foreign service or temporary transfer, as the case may be.”

10. From the reading of Rule 1.2 of the Punjab Civil Services Rules Volume I, it is evident that these rules are applicable to the government employees, whereas, the petitioners are the employees under the Society and not the government. In the absence of any conscious decision taken by the Society to make the said rules applicable upon its employees, this Court does not find it appropriate to issue such directions.

11. Moreover, now, the Society has already framed the independent rules to regulate the service conditions of its employees. It is only waiting for the sanction of the said rules by the government.

12. Mr. Vikas Chartrath, Advocate, representing the petitioners in Civil Writ Petition No. 5647 of 2019, contends that once a conscious decision had been taken to equate the pay, there was no occasion for recall of that order. The aforesaid argument is in the context of the contention of the learned counsel, that the Society had decided to regularize the services of the Computer Faculties. Undoubtedly, at one point of time, the petitioners were communicated that they will be entitled to the casual leaves and other leaves as per the Punjab Civil Services Rules and that they shall also be governed by the Conduct Rules, 1966, the Punjab Civil Services (Punishment and Appeal) Rules, 1970 and the Punjab Civil Services Rules, however, subsequently, once the competent authority has taken a conscious decision in

consultation with the government to frame the independent rules for the

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employees of the Society, this Court does not consider it rational to issue the direction to apply the Punjab Civil Services Rules upon such employees. It would be noted here that the Society is managed by the Board of Governors, though, it is funded by the government. Initially, the petitioners were appointed on contract basis, however, a decision was taken to regularize the service of the Computer Teachers who have completed two and a half years of services as on 01.07.2011. At that point of time, they were governed by the terms and conditions of their respective contracts. Once the employer, which is an autonomous body, has already proposed the independent rules, this Court does not find it appropriate to issue any direction which may result in debarring the employer-Society to lay down the independent rules governing its employees of the Society.

13. Ms. Supriya Garg, Advocate, learned counsel representing the petitioners in one of the writ petitions, has relied upon the judgment passed in *Nishan Singh and Others v. State of Punjab and Others (Civil Writ Petition No. 18619 of 2011 and Other Connected Cases, decided on 28.02.2013)*. In this judgment, the employees of the Departments of Revenue and Excise & Taxation, Punjab, had filed the writ petitions claiming the regularization of their services as per the government policy. In that writ petition, the petitioners asserted that they are being discriminated as the directions to regularize the services of the Computer Teachers employed by the Society have been issued. The Court dismissed the writ petition. Hence, the aforesaid judgment does not help the petitioners in the present case. Reliance has also been placed upon the judgment passed by this Court

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in *Balbir Singh and Others v. State of Punjab and Others (Civil Writ Petition No.7764 of 2015 and other connected cases, decided on 04.12.2018)*. In this case, the petitioners, who were employed by the Society, had sought regularization of their services w.e.f. 01.07.2011. The petitioners therein were appointed by the Society on the various administrative and non-teaching posts on the contract basis. The learned Single Judge held that once the decision to regularize the services of the Computer Teachers has been taken, the petitioners therein could not be discriminated. The aforesaid judgment of the learned Single Judge was upheld by the Division Bench on 29.03.2022. Both these decisions do not help the petitioners in the peculiar facts involved in the present writ petitions.

14. Further, reliance is also placed on the judgment rendered in *Baljit Singh and Others v. State of Punjab and Others (Civil Writ Petition No. 18847 of 2016, decided on 01.11.2018)*. In that case, the drivers employed by the High Court were seeking directions that their salary cannot be less than that of their juniors. The petition was accepted. Hence, the aforesaid judgment is also not applicable in the present case.

15. Reliance is also placed on the judgment rendered in *Kartar Singh and Others v. State of Punjab and Others (Civil Writ Petition No. 4060 of 2016, decided on 11.03.2016)*, wherein the petitioners were employed by the Sarv Shiksha Abhiyan Authority constituted under a centrally sponsored scheme (Sarv Shiksha Abhiyan). They were praying for various reliefs including the directions to regularize their services. The writ

16. Lastly, reliance is placed on the judgment rendered in *Kiran Bala v. State of Punjab and Another (Civil Writ Petition No. 3954 of 2015, decided on 06.04.2017)* wherein the petitioner, who was appointed as a Computer Teacher sought regularization of his services. The Court allowed the said writ petition directing that the petitioner’s case shall be considered on completion of two and a half years of her service which completed on 02.11.2011. Thus, again, the said judgment does not support the present case.

17. Though, issue No. (ii) is no longer required to be answered in view of discussion on issue No.(i), however, for the sake of clarity, the same is answered in negative.

18. Keeping in view the aforesaid facts and discussion, this Court does not find it appropriate to issue the writ as prayed for by the petitioners. Consequently, all the writ petitions are dismissed.

(Anil Kshetarpal)
Judge

March 14, 2023
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No

Sr. No.	Case No.	Party’s Name
1.	CWP-4089-2013	Sukhdeep Singh Bhangu and Others V. State Of Punjab And Others
2.	CWP-16481-2015	Amardeep Singh And Others V. State Of Punjab And Others
3.	CWP-27226-2016	Nirlap Kaur V. State Of Punjab & Others
4.	CWP-2229-2017	Computer Faculty Association Regd. & Others V. State Of Punjab & Others
5.	CWP-4511-2017	Kulwinder Singh And Ors. V. State Of Punjab And Ors.
6.	CWP-20856-2017	Manpreet Singh And Others V. State Of Punjab And

Sr. No.	Case No.	Party’s Name
		Others
7.	CWP-25036-2017	Pawanpreet Kaur And Others V. State Of Punjab And Others
8.	CWP-25539-2017	Anu Gupta V. State Of Punjab & Others
9.	CWP-5647-2019	Pardeep Kumar And Others V. State Of Punjab And Others
10.	CWP-2085-2023	Dharminder Singh And Others V. State Of Punjab And Others

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“DK”

(Anil Kshetarpal)
Judge