In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 16714 of 2013 (O&M)

Date of Decision: 10.01.2023

Smt. Joginder Kaur and Others

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. D.S.Pheruman, Advocate
for the petitioner(s).

Mr. Mohit Kapoor, Additional Advocate General,
Punjab, for the respondent No.1 and 2.

Mr. Naresh Kumar, Advocate
for the respondent No.3.

Mr. Brijeshwar Singh Kanwar and Mr. Chamandeep, Advocates
for the respondent No.4.

Anil Kshetarpal, J.

1. The petitioners pray for issuance of a writ in the nature of mandamus to direct the respondents to grant them pension. They claim to be employees of the State Government, hence, entitled to pension.

2. It has come on record that the petitioners were employed in the project called as "Border Area Project Scheme" which was run by the Punjab State Social Welfare Board. The expenditure of the project was shared in the ratio of 67% and 33%, respectively, by the Central Social Welfare Board and the Punjab Government. In fact, the Border Area Project was declared phased out in the year 1974, by the Government of India. However, the working of the project was closed on 31.03.2005. However,

taking sympathetic view about the employees of the Border Area Project, the Government of India issued directions to the Punjab Government to adjust these employees. In compliance thereto, the State of Punjab allotted five blocks of Integrated Child Development Scheme (hereinafter referred to as "the ICD Scheme") to the Punjab State Social Welfare Board and all these petitioners have retired on attaining the age of superannuation. It has been projected that 90% funds for implementation of the ICD Scheme are released by the Central Government to the State Government for administrative and operative costs while 10% cost is borne by the State. In its reply, the respondent No.4-Union of India does not pay any retiral benefits including pension to any of the ICDS functionaries employed for the implementation of the said Scheme in any State or Union Territory.

3. The respondent-State while contesting the petition has submitted that the petitioners were issued the appointment letters by the Punjab State Welfare Board and the terms & conditions of their appointment remained unchanged. As such, the petitioners never became the employees of the State Government.

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

5. The learned counsel representing the petitioners has filed the synopsis while giving summary of the stand taken in the various developments which have taken place during the pendency of the writ petition.

6. The learned counsel representing the petitioners contended that the petitioners have worked for the State of Punjab during all this while,

therefore, a direction is required to be issued to the respondents to pay the amount. It has also been brought to the notice of the Court that in ***Jagtar Kaur and Others v. State of Punjab and Others (Civil Writ Petition No. 19067 of 2006, decided on 21.04.2009)***, the learned Single Judge held that the petitioners being employees are entitled to the benefits of CPF and EPF Scheme as also other benefits like pension, gratuity, leave encashment, GIS, medical reimbursement and Leave Travel Concession. It was held that since the Scheme is sponsored by the Government of India, therefore, the Central Government is liable to pay the pensionary benefits. However, two Letter Patent Appeals preferred, one by the Union of India and second by the State of Punjab were allowed while setting aside the judgment in ***Jagtar Kaur's case*** *(supra)*. The Division Bench culled out the following questions for decision:-

> *"(i) Whether the respondents are entitled to same benefits which are being derived by the employees of 139 projects run by the State Government/Punjab Social Advisory Board and an incidental question would be as to whether these respondents are the employees of the State Government?*
>
> *(ii) In case the respondents are entitled to same benefits, whether these are to be borne by the Union of India or the State of Punjab or the NGO, namely, Child Welfare Council, Punjab?"*

While answering both the questions, the Division Bench held as under:

> *"19. However, what is the meaning assigned to 'other allowances'? Would it mean that the respondents had claimed CPF/Pension, Gratuity, Leave Encashment and GIS and also the facilities of medical reimbursement and LTC. We are of the*

opinion that 'other allowances' would mean fringe benefits given along with the pay in a particular pay scale, like DA, HRA, Medical Allowance. But, on the other hand, insofar as CPF/Pension, Gratuity, Leave Encashment, GIS and LTC are concerned, these are other service conditions which may not come in the expression 'other allowances'. Such benefits are admissible only to Government employees as per the Government rules. The Child Welfare Council, Punjab does not have any CPF/Pension Scheme. They do not have LTC Scheme or Group Insurance Scheme either. Therefore, these benefits would not be admissible to these employees of the NGOs. Insofar as payment of gratuity is concerned, same would be subject to applicability of the Payment of Gratuity Act, 1972 to these employees for which these employees can make claim before the competent authority under the Payment of Gratuity Act. There may be some medical allowance that can be claimed as 'other allowance', but medical reimbursement is an altogether different benefit for which there has to be specific rule/rules and in the absence of such specific rule/rules, the respondent employees cannot claim the same. Same would be the decision regarding the leave encashment. These employees may be entitled to leave but when it comes to encashment of leave, again, there have to be specific rules.

20. No doubt, para-3 of the appointment letter states that these employees would be governed by the rules and regulations of the Punjab Government which have been adopted/will be adopted by the Child Welfare Council, Punjab. However, it appears that the indicator is disciplinary rules, etc. In any case, unless it is shown that the Child Welfare Council, Punjab, has, in fact, adopted the rules and regulations qua leave encashment, GIS, LTC, medical reimbursement, etc. the employees cannot claim these benefits.

21. Further, in any case, financial liability, if any, would be *that of the Child Welfare Council, Punjab and it is not of the State of Punjab or the Union of India. The directions given to Union of India in this behalf, therefore, cannot be sustained and are accordingly set aside. As a result, the writ petition has to fail, insofar as State of Punjab and Union of India are concerned. As far as liability of Child Welfare Council, Punjab is concerned, it would be admissible within four corners of the appointment letters and in the absence of any clear position emerging regarding rules and regulations of the Council, it is difficult to give any positive directions. Even otherwise, as far as claim of the employees against their employer, namely, Child Welfare Council, Punjab is concerned, it is an NGO and writ petition against it under Article 226 cannot be maintained. More appropriate cause of action would be to file a civil suit, if at all. While giving that liberty, these appeals are allowed and the order of the learned single Judge is set aside, dismissing the writ petition filed by the respondents."*

7. The Court has been informed that the Special Leave Petition is pending in the Supreme Court against the judgment passed by the Letter Patent Bench. It is evident that the Division Bench held that the other allowances would mean fringe benefits given along with the pay in a particular pay scale. However, the Contributory Provident Fund, pension, gratuity, leave encashment, GIS and Leave Travel Concession fall in the other service conditions which may not come in the expression "Other Allowances". The Child Welfare Council does not have any CPF or pension scheme. It was held that such employees are neither the employees of the State Government nor the Central Government. Thus, the judgment of the learned Single Judge was set aside while dismissing the writ petition.

8. The judgment passed by the Division Bench is binding on the

Court.

9. The learned counsel representing the petitioners, while drawing the attention of the Court to Annexure P27, submits that at one point of time the decision was taken for creation of the pension funds. However, it would be noticed that no final decision in the matter has been taken by the Government. Moreover, before the petitioners are held entitled to pension, they are required to establish their right based on Acts, Rules, Regulations or Policy decision. However, the petitioners have failed to draw the attention of the Court to any such provision.

10. Keeping in view the aforesaid facts, no ground is made out to issue the writ. Hence, the present writ petition is dismissed.

11. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

January 10, 2023
"DK"

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