

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-23073 of 2013 (O&M)
and other connected cases
Date of decision: 01.03.2023

Sulakhan Singh and others

..Petitioners

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. L.S.Virk, Advocate
for the petitioners(in CWP-24060 & 24071-2013).

Mr. R.K. Kapoor, Addl. A.G. Punjab.

Mr. Gagandeep Singh, Advocate
for respondent no.2 (in CWP-24060 of 2013

Mr. Anupam Singla, Advocate,
for respondent no.2(in CWP-23073, 24071 of 2013)

Mr. Vipul Aggarwal, Sr. Panel Counsel
for respondent no.4-Union of India
(in CWP-23073, 24060, 24071 of 2013)

ANIL KSHETARPAL, J(Oral)

1. The petitioners are working as Inclusive Education Reserve Teachers on contractual basis under the Sarva Shiksha Abhiyan now named as Samagra Shiksha Abhiyan. By filing the writ petitions, they pray for the issuance of a direction to the respondents to set aside the office order dated 07.05.2013 and for issuance of a writ in the nature of mandamus directing the respondents to enhance their salary in order to make it equivalent to the salary of Primary/Upper Primary Teachers working under the Sarv Shiksha Abhiyan/Rashtriya Madheamik Shiksha Abhiyan or at par with the salary of any other regular elementary teacher. They also pray for a direction to the

respondents to grant them salary for the month of June, 2012 (summer vacation).

2. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

3. Before the court proceeds to order pay parity, a finding is required to be recorded that there is an absolute parity in all the other aspects of work between the two different categories of employees. Recently, the Supreme Court in **State of Bihar vs. Bihar Secondary Teachers Struggle Committee, Munger and others (2019) 18 SCC 301** has laid down certain parameters to be taken care of before the Court accepts the applicability of the doctrine of “Equal Pay for Equal Work” in any particular case. The said parameters are extracted as under:-

“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’:-

96.1) The doctrine of ‘equal pay for equal work’ is not an abstract doctrine.

96.2) The principle of ‘equal pay for equal work’ has no mechanical application in every case.

96.3) The very fact that the person has not gone through the process of recruitment may itself, in certain cases, makes a difference.

96.4) The application of the principle of ‘equal pay for equal work’ requires consideration of various dimensions of a given job.

96.5) 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.

96.6) 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 kinds of problems for the Government and authorities.

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

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

96.9) *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.*

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

4. It is evident that such parity can be ordered by expert bodies like Pay Commission or Pay Anomaly Committee. In the present case, the petitioners' qualification, manner of recruitment, nature of duties, time schedule etc., are different from the employees with whom they seek pay equivalence. The Inclusive Education Reserve persons are required to possess the minimum qualification of 10+2 with Diploma or Degree in Special Education, whereas, the qualification of Elementary Trained Teachers (ETT) or primary teachers are different. In **Kartar Singh and others vs. State of Punjab and others (Civil Writ Petition No.4060 of 2016, decided on 11.03.2016)**, a similar case of Inclusive Education volunteer appointed under the Sarv Shiksha Abhiyan, which was also a centrally sponsored scheme, was examined and it was held that such volunteers are not entitled to equivalence of pay. It has been pointed out by the learned counsel representing the respondents that the education volunteers are required to teach the students, whereas, the inclusive education reserve persons are not required to teach.

5. The learned counsel representing the petitioners submits that in **Rajneesh Kumar Pandey and others vs. Union of India and others, 2021 SCC Online SC 1005** the Supreme Court has laid down the guidelines that the Inclusive Education Reserve persons should be given the same salary as is being paid to their counter parts. He also relies upon an interim order passed in the same case on 21.07.2022, wherein certain directions have been issued to the effect that the recommendations made by the Rehabilitation Council of India should be adhered to for special education teachers.

6. This court has considered the submissions of the learned counsels representing the parteis.

7. As far as the observations made by the Supreme Court in the main judgment as well as in the interim order are concerned, such guidelines have been laid down by the Supreme Court in the exercise of powers under Section 142 of the Constitution of India. Whereas, the petitioners herein are praying for parity by filing the writ petitions in the year 2013. There is no direction by the Supreme Court that the parity should be maintained from the date on which the Inclusive Education Reserve persons were appointed on contractual basis. In para 76, the following guidelines have been issued:-

“57. In view of the above, a multipronged approach needs to be adopted by the concerned Authorities with immediate effect, inter alia, as follows:

- A. *The Central Government must forthwith notify the norms and standards of pupilteacher ratio for special schools and also separate norms for special teachers who alone can impart education and training to CwSN in the general schools; and until such time, as a stopgap arrangement adopt the recommendations made by the State Commissioner, NCT of Delhi in the case of Ms. Reshma Parveen²⁸ reproduced in paragraph 51 above;*

- B. To create commensurate permanent posts as per the just ratio to be specified by the competent authority for the rehabilitation professionals/special teachers who can cater to the needs of CwSN;*
- C. To initiate appointment process to fillin vacancies for the posts so created for rehabilitation professionals/special teachers for being appointed on regular basis. The same shall be completed within six months from the date of this order or before the commencement of academic year 2022 2023, whichever is earlier;*
- D. To overcome the shortage of resource persons (rehabilitation professionals/special trained teachers), the training schools/institutions must take steps to augment the number whilst ensuring that the norms and standards specified under the governing laws and regulations including that of the Council for grant of recognition and registration are fulfilled;*
- E. Until sufficient number of special teachers becomes available for general schools and special schools, the services of special trained teachers can be availed as itinerant teachers as per the SSS within the school block (cluster schools) to optimize the resource persons and as a stopgap arrangement;*
- F. The other teachers and staff in the general schools be given compulsory training and sensitized to handle the CwSN in the general schools, if admitted; and G. The authorities may also explore the possibility of merging unviable special schools with relatively viable special schools in the neighbourhood, so as to entail in consolidation of assets and resources for better delivery to the requirements of CwSN.*

8. In para 79, the Supreme Court clarified as under:-

79. We are making it amply clear that we are not deciding on the working conditions of the special teachers and the class of persons represented by the petitioners before this Court.

9. In these circumstances, this court, in the exercise of the writ jurisdiction does not find it appropriate to issue any direction particularly when it is the job of the expert bodies. The petitioners have been appointed on contractual basis. In the recruitment notice, it was specifically disclosed that they shall be paid on contractual basis only. Many other aspirants may also have applied for the said post if they had known that the Inclusive Education Reserve persons shall be entitled to the pay which is equivalent to

the Elementary Trained Teachers, who are permanent.

10. In these circumstances, this court does not find it appropriate to issue any direction.

11. As regards their entitlement for salary during the summer vacation, it may be noticed that the management of the Samagra Shiksha Abhiyan has issued guidelines from time to time while keeping in view the fact that the petitioners are not required to teach the students in the schools in the traditional sense. Once, there is a contract between the parties, the petitioners, if so advised, may represent to the appropriate authority for the breach of the same, if any. However, this court does not find it appropriate to issue any writ.

12. Disposed of accordingly.

13. All the pending miscellaneous applications, if any, are also disposed of.

March 01, 2023
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(ANIL KSHETARPAL)
JUDGE

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