

2023:PHHC:146653
CWP-23995-2013 (O&M)
Date of Decision: 17.11.2023

...Petitioners

Vs.

...Respondents

2023:PHHC:146654
CWP-16475-2015 (O&M)
Date of Decision: 17.11.2023

...Petitioners

Vs.

...Respondents

2023:PHHC:146655
CWP-23984-2019 (O&M)
Date of Decision: 17.11.2023

...Petitioners

Vs.

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present Mr. H.C. Arora, Advocate,
Ms. Arti, Advocate and
Mr. Vivek Sharma, Advocate for the petitioners.

Ms. Shivani Sharma, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. Since the relief prayed for in the writ petitions is same, the same are heard together. The facts of the case are taken from CWP-23995-2013.

2. The petitioners by way of this writ petition have challenged the action of the respondents in placing the petitioners on a fixed pay scale in

terms of the Punjab Civil Services (Rationalization of Certain Conditions of Services) Act, 2011 (hereinafter referred to as 'the Act of 2011'), although the Act of 2011 stood repealed w.e.f. the date of its coming into force by the Legislature, who passed the Punjab Civil Services (rationalization of Certain Conditions of Service) Repeal Act, 2011, which was made effective from 05.04.2021. The same was notified on 13.12.2011.

2. Learned counsel for the petitioners submits that the petitioners had applied for the post of masters cadre (department of school education), against advertisement dated 07.05.2011. By corrigendum dated 07.06.2011, it was mentioned that the salaries payable to the selected candidates would be under para No.7 of the Act of 2011. The advertisement further mentioned that their appointment would be on contract basis during first three years and the work and conduct being satisfactory, his case would be considered for regularization. All of the other conditions as mentioned in the advertisement reflected that the appointments were being made on regular basis against regular posts.

3. Learned counsel submits that although the Act of 2011 was repealed, but the respondents appointed the petitioners after selection on a fixed salary and thus they were entitled to be placed in the pay scale. The petitioners have, therefore, prayed to treat them in regular service with regular pay scale from the date they were initially appointed and also to give them regular pay scale from the said date. Learned counsel further submits that after the repealing Act of 2011, employees who were appointed in the other departments were placed in the regular pay scale and have been treated to be appointed on regular basis. In CWP-23984-2019, the petitioners who have already been selected under the aforesaid advertisement apart from the

prayer noticed above, have further challenged the order dated 29.02.2016, regularizing the petitioners from the date of issuance of order dated 15.01.2016. The petitioners have been granted the regular pay scale also w.e.f. 15.01.2016 and have also challenged the same by claiming that the same should be paid to the petitioners from the date they were initially appointed i.e. 31.12.2012.

4. Learned counsel for the respondents has submitted that the conditions of the advertisement mentions that the appointment would be on contract basis and since the petitioners accepted the said conditions, they have been rightly treated to be on contractual basis till they were regularized in the year 2016. The condition of contractual appointment was mentioned in the advertisement itself and it was binding upon the petitioners. Learned counsel has also relied upon the judgment in **State of Haryana vs. Charanjit Singh and others 2006 (1) RSJ 539 (SC)**, to submit that the persons employed on contract cannot claim equal pay on the basis of equal pay for equal work. It is also stated that the petitioners were not appointed under the Act of 2011 and the repealing of the Act would have no effect on the petitioners. Learned counsel submits that with reference to the other advertisements issued by the other departments, the same cannot be equated with the selection conducted in the Education Department. Learned counsel for the respondents has invited the attention to the contents of Para Nos.8, 9 and 10 of the reply filed.

5. I have considered the submissions.

6. Admittedly, the Act of 2011 was brought into force vide notification dated 05.04.2011, which provided that to appoint persons by direct recruitment on period of induction which was defined as period of

three years commencing from the date of appointment which may be extendable upto five years. The Act further provided that a person who was not being entitled to any additional amount other than all inclusive fixed monthly emoluments equal to minimum of the pay band of the post to which he was appointed. It is after the period of induction is over that the concerned person would be entitled to receive the regular salary. A look at the advertisement issued by the respondents reflects that the conditions incorporated in the advertisement are similar to the conditions which have been incorporated in the Act of 2011. By way of corrigendum, the respondents had also specified that the salary is being paid in terms Act of 2011. Thus, it does not stand to lie in the mouth of the respondents to state that the appointment was not made under the Act of 2011. Further, this Court finds that although the Act of 2011 stood repealed, the respondents did not accordingly pass orders and left the petitioners to continue to work on the regular post of masters cadre on a fixed pay and it is only in the year 2016 i.e. after almost three years that the respondents started releasing regular pay scale to the petitioners. No explanation has come forward for this approach adopted by the respondents. On the other hand, the respondents have tried to contend that the appointment was being made under the general rules of the Indian Contract Act, which is absolutely shocking as the said services cannot be governed by the rules of Indian Contract Act and rather have to be governed by the rules framed under the provisions of Article 309 of the Constitution of India. The contention so raised by the respondents is, therefore, rejected. The services of the petitioners cannot be said to have been on contract basis and the words used are merely a misnomer and are similar

to the words induction as mentioned in the Act of 2011, which stood repealed with effect from the date of its notification itself.

7. The contention of the learned counsel for the respondents relating to the other departments is also found to be unsatisfactory. A look at para No.8 of the reply reflects that the advertisement issued by the Punjab Agricultural Marketing Board, dated 19.05.2011, also mentions the same conditions of appointment on contract basis for a consolidated salary of three years and to be regularized on work and conduct of the candidate being satisfactory. Thus, there is no difference in the terms and conditions of the appointment as issued to the petitioners and that of the Punjab Agricultural Marketing Board employees. Similarly, other department namely Punjab State Civil Supplies Corporation Limited had also issued an advertisement offering the appointment on contract basis and, thereafter regular pay scale was given to the employees in terms of the repealing of the Act of 2011. The Directorate of Health and Family Welfare, Punjab has also followed the same approach. However, no reason has come forward for adopting a different yardstick for the employees of the Education Department, Punjab.

8. The State Government cannot be allowed to act in a manner to exploit their own employees. The concerned officers are answerable to the State Legislature and they are bound to follow the rules as framed by the State Legislature. It is not denied that the petitioners were appointed against permanent posts existing in the Education Department as the advertisement itself mentions the post to be of masters cadre.

9. Keeping in view thereof, the writ petitions deserve to be allowed and are accordingly allowed. The petitioners would be considered to be appointed on regular basis in terms of the rules and would also be entitled to

the regular pay scale from the date of their initial appointment. Arrears shall be calculated accordingly and released to the petitioners. However, the interest as claimed by the petitioners is not to be paid. At the same time, the amount which has already been paid to the petitioners as fixed salary shall be adjusted while calculating the arrears. The entire exercise shall be completed within a period of three months henceforth. The order of regularization passed on 29.02.2016 also stand quashed accordingly and the petitioners would be treated to be regularized from the date of their initial appointment. Other consequential benefits shall also follow accordingly.

10. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

17.11.2023.
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| 1. Whether speaking/reasoned? | : | Yes/No |
| 2. Whether reportable? | : | Yes/No |