

**CWP No.22371 of 2015(O&M)
and other connected cases**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.22371 of 2015(O&M)
and other connected cases
Date of decision: 14.02.2023**

Baldev Singh and others

..Petitioners

Versus

State of Punjab and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Alka Chatrath, Advocate
for the petitioner(s) (in CWP-22371, 22702, 24559-2015)

Mr. Sukhdev Kamboj, Advocate
for the petitioner(s) (in CWP-23200 of 2015)

Mr. V.K.Shukla, Advocate
for the petitioner(s) (in CWP-27132 of 2015)

Mr. Mohit Kumar, Advocate,
for the petitioner(s) (in CWP-16603 of 2017)

Mr. Amandeep Singh Manaise, Advocate
for the petitioner(s) (in CWP-26769 of 2016)

Mr. Nitesh Singla, Advocate
for the petitioner(s) (in CWP-13446 of 2017)

Mr. D.K.Singal, Addl.A.G., Punjab.

ANIL KSHETARPAL, J(Oral)

1. This batch of connected writ petitions have come up for final disposal. On 12.02.2023, the cases were heard at length. In order to give yet another opportunity to the learned counsels representing the parties, the case was ordered to be taken up for further arguments on the next day i.e. 13.02.2023. Once again, the learned counsels representing the parties have been heard at length. In substance, the primary issue which requires consideration is "Whether the petitioners are entitled to regularization of

their services from a date prior to which they were born in the cadre or from the date on which they were recruited on contractual basis?” For convenience, the facts are being noticed from Civil Writ Petition No.22371 of 2015 which has been treated as the lead case.

2. The Department of School Education issued a recruitment notice on 23.09.2009 to recruit 513 Lecturer, 3638 Master/Mistresses in various streams as well as 2106 Vocational Masters/Mistresses on contract basis. The recruitment notice provided that the appointment under all these categories shall be on contract basis for a period of one year on consolidated pay which could be renewed keeping in view the work and conduct of the recruited candidates. It was provided that on the completion of the period of 3½ years of service, the work and conduct of the candidates shall be reviewed and then they shall be entitled to be considered for regularization.

Clause 3 of the General Conditions reads as under:-

3. These appointments for all the categories are to be initially made for a period of one year on contract basis and consolidated pay. The offer of appointment can be extended for next year, keeping in view the work and conduct of the candidate. After period of 3-1/2 years, on the condition of the work and conduct of the candidate being satisfactory, he will be considered for regular appointment. This recruitment is being made on priority basis to fill up the vacant posts in boarder, bet, kandi and rural areas.”

3. It was also specifically provided that the initial appointment

shall be made on consolidated salary which was specified in the recruitment notice itself.

4. On completion of the selection process, the appointment letters were issued to the candidates. However, it came to the notice of the Government that certain candidates who were lower in merit have been appointed, whereas the candidates, who were higher in merit, have inadvertently been left out. This led to the decision of the Government to dispense with the services of such candidates who were lower in merit. Various writ petitions were filed by the candidates whose services were sought to be dispensed with in this manner. On the statement of the State's counsel that the petitioners will be permitted to continue in service, the learned Single Judge disposed of the writ petitions on 13.12.2012. In the contempt proceedings, certain order was passed which led to the filing of LPA before the Division Bench. During the pendency of the matter before the Division Bench, various candidates, including the petitioners, filed applications for intervention. On 21.05.2013, an interim order was passed by the Division Bench to consider the cases of the candidates who stood higher in merit but were inadvertently left out. Though, pursuant to the directions of the High Court, public notice was issued and the interviews were conducted but no result was declared. Ultimately, yet another interim order was passed by the Division Bench. Thereafter, a fresh public notice was issued on 14.07.2013 and on the basis of interview a fresh merit list was prepared. The petitioners were offered their respective appointment letters in November/December, 2014. They have respectively joined pursuant thereto.

5. Now, the petitioners pray that their services are required to be regularized as per the Government's decision dated 06.04.2014 (Annexure P-12 in CWP-27132 of 2015) with effect from 06.04.2014. The decision of the Government dated 06.04.2014 reads as under:-

“In reference to the above cited subject, it has been decided by the Government that for regularization of the services of the employees appointed against 7654 posts three years period will be counted from the date of joining of the first employee of the concerned batch. In reference to the above said letter of the government, the services of the employees recruited against 7654 posts will be regularized w.e.f. 06.04.2014 in view of the conditions mentioned in their appointment letter.”

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

7. Ms. Alka Chatrath, Advocate, while leading from the front, submits that once a conscious decision has been taken to regularise the services of the employees appointed in furtherance of the recruitment notice dated 23.09.2009 w.e.f. the date of joining of the first employee of the concerned batch, then, the petitioners, who are similarly situated are required to be treated as regularised w.e.f. 06.04.2014 itself. She submits that even though the petitioners shall not be entitled to the payment of regular pay scale from 06.04.2014, however, the petitioners cannot be discriminated from other candidates of the same batch. She relies upon the judgment passed in **Isha Sharma v s. State of Punjab and another** (Civil

Writ Petition No.10558 of 2014, decided on 28.07.2017) and a Division Bench judgment passed in **Gurpreet Singh Gill vs. State of Punjab and others, 2008 (3) S.C.T. 47.** She has submitted that the judgment passed by the learned Single Judge in **Ravinder Kaur's case** was modified in LPA No.1828 of 2017, decided on 26.09.2017.

8. In Civil Writ Petition No.23200 of 2015, the learned counsel representing the petitioner submits that an identically situated employee, namely, Sh. Jagjit Singh has been regularised from 06.04.2014, though, he was appointed on 03.07.2014. He submits that the petitioner cannot be discriminated.

9. In Civil Writ Petition No.27132 of 2015, the learned counsel representing the petitioner has adopted the arguments of Ms. Alka Chatrath, Advocate.

10. In Civil Writ Petition No.13446 of 2017 and Civil Writ Petition No.2064 of 2021, the learned counsel representing the petitioner submits that the petitioners are entitled to the minimum pay scale payable to the regular employees from the date of their appointments. He relies upon the judgment passed by the Supreme Court in **State of Punjab vs. Jagjit Singh (2017) 1 SCC 148.**

11. On the other hand, the learned counsel representing the State of Punjab submits that in **Ravinder Kaur vs. State of Punjab and others (Civil Writ Petition No.23532 of 2015, decided on 21.08.2017),** Clause-8 of the appointment letter providing for appointment on contract basis on a consolidated salary was challenged, however, the court while dismissing the writ petition held that such petitioners shall be entitled to be considered for

regularization upon completion of 3½ years of contractual engagement. He further submits that the petitioners, who had have applied in pursuant to the recruitment notice cannot now turn around and claim regularization of their services from a time which is prior to the date on which they were born in the cadre. He submits that the judgment passed in **Jagjit Singh's case (supra)** shall not be applicable particularly in view of the recent judgment passed in **State of Bihar vs. Bihar Secondary Teachers Struggle Committee, Munger and others' (2019) 18 SCC 301**. The learned counsel representing the State of Punjab has drawn the attention of the Court to the judgment passed in **Aradhana vs. State of Punjab and others, (Civil Writ Petition No.22184 of 2011, decided on 05.02.2014)**, wherein the claim of an identically situated employee was declined while holding that neither the petitioner is entitled to claim benefit for the past service nor she is entitled to claim seniority, pay fixation etc. from the date on which the persons lower in merit to her were appointed.

12. This court has analyzed the arguments of the learned counsels representing the parties and with their able assistance perused the paper books.

13. It is pertinent to note that the petitioners herein did not challenge the appointment of the candidates, who were lower in merit. Subsequently, the matter came before the High Court on a writ petitions filed by the candidates who were appointed but were lower in the merit list. The writ petitions were filed as the State Government took a decision to dispense with their services. Subsequently, on a statement made by the State, the candidates lower in the merit list were allowed to continue in

service. For the first time in the year 2013, the Division Bench in the Letter Patent Appeals directed to consider the cases of the candidates who stood higher in the merit list but were inadvertently left out. Certain petitioners did file intervention applications. Thus, the petitioners were appointed after the interim orders were passed by the High Court. In these facts, the petitioners cannot claim parity with the persons originally appointed pursuant to recruitment notice dated 23.09.2009.

14. Moreover, it is evident that as per Clause 3 of the General Conditions of the recruitment notice which has been extracted above, it was specifically provided that these appointment for all the categories shall be initially made for one year on contract basis and consolidated salary which was extendable keeping in view the work and conduct of the candidate. It was only after a period of 3 ½ years subject to the condition of the work and conduct of the candidates being satisfactory, they were held entitled to be considered for regular appointment.

15. The petitioners sought appointment as per the aforesaid recruitment notice. Hence the petitioners cannot now turn around and claim that they should be directed to be regularised with effect from 06.04.2014 particularly when the petitioners were appointed in the months of November/December 2014. There is no order of the court that because the petitioners were previously wrongly ignored therefore, they have to be given appointment from the date the persons lower in merit were given appointments.

16. This court has carefully read the judgment passed in **Isha Sharma (supra)**. In the aforesaid case, the experience from school affiliated

to Council for the Indian School Certificate Examination was not taken into consideration while calculating marks for the experience. In that context, the Court allowed the writ petition while holding that with respect to experience gained from school affiliated to ICSE Examination the counter signatures of the District Education Officer were wrongly insisted upon. The aforesaid judgment does not laid down as a ratio decidendi that all the appointees pursuant to the recruitment notice dated 23.09.2009 are required to be regularised with effect from 06.04.2014.

17. A Division Bench in **Ravinder Kaur's case** partly modified the judgment of the learned Single Judge. Smt. Ravinder Kaur filed CWP No.13421 of 2011 which was accepted with the following mandate:---

“In view of my above discussions, present writ petitions are allowed. A direction is issued to the respondents to consider the claim of the petitioners for appointment to the post of Math Mistresses within a period of two months from the date of receipt of certified copy of the order and take appropriate steps in accordance with law. It is made clear that the petitioners shall be entitled to the benefits from the date of their appointment, and they will not be entitled to claim seniority, notional pay fixation etc. from any previous date.”

18. Still the appointment letter was not issued to Smt. Ravinder Kaur, resulting in filing of the contempt petition. Subsequently, her appointment letter was issued in 2015. Her appointment was delayed on account of the fault of the respondents. Hence, the benefit would relate to the petitioner prescribed in the writ petition for compliance.

19. In *Gurpreet Singh Gill (supra)*, the Division Bench was examining the correctness of the assignment of deemed date of appointment to the respondents before the court. In that case, 22 posts of Deputy Superintendent of Police were advertised in the year 1989, whereas a subsequent advertisement was issued in the year 1990 to recruit 7 Deputy Superintendent of Police. The private respondents were recruited under the recruitment notice issued in the year 1989. However, they were not appointed. The writ petition filed by them was allowed on 09.07.2001. In that context, two writ petitions were filed challenging the assignment of deemed date of appointments to the private respondents. The Division Bench upheld the decision of the government in the facts of the case. Hence, none of the judgment cited by the learned counsels representing the petitioners as a ratio decidendi laid down that the petitioners should be deemed to have been regularized from 06.04.2014.

20. Another judgment relied upon the learned counsel representing the petitioner is in *State of Punjab vs. Jagjit Singh (supra)*. This judgment has been subsequently noticed and explained by the Supreme Court in the *State of Bihar vs. Bihar Secondary Teachers Struggle Committee's case (supra)*. In this judgment, after noticing that there are judgments of larger Benches including *Zabal Singh vs. State of Haryana, 1972 (2) SCC 275* the Supreme Court held that the State was justified in having two different streams or cadres, the same nature of work. In *Zabal Singh's case (supra)*, the State Government took a decision to divide the cadre amongst State and Provincial cadres and different pay scales were provided. State cadre was a dying cadre. The Supreme Court upheld the decision of the Haryana

Government.

21. As regards the judgment in *Ravinder Kaur's case (supra)*, the same stands modified by the Division Bench in *Ravinder Kaur's case* as already noticed. In *Aradhana's case (supra)*, the Court allowed the writ petition after noticing that the petitioner has undertaken that she will not claim any benefit for the past service including seniority, pay fixation etc. from the date the person lower in merit to her were appointed. Hence, the aforesaid judgment also does not help the court in deciding the issue.

22. It is not in dispute that the services of the petitioners have already been regularized on the completion of 3½ years of service from the date of their appointment. These petitioners were not appointed with the candidate recruited before 06.04.2014, hence, they are not entitled to the same relief.

23. In view of the foregoing discussion, it is evident that the petitioners are not entitled to regularization from 06.04.2014.

24. Consequently, all the writ petitions are dismissed.

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

February 14, 2023
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(ANIL KSHETARPAL)
JUDGE

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