

In the High Court of Punjab and Haryana, at Chandigarh

**Civil Writ Petition No. 25984 of 2015
And Other Connected Cases**

**Reserved On: 13.02.2023/01.03.2023
Pronounced On: 13.04.2023**

Rajinder Pal and Others

... Petitioner(s)

Versus

State of Punjab and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. G.S.Bal, Senior Advocate
with Mr. Laxman Choudhary, Mr. Dilshad Singh Gill,
and Mr. Neeraj Sharma, Advocates
for the petitioner(s) (In CWP-25984-2015, CWP-25985-2015,
CWP-16204-2018, CWP-16205-2018, CWP-16206-2018 and
CWP-32347-2018).

Mr. J.P.Rana, Advocate
for the petitioner(s) In CWP-827-2017, CWP-893-2017,
CWP-828-2017, CWP-829-2017, CWP-5159-2018 and
CWP-5177-2018).

Mr. R.K.Arora, Advocate
for the petitioner(s) (In CWP-14405-2018).

Mr. R.S.Pandher, Senior Deputy Advocate General,
Punjab, for the respondents.

Anil Kshetarpal, J.

1. This order shall dispose of a batch of the identical writ petition (details whereof are given at the foot of the judgment). The learned counsel representing the parties are *ad idem* that this batch of the writ petitions can, conveniently, be disposed of by a common order.

2. The petitioners pray for the directions to the respondents to pay

them the minimum pay scale plus the dearness allowance for the entire

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period i.e. from the date of joining as a daily wager till the date of the regularization of their services. The petitioners also pray for the issuance of the writ in the nature of certiorari to quash the order (Annexure P6).

3. The facts are being outlined from the lead case i.e. Civil Writ Petition No. 25984 of 2015. The petitioners are working as Fitter, Helper, Petrolmen, Pump Operator and Mali-cum-Chowkidar in the Department of Water Supply & Sanitation, Punjab. All these petitioners were initially engaged on the daily wage basis and their services were regularized in the years 2001, 2004 and 2011, respectively. After regularization, they are being paid the regular pay scale that is payable to their counterparts who hold regular/permanent positions. The petitioners claim that the similarly situated employees of the department filed the various writ petitions in the High Court claiming equal pay for equal work which were allowed on 18.04.1996 and 15.07.1997, respectively. The petitioners have also filed the writ petitions in the year 1999 which were allowed by the Division Bench on 20.12.2001. However, the Supreme Court directed the State of Punjab to re-examine the matter by appointing an Expert Committee for the same. Ultimately, the Expert Committee, after several meetings, submitted its report on 29.07.2011 recommending the payment of the minimum of the pay scales to the petitioners from the date of their appointment. Subsequently, the government, after taking an opinion from the Department of Finance and the learned Advocate General, Punjab, decided not to accept the recommendations of the Expert Committee. On the basis of the aforesaid decision, the department has passed the impugned order on 08.08.2014

which is the subject matter of challenge in this batch of the writ petitions.

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

5. The learned senior counsel representing the petitioners in the lead case contends that in 1996 and 1997, the High Court allowed certain identically situated employees to receive the benefit of the minimum pay scale grant that was given to the daily wage employees of the department. They have been paid the amount, whereas, the petitioners, despite the recommendations of the Expert Committee, have been deprived of the same. While relying upon the judgments passed in the *State of Punjab and Others v. Jagjit Singh and Others (2017) 1 SCC 148:2016 (4) SCT 641* and *State of Punjab v. Mukhtiar Singh and Others 2012 (4) RSJ 164*, the learned senior counsel contends that the writ petitions deserve to be allowed.

6. On the other hand, the learned State counsel, while contesting the writ petitions, has reiterated the stand taken in the impugned order (Annexure P6) and submitted that the petitioners are the back door entrants and their recruitment have not been made in accordance with the rules. Hence, the claim of the petitioners for grant of equal pay for equal work is not made out.

7. At the outset, it must be noticed that there is no dispute that the petitioners are being paid on the regular pay scale with annual increments from the date of their regularization. In essence, the petitioners are claiming entitlement of difference in the minimum of the pay scale payable to their regular counterpart minus the daily wages already received by them.

Undoubtedly, in the previous round, the writ petitions filed by the petitioners

were allowed by the Division Bench, however, the Supreme Court, as

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already noticed, has directed the State of Punjab to constitute an Expert Committee which recommended the payment of the minimum pay scale to the petitioners. However, the recommendations have not been accepted by the government. In such circumstances, the question arises with regard to the scope of judicial review in the peculiar facts and circumstances of the present case.

8. A Full Bench of this High Court in *Avtar Singh v. State of Punjab and Others 2011 SCCOnline Punjab and Haryana* held that the daily wager, ad hoc or contractual appointee against the regular sanctioned post, if appointed after undergoing a selection process based upon fairness and equality of opportunity to all other eligible candidates, shall be entitled to the minimum of the regular pay scale from the date of such engagement. However, if the daily wager, ad hoc or contractual appointees are not appointed against regular sanctioned posts and their services are availed continuously for a sufficiently long period i.e. for 10 years, then, they shall be entitled to minimum of the regular pay scale without any allowances on the assumption that work of perennial/seasonal nature is available. It was also observed that they shall be entitled to arrears for a period of three years and two months prior to the filing of the writ petitions. Subsequently, in *Jagjit Singh's case (supra)*, the Court on the basis of the principle of equal pay for equal work held that the daily wagers are entitled to grant of the minimum of the pay scale. However, in *State of Bihar and Others v. The Bihar Secondary Teachers Struggle Committee, Munger and Others (2019) 18 SCC 301*, the Supreme Court, in para 97, discussed the judgment

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judgment, the Supreme Court noticed that the decision in *Jagjit Singh's case (supra)* did not take into account the earlier decision rendered in *State of Punjab v. Joginder Singh AIR 1963 Supreme Court 913* and *Zabar Singh and Others v. State of Haryana and Others (1972) 2 SCC 275*. Ultimately, the Supreme Court, after discussing the judgment passed in *Secretary, Finance Department and Others vs. West Bengal Registration Service Association and Others 1993 Supp (1) SCC 153*, held as under:-

“104. If a pay structure is normally to be evolved keeping in mind factors such as “method of recruitment” and “employer’s capacity to pay” and if the limitations or qualifications to the applicability of the doctrine of ‘equal pay for equal work’ admit inter alia the distinction on the ground of process of recruitment, the stand taken on behalf of the State Government is not unreasonable or irrational. Going by the facts indicated above and the statistics presented by the State Government, it was an enormous task of having the spread and reach of education in the remotest corners. Furthermore, the literacy rate of the State which was lagging far behind the national average was also a matter which required attention. The advances made by the State on these fronts are quite evident. All this was possible through rational use of resources. How best to use or utilise the resources and what emphasis be given to which factors are all policy matters and in our considered view the State had not faltered on any count. As laid down by this Court in the decisions in Joginder Singh and Zabar Singh,

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the State was justified in having two different streams or cadres. The attempt in making over the process of selection to Panchayati Raj Institutions and letting the cadre of State Teachers to be a dying or vanishing cadre were part of the same mechanics of achieving the spread of education. These issues were all part of an integrated policy and if by process of judicial intervention any directions are issued to make available same salaries and emoluments to Niyojit Teachers, it could create tremendous imbalance and cause great strain on budgetary resources.”

9. The judgment passed in ***The Bihar Secondary Teachers Struggle Committee, Munger’s case (supra)*** is subsequent to the judgment passed by the Supreme Court in ***Jagjit Singh’s case (supra)***. Even after noticing that the judgment passed by the Larger Benches in ***Joginder Singh’s case (supra)*** and ***Zabar Singh’s case (supra)*** are not related to daily wagers, it was held that the State is entitled to have two categories of teachers working in the State service. Similarly, while discussing ***Zabar Singh’s case (supra)***, it was held that it is permissible for the State to have two categories of the teachers keeping in view their method of recruitment, retiral benefits, rules for determining seniority etc. In that case, despite being aware of the factual position, the Supreme Court ultimately refused to issue the writ to mandate the provision of same salaries and emoluments to Niyojit Teachers. The Court ruled that although, the availability of the finances and budgetary constraints may not be the sufficient reasons, however, the scope

defending the petitions have asserted that the petitioners are the back door entrants. Therefore, the petitioners were not appointed through a selection process that was fair and equal to all other eligible candidates. Now, for the last minimum period of 12 years they are regularly getting their pay scale. Hence, at this stage, this Court does not find it appropriate to issue the writ. Consequently, all the writ petitions are dismissed.

(Anil Kshetarpal)
Judge

April 13, 2023
“DK”

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

Sr. No.	Case No.	Party’s Name
1.	CWP-25985-2015	Pardeep Kumar and Others v. State of Punjab and Another
2.	CWP-827-2017	Balvir Singh and Others v. State of Punjab and Another
3.	CWP-828-2017	Surjit Singh and Others v. State of Punjab and Another
4.	CWP-829-2017	Amrik Singh and Others v. State of Punjab and Another
5.	CWP-893-2017	Boota Singh and Others v. State of Punjab and Another
6.	CWP-5159-2018	Sham Lal and Others v. State of Punjab and Another
7.	CWP-5177-2018	Jodh Singh and Others v. State of Punjab and Another
8.	CWP-14405-2018	Ajit Pal Singh and Others v. State of Punjab and Others
9.	CWP-16204-2018	Paramjit Singh and Others v. State of Punjab and Others
10.	CWP-16205-2018	Sarwan Singh and Others v. State of Punjab and Another
11.	CWP-16206-2018	Baldev Singh and Others v. State of Punjab and Others
12.	CWP-32347-2018	Rakesh Kumar and Others v. State of Punjab and Others

(Anil Kshetarpal)
Judge

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