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2023:PHHC:041230

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

CWP No.18944 of 2020

Date of Decision: 24.02.2023

Nikhil Choudhary and others

.... Petitioners

Versus

State of Haryana and others

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. R.K. Malik, Senior Advocate, with
Mr. Samrat Malik, Advocate, for the petitioners.

Mr. Narinder Singh Behgal, AAG, Haryana,
for respondents No.1 and 2.

Mr. Hitesh Pandit, Advocate, for respondent No.3.

JAISHREE THAKUR.J

1. By way of the present writ petition, filed under Article 226 of the Constitution of India, the petitioners herein seek a writ in the nature of certiorari to quash order dated 16.01.2020 Annexure P-4 vide which their claim for grant of minimum scale prescribed for their respective posts has been rejected. The petitioners have also sought a writ in the nature of mandamus directing the respondents to grant them the minimum scale meant for their posts w.e.f. 01.11.2017 or from the date of their appointments and to release the consequential benefits.

2. Brief facts of the case are that the petitioners No.1 to 3 were appointed as Junior Engineer (Civil) and petitioners No.4 to 8 as Draftsman on contract basis by the respondent-Municipal Corporation Yamuna Nagar at

Jagadhari, after due advertisement, by a duly constituted Selection Committee. The minimum scale for their posts was Rs.9300-34800+GP Rs.4000/-. Their claim is that they are not being given the minimum pay scale as admissible. In this respect, they filed various representations and even served a legal notice dated 06.07.2019, but when no action was taken, they approached this Court by way of CWP No.27871 of 2019, which writ petition was disposed of vide order dated 31.10.2019 with a direction to decide the said legal notice within a period of two months. It was claimed that they are entitled for 'equal pay for equal work' in view of instructions issued by the Government of Haryana vide circular dated 03.11.2017. However, respondent No.2, vide order dated 16.01.2020, rejected their claim by observing that the provisions of the instructions issued vide circular dated 03.11.2017 with regard to the principle of 'equal pay for equal work' shall be applicable to the contractual employees subject to the parameters laid down in para 42 of the judgment passed by the Hon'ble Supreme Court in ***Civil Appeal No.213 of 2013, State of Punjab and Jagjit Singh, on 26.10.2016***, but since the petitioners were appointed by the Municipal Corporation, Yamuna Nagar on the basis of recommendations of the Selection Committee constituted at its own level and not appointed through a regular recruiting agency i.e. Haryana Staff Selection Commission and moreover, before appointing them, No Objection Certificate was not obtained by the said Corporation, hence, they were termed ineligible to get their claim.

3. Learned Senior Advocate appearing on behalf of the petitioners would submit that the impugned order is contrary to the judgment rendered in ***Jagjit Singh's case*** (supra). Para 42 of said judgment does not talk about contractual employees and the relevant paragraphs of the said judgment are

paragraphs 57 and 58. It is submitted that while passing the impugned order, respondent No.2 has not disputed the qualifications, duties and responsibilities of the petitioners as that of regular employees holding similar posts. It is further submitted that the petitioners were engaged under Outsourcing Policy Part II against the sanctioned posts and, therefore, they were entitled the salary/wages equivalent to their counterpart working on regular basis on the principle of 'equal pay for equal work' in terms of the government instructions dated 03.11.2017. They are still being paid the wages on DC rates though they are entitled for minimum of the pay scale.

4. *Per contra*, learned counsel appearing on behalf of the respondents would contend that sub-para (vi) of para 42 of the judgment rendered in ***Jagjit Singh's case*** (supra) would suggest that for claiming regular scale, one should be a regular appointee and not appointed on temporary basis, but in the present case, for the recruitment of the petitioners, proper procedure has not been followed. The selection is to be made by the recruiting agency i.e. Haryana Staff Selection Commission, however, the petitioners herein were engaged by the Municipal Corporation at its own level and even 'no objection' was not obtained before the said exercise was done. Since the engagement of the petitioners was not in consonance with the rules provided for regular appointment of employees, therefore, they cannot claim their engagement at par with regular appointment. It is further submitted that the advertisement (Annexure R-1) itself says that the appointees will be paid as per the rate fixed by the government/Deputy Commissioner and while submitting their applications to the respective posts, they are supposed to have accepted the terms of their engagement and, therefore, now they cannot back-out from the same.

5. I have heard learned counsel for the parties and have gone through the pleadings of the case.

6. The claim of the petitioners is to grant them minimum pay scale for various posts that they are working against, by relying on paras 57 and 58 of the judgment passed by the Hon'ble Supreme Court in ***Jagjit Singh's case (supra)***, which relief stands denied on the ground that they have not been appointed through proper channel.

7. It is an admitted fact that the petitioners were appointed by the Municipal Corporation after due advertisement/public notice was issued and they participated in the selection process, therefore, it cannot be said that their entry into the service is through a backdoor. A regular Section Committee was constituted and thereafter appointments were made. The only ground that is taken in the written statement to deny them 'equal pay for equal work' is that the Municipal Corporation decided to fill up these posts even though such posts were to be filled up by the Haryana Staff Selection Commission, which ground cannot be made available to the respondent Corporation since the appointments were made at their instance.

8. The judgment rendered in ***Jagjit Singh's case (supra)*** has clearly held that that all the concerned temporary employees would be entitled to draw wages at the minimum of the pay-scale i.e. at the lowest grade, in the regular pay-scale, extended to regular employees, holding the same post. Relevant paras are reproduced as under:-

“57. Having traversed the legal parameters with reference to the application of the principle of ‘equal pay for equal work’, in

relation to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of 'equal pay for equal work' summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the

present set of appeals, were the same as were being discharged by regular employees. It is not the case of the appellants, which the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State that any of the temporary employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post.

58. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding, that all the concerned temporary employees, in the present bunch of cases, would be entitled to draw wages at the minimum of the pay-scale (- at the lowest grade, in the regular pay- scale), extended to regular employees, holding the same post."

9. Based upon the said judgment, the Haryana Government issued instructions dated 03.11.2017 to all Head of Departments; Registrar, High Court, Corporations; Managing Directors; Chief Administrators of Boards and Corporations to apply the ratio of the judgement rendered in ***Jagjit Singh's case (supra)*** to the employees under the Outsourcing Policy II w.e.f 01.11.2017 and that a separate Committee had been constituted to deal with

the issue regarding equal pay for equal work for other category of employees (other than those engaged under the Outsourcing Policy II).

10. As noticed above, the only ground for denial of the minimum pay scale is that the petitioners were not appointed through the HSSC, but it cannot be lost sight of that the petitioners were appointed by the Corporation after due selection. Therefore, finding that the petitioners were appointed after due selection, they cannot be denied the benefits as provided under the judgment rendered in *Jagjit Singh's case (supra)*. The instant writ petition is accordingly allowed. The relief due to the petitioners, as held hereinbefore, shall be released within a period of three months of receipt of certified copy of this judgement.

(JAISHREE THAKUR)
JUDGE

24.02.2023

sanjeev

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No