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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-24210-2018 (O&M)

Date of Decision:02.08.2023

KUSUM MALHOTRA

.....Petitioner

V/s.

**STATE OF PUNJAB THROUGH THE SECRETARY TO
GOVERNMENT, DEPARTMENT OF EDUCATION, PUNJAB AND
OTHERS**

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. Jugam Arora, Advocate,
for Ms. Saguna Arora, Advocate,
for the petitioner.

Ms. Shivani Sharma, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. The petitioner by way of this Writ Petition has prayed for issuance of a Writ in the nature of *mandamus* directing the respondents to grant her the benefit of one pre-mature increment for not participating in the strike in the same terms as allowed to the similarly situated persons vide order dt.01.03.2018 (Annexure P-6) in terms of the judgment passed in CWP-3504-1989 titled as “**Ramesh Chander and Others Vs. State of Punjab and Others**” decided on 18.05.2009, which was affirmed by the Hon’ble apex Court, with all consequential benefits i.e. re-fixation of pay and pensionary benefits with interest @ 12% per annum.

2. Learned counsel for the petitioner submits that the petitioner was working on *ad hoc* basis and did not participate in the strike on 08.02.1978. This Court has held that the employees on *ad hoc* basis, who were in service at that time and who had not participated in the strike, would be entitled to

the benefit. He has also placed on record other judgments passed by the coordinate Bench.

3. The respondents, however, have filed their reply and have placed reliance on the judgment passed in the case of “State of Punjab and Others Vs. Surinder Singh and others” passed in Civil Appeal No.3487-3492 of 2004, wherein the apex Court held as under:-

“18. So far as the point raised by the learned counsel for the petitioner that those ad hoc employees who had not been regularized by February 8, 1978, were also granted the benefits of premature increment though they might have been regularized later on but w.e.f. a date on or to or upto February 5, 1978, should not be discriminated against, we find no force in this argument. Those ad hoc employees who were liable to be regularized on or before February 8, 1978, but for no fault of theirs no orders had been passed were held entitled to the benefits by the Government as if in fact they were regular employees as on February 8, 1978. In the words, the benefits were only been given of premature increment to regular or virtually regular employees who were there as such on February 8, 1978”

The aforesaid paragraph carves out a situation that if an employee is regularized at a later stage but with effect from the date when strike took place, he will be entitled to the benefit of premature increment. The facts are not clear in this regard and therefore, we would like the competent authority of the State Government to scrutinize the cases of each of the respondents in the backdrop of para 18 of Full Bench which we have reproduced herein above within a period of three months and communicate to them.

Resultantly, the appeals are allowed to the extent indicated above and the order dated 17.1.2002 passed by the division bench in civil writ petition No. 19057 and order dated 12.9.2003 passed in Review petition No. 329 of 2002 are set aside. The competent authority shall decide the

matter as directed herein above. In the facts and circumstances of the case, there shall be no order as to costs"

4. Learned counsel for the respondents submits that the petitioner was regularized w.e.f. 01.10.1980 and the benefit of premature increment was to be given to the *ad hoc* employees who had not participated in the strike and whose services were regularized or were to be regularized on or before the cut-off date i.e. 08.02.1978. Since the petitioner admittedly was regularized on 01.10.1980, the benefit of circular issued by the State Government dt.26.10.1980 would not be extendable to the petitioner.

5. Learned State counsel submits that so far as the judgment passed in the Ramesh Chander's case (Supra) is concerned, it has to be understood as judgment in *personam* and not in *rem*. The relevant portion of the said judgment is reproduced as under:-

"It is admitted position that the petitioners did not participate in the strike. Once the ad hoc employees were in service and they did not participate in the strike, they cannot be discriminated against those who were regular employees and did not participate in the strike. Ad hoc employee is an employee and had the complete liberty to participate in the strike, but they chose not to do so. They cannot be deprived of the benefit which otherwise has been allowed to all Punjab Government employees. In so far the employees who were either on maternity leave or medical leave, though they had no occasion to attend the office, but they could have at least joined the striking employees even while on leave. It is not the stand of the respondents that such petitioners or any one of them joined with the striking employees. Since they were on leave, their participation/nonparticipation from the point

of attendance cannot be decided, but the benefit should go to such employees.

In view of the above, these petitions are allowed. Respondents are directed to release one premature increment for non-participation in the strike on 8th February, 1978 to all these petitioners irrespective of the fact whether they were ad hoc employees on the relevant date or on maternity leave or medical leave. This is subject to the condition that ad hoc employees were in regular pay scale. Let the benefit accruing to the CWP Nos. 3504, 3580, 14563 of 1989, 3081 & 9604 of 1990 5 petitioners be released within a period of four months from the date a certified copy of this order is received by the competent authority.”

6. I have considered the submissions of the learned counsel for the parties carefully, considered the judgment passed in the Ramesh Chander’s case (Supra) and finds that the said judgment has been followed by the coordinate Benches while allowing CWP-20520-2018 “**Hansraj and Another Vs. State of Punjab and others**” decided on 18.08.2018 and **Amarjit Kaur and others Vs. State of Punjab and others**. Further, the SLP preferred by the state of Punjab against the judgment passed in the case of Ramesh Chander (Supra) bearing SLP No.7318 of 2015 titled as “**State of Punjab and others Vs. Ramesh Chander and others**” was dismissed by the Supreme Court on 27.04.2015.

7. In view of above, this Court is of the view that no distinction can be drawn with regard to the *ad hoc* employees who were working on the day of strike i.e. 08.02.1978. The question of their regularization from a date earlier or after 08.02.1978 would not create distinction between them as the increment being granted to them is only for the purpose that they did not

participate in the strike. The date of regularization, therefore, has no nexus to the purpose sought to be achieved.

8. The Writ petition therefore deserves to be allowed and is allowed in terms of the order passed in Ramesh Chander (Supra). Respondents are directed to grant pre-mature increment for not participating in the strike. All consequential benefits shall accordingly follow.

9. Pending application(s), if any, stands disposed of accordingly.

August 2, 2023

Ess Kay

[SANJEEV PRAKASH SHARMA]

JUDGE

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No