

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.:212

Civil Writ Petition No.20975 of 2021 (O&M)
Date of Decision: *July 04, 2023*

Sapna

..... PETITIONER(S)

VERSUS

State of Haryana and others

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

. . .

PRESENT: - Mr. Kanwal Goyal, Advocate, Mr. Paramjit Singh,
Advocate and Mr. Govind Tanwar, Advocate for the
petitioner.

Mr. Rohit Arya, DAG, Haryana.

. . .

Tribhuvan Dahiya, J. (Oral)

Learned counsel for the petitioner at the outset contends that the only issue remains to be adjudicated in this case is release of salary/remuneration to the petitioner/Guest Faculty for the months of May and June, 2020 and up to 06.07.2020, as the remaining reliefs already stand granted to her.

2. Briefly, the facts of the case are, the petitioner was working as Guest Faculty with respondent No.3/Institute w.e.f. 28.01.2017, and was relieved on 07.07.2020 leading to filing of the instant petition. During pendency of the petition, she has been taken back in service on 26.08.2022 and is continuing ever since.

3. Learned counsel for the petitioner contends that the petitioner has not been paid salary for the vacation period for the months of May and June, 2020 up to July 6, 2020 on the plea that she did not work

during the said period as there were practical examinations, preparatory holidays and vacation/summer break at that time. It is further contended that this is contrary to the instructions issued by the State Government itself, dated 11.09.2019 (Annexure P-6), which are to the effect that the Guest Faculty/Guest Instructors are to be paid remuneration throughout the academic year, i.e., for 12 months. Subsequently, the State Government issued fresh instructions dated 22.12.2022 (Annexure R-1) which further clarify that the Guest Faculty/Instructor will be treated on rolls for the purpose of payment/remuneration, during holidays/vacation period/non-teaching days notified by Government/affiliating bodies during the academic calendar. He has referred to a judgment dated 23.02.2023 passed by this Court in Civil Writ Petition No.15815 of 2022 titled *Sumit Choudhary and others v. State of Haryana and others*, wherein similarly situated persons, who were also working in respondent No.3/Institute, were granted remuneration for the vacation period by referring to the aforesaid instructions of the State Governments as well as law laid down by the Supreme Court.

4. Learned State counsel on the contrary contends that the petitioner has not worked during the vacation period, as has been stated in the reply filed by the State as well as the affidavit dated 07.04.2023. She is, therefore, not entitled to the remuneration claimed. He further submits that the instructions dated 22.12.2022 are applicable with effect from the date of notification only. This also disentitles the petitioner to remuneration for the vacation as the same pertains to a period prior to the notification. He, however, is not in a position to dispute the law laid down in *Sumit Choudhary* case (*supra*).

5. Learned counsel for the parties have been heard, and case file has been perused.

6. It is apparent on record that the instructions dated 11.09.2019 issued by the State Government clearly stipulate that the Guest Faculty/Instructors are to be paid remuneration for the entire academic year of twelve months. The requirement has only been clarified and reiterated by the subsequent instructions dated 16.12.2022, which have been issued in supersession of the earlier instructions. In effect, the position remains that at the relevant time, i.e., 04.05.2020 to 06.07.2020 for which the petitioner is claiming remuneration, the said instructions were in force which entitle the petitioner to the claim made. Besides, this Court in *Sumit Choudhary* case (*supra*) has already held that the similarly placed Guest Faculty, working in the respondent Department itself, are entitled to remuneration for the vacation period. The relevant paragraphs of the judgment read as under:

Admittedly the petitioners are working as Guest Faculties under the Technical Education Department and as per the instructions/order dated 11.09.2019 (Annexure P-2), the remuneration is to be paid to the Guest Faculties/Guest Instructors, throughout the academic year i.e. for 12 months. The Director General, Technical Education Department, Haryana, has issued clarification vide letter dated 16.12.2022 stating therein, that the remuneration throughout the academic year i.e. 12 months (including vacation period/break period) be given to the Guest Faculty.

Hon'ble Apex Court in Rattan Lal's case (*supra*), deprecated the policy of the State Government under which 'ad-hoc'

teachers were denied the salary and allowances for the period of the summer vacation by resorting to the fictional breaks and accordingly, directed that the 'ad-hoc' teachers shall be paid salary and allowances for the period of summer vacations as long as they hold the office under this order. It was further held that those entitled to maternity or medical leave, shall also be granted such leave in accordance with the rules.

In view of the above, non-payment of remuneration to the petitioners during the vacation/break period, is not sustainable. The present petitions are accordingly, allowed and the respondents are directed to make payment of the salary and other allowances to the petitioners, during the vacation period, including the summer vacations. It is further directed that the petitioners shall not be replaced with another set of contractual employees, till the regular appointments are made.

7. Despite clear enunciation of law by this Court as well as the instructions issued by the State Government themselves, that entitle the petitioner to remuneration for the vacation period, the respondents have failed to release it. Instead of abiding by the law, they have chosen to flout the same by taking refuge in the aforementioned instructions on the plea that the same were not applicable at the relevant time. The plea is groundless, since applicability of the instructions was never in doubt, as discussed above. This makes the respondents' action reprehensible which is deprecated.

8. The petition is, accordingly, allowed directing the respondents to release remuneration from 04.05.2020 to 06.07.2020 with costs amounting ₹50,000 to the petitioner within six weeks from today.
9. Pending miscellaneous application(s), if any, stand disposed of, as having been rendered infructuous.

(Tribhuvan Dahiya)
Judge

July 04, 2023
payal

<u>Whether Speaking/ Reasoned:</u>	<u>Yes/ No</u>
<u>Whether Reportable:</u>	<u>Yes/ No</u>