

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-17611-2023 (O&M)
Date of decision: 11.08.2023

Rajesh Kumar & Ors.

... Petitioners

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Kanwal Goyal, Advocate
Mr. Paramjit Singh, Advocate
Mr. Govind Tanwar, Advocate,
Mr. Shobit Rapria, Advocate
for the petitioners

Sandeep Moudgil, J.

(1). The issue involved in this case is as to whether the action of the respondents particularly, respondent No.6&7-HWSPSHI can be held to be justified in withdrawing the regular pay scales granted to its contractual employees, on the pattern of 'equal pay for equal work', and reducing their pay to a consolidated salary, without issuing any notice or following the due process of law?

(2). The petitioners have filed the present writ petition invoking the jurisdiction of this Court under Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 25.07.2023 (Annexure P15) validating the action of the respondent No.7-HWSPSHI in withdrawing the regular pay scale and re-fixation of petitioners' pay at consolidated salary and also for quashing the impugned orders dated 14.10.2022, 08.08.2022, 04.07.2022 and 31.10.2022 (Annexure P-12 to P-12/D) wherein the petitioners have been de-regularised and their pay has been reduced from regular pay scale of teacher to that of

contractual consolidated amount of Rs. 25000/- per month without any prior notice. A further direction is sought to the respondents to release salary of petitioners with regular pay scale along with arrears of pay and not to initiate any coercive action against petitioners.

(3). Learned counsel for the petitioner submitted that the petitioners joined respondents No.4, 6 & 7 – the Haryana Welfare Society for Persons with Speech & Hearing Impairment (HWSPSHI), Gurugram, which gets 100% Grant-in-Aid for expenditure regarding pay of teachers from Elementary Education Department, Haryana in the form the advance. The petitioners were initially on consolidated salary of Rs.14,500/- (in 2013), however, on a specific proposal submitted to the competent authority, the petitioners, vide order dated 24.09.2015 (Annexure P7), were also allowed/granted full and statutory pay scale of Primary Teacher i.e. Rs.9300-34800+4200 (GP) with usual allowances w.e.f. 01.09.2015 and in this regard, the Finance Department also accorded its sanction/approval vide order dated 19.09.2019 to grant pay scale of Rs.35400/- to 146 contractual 'Special Teachers', who completed five years of continuous contractual service. Since, all of a sudden and without any prior notice or hearing, the respondent-HWSPSHI withdrew the regular pay scale to the petitioners.

(4). Mr. Kanwal Goyal, Advocate assisted by three other counsel, vehemently argued that HWSPSHI runs various centre at different places in Haryana for children suffering with speech & hearing impairment having expenditure in form of cent-percent grant (100%) from Govt. of Haryana through (i) Department of Elementary Education Haryana; (ii) Department of Social Justice & Empowerment Haryana; & (iii) Health Department, Haryana

and the expenditure is borne by State Government in form of 100% grant, therefore, the HWSPSHI is liable to be treated as an instrumentality of the State for the purpose of the expression "other authorities" appearing in Article 12 of the Constitution. Reliance is placed on **The District Red Cross Society Sirsa vs. Radha Kishan Rajpal & another, 2005(1) SCT 41** (Annexure P3) to contend that the District Council for Child Welfare is a 'State' under Article 12 of the Constitution and is amenable to writ jurisdiction and as such, HWSPSHI – respondent No.6 is a “State” and an ‘authority’ within the meaning of Article 226 of the Constitution.

(5). It is urged that the petitioners were engaged by the respondents on contractual basis by following due selection process and hence their appointments cannot be held to be irregular or illegal. Reliance has been placed on **State of Punjab & Ors. Vs. Jagjit Singh & Ors (2017) 1 SCC 148**, to contend that since the respondents themselves chose to give minimum of the pay scale available to the regular employees in view of the requirement at work and that too posts were available at the particular point of time, the action of the respondent-HWSPSHI in withdrawing the pay scale to the petitioners is unjust and illegal

(6). The further argument raised on behalf of the petitioners is that withdrawal of pay scales earlier granted by the respondent, is a stigma upon the petitioners which has affected not only their economic conditions but also social and mental level adversely and even otherwise also, before passing any adverse order, which has fraught the petitioners with penal and civil consequences, the respondent-HWSPSHI ought to have adhered to the constitutional and legal mandates and by following the principles of natural

justice. Reliance has been placed on **BATA India Ltd. vs. Workmen of BATA India Ltd. & Anr. (2022) 6 SCC 95**, wherein the Supreme Court held that the employer cannot reduce salary of its employee without affording an opportunity of hearing under the principles of natural justice.

(7). Learned counsel reinforced his argument to further contend that there is no statutory provision to convert a regular pay scale of a teacher into a consolidated pay scale and that too without proper assessment or without initiating any disciplinary action. He urged that there may be punishment of stoppage of annual increment with cumulative or without cumulative effect but to withdraw the regular pay scales and replacing it with consolidated pay is alien to the service jurisprudence.

(8). It is averred that the petitioners have wrongly been assessed on basis of new equipments whereas no training or in-service training camps have ever been organized to introduce them with the latest equipments and moreover, the assessment of students alone is not a standardized way to assess the work and conduct of Special Teachers like the petitioners. It is also submitted that during last two sessions i.e. 2020-21 and 2021-22, the pandemic CORONA has adversely affected the class-room teaching, therefore, the teacher alone cannot be held responsible for such circumstances.

(9). Heard learned counsel for the petitioners and gone through the case file.

(10). From the appointment letter dated 29.10.2013 (Annexure P6) issued, it can be inferred that one of the petitioners namely, Rajesh Kumar was appointed as Teacher on contract basis, on a fixed consolidated remuneration of Rs.14,500/-, by the Haryana Welfare Society for Persons with Speech &

Hearing Impairment which is a voluntary organization registered under the Societies Registration Act. The said Society unilaterally vide office order dated 24.09.2015 (Annexure P7), granted regular pay scale of Rs.9300-34800+4200 GP plus allowances with effect from 01.09.2015 to the petitioners, for which approval was accorded by the Finance Department vide U.O.No.28925-1FD-II/2019 dated 19.09.2019. There is nothing on record to show as to the circumstances which led the respondent-Society to grant regular pay scales to its contractual teachers w.e.f. 01.09.2015. Consequently, the petitioners started drawing regular pay scales until 14.10.2022, when fresh letters (Annexure P12 colly) were issued to the petitioners appointing them on contractual basis with fixed remuneration of Rs.25,000/- evidently withdrawing the regular pay scales.

(11). In response to the legal notice dated 07.06.2023 by the petitioners, the respondents vide reply dated 25.07.2023 (Annexure P15) controverted the claim of the petitioners, *inter alia*, stating that the Society survives by donations from public and is not “other authorities” within the meaning of Article 12 of the Constitution. It further stated that there was no promise by the Society to grant regular pay scale to the petitioners either at the time of advertisement or appointment and that the Haryana Civil Services (Revised Pay) Rules, 2008 *ipso facto* is not applicable to the employees of the Society, who are not civil servants as per Rule 2 of Rules *ibid* as the nature of employment is completely different and as such, the provisions of Article 309 of the Constitution do not apply in the case of the petitioners. The respondent-Society in its reply has also fairly highlighted that it is a matter of concern and investigation that the previous hiked payments were as per law or not. It

further mentioned that the engagement of the petitioners is contractual in nature and that new contract can be signed in view of the performance of the contractual employee and it is up to the contractual employees to accept the terms of the new contract or not.

(12). In **BATA India Ltd. vs. Workmen of BATA India Ltd. & Anr.** (supra), the Supreme Court held that an employer must give proper opportunity of hearing to the workmen before deducting their wages for “go slow” approach and the right procedure should be followed as what is required and necessary is giving proper opportunity to the affected person before making any deduction.

(13). It is noticed that in the aforesaid circumstances the Supreme Court in the case of **State of Punjab Vs. Jagjeet Singh (2017) 1 SCC 148**, has considered this aspect that the persons who have been appointed and are continuously discharging duties commensurate with regularly appointed persons, such persons are also entitled to be paid the same wages in accordance with the provisions of 'equal pay for equal work'.

(14). It is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less

wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

(15). The respondent is a Society which survives by public donations and is not an authority within the meaning of Article 12 of the Constitution. That being so, the Society cannot be compelled to grant regular pay scale to the petitioners as there was no such compromise or commitment by the respondent-Society, either at the time of advertisement or appointment and moreso when the Haryana Civil Services (Revised Pay) Rules, 2008 *ipso facto* are not applicable to the employees of the Society. It is for the petitioners to decide whether or not to accept the contractual engagement as per the terms and conditions of the contract and not as per their own choice.

(16). The writ petition is accordingly dismissed.

(17). However, even if the Society is not State authority but it also cannot be denied that the said Society is governed by the rules and that being so, the impugned action could not have been taken by the respondent-Society without hearing the aggrieved employee and enabling him to show cause as to why the scale of pay which is already granted to them should not be withdrawn. Thus, it is directed that in case the respondent-Society is desirous to withdraw benefit of pay scale on the ground available in law then formal show cause notice be issued to the concerned petitioners and opportunity of hearing be given to them and thereafter it would be open to the respondent to pass order in accordance with law.

11.08.2023

V.Vishal

(Sandeep Moudgil)

Judge

1. Whether speaking/reasoned?

Yes/No

2. Whether reportable?

Yes/No