

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-23153-2019
Date of decision : 31.05.2023

Kamal Kumar and others..... Petitioners

versus

State of Punjab and others..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Pawan Kumar Mutneja, Senior Advocate with
Mr. Himanshu Mehta, Advocate &
Mr. Abhishek Joon, Advocate
for the petitioners.

Ms. Shivani Sharma, DAG, Punjab.

Mr. Ashish Grover, Advocate for
respondents No.2 and 3.

PANKAJ JAIN, J. (Oral)

By way of present writ petition, the petitioners who were working as daily wagers with PUDA since the year 2001 or prior thereto are claiming pay parity vis-a-vis regular employees in terms of law laid down by Apex Court in the case of **State of Punjab and others vs. Jagjit Singh and others 2017(1) SCC 148**. The details of the petitioners which remain uncontroverted are tabulated here as under:-

Petitioner No.	Name of the petitioner	Date of Joining	Post
Petitioner No.1	Kamal Kumar	02.05.2000	Bill Distributor
Petitioner No.2	Davinder Kumar	01.05.1998	Helper Class
Petitioner No.3	Vinod Kumar	01.10.2000	Sweeper
Petitioner No.4	Amar Singh	01.06.2000	Supervisor (Civil) (Field)

Petitioner No.5	Gurchetan Singh	11.05.2000	Pump Operator
Petitioner No.6	Gurmeet Singh	01.11.2001	Chowkidar

2. Learned senior counsel submits that the matter in favour of the petitioners is squarely covered in terms of law laid down in **Jagjit Singh's case (supra)**, wherein the Supreme Court has gone to state that paying less wages as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position and the same would constitute an action which is oppressive, suppressive and coercive compelling involuntary subjugation.

3. Per contra, Mr. Grover submits that the petitioners are being paid at the DC rates i.e. as per the provisions of Minimum Wages Act. He submits that even as per the law laid down in **Jagjit Singh's case (supra)**, the petitioners may be entitled for minimum pay scale, but the same shall not include dearness allowance.

4. I have heard counsel for the parties and have gone through the records of the case.

5. Facts are not much in dispute. It is also not in dispute that each of the petitioner has completed more than 20 years working with the respondents.

6. In view of the conceded position by the respondents that the petitioners are entitled for the minimum pay scale, the only issue that needs to be decided is:

(i) Whether dearness allowance would come within the ambit of expression of 'pay'?

7. The aforesaid issue came up for consideration before this Court in the case of **Seeshan Kumar and another vs. State of Punjab**

was held as under:-

“3. The question as to whether the employees held to be entitled for minimum pay-scale would be entitled for dearness allowance or not is no more res integra and the same came up for consideration before the Apex Court that too in contempt proceedings wherein it was held as under :

“2. The instant Contempt Petitions arise out of the Order dated 10.01.2018 passed by this Court disposing of Special Leave Petition preferred by the Principal Secretary, Government of Punjab, PWD Public Health & Others, in terms of the judgment rendered by this Court in *State of Punjab & Ors. v. Jagjit Singh & Ors.*, (2017) 1 SCC 148.

3. Paragraph 55 of the decision in Jagjit Singh (supra) was to the following effect:

"55. In view of all our above conclusions, the decision rendered by the Full Bench of the High Court in *Avtar Singh v. State of Punjab* [*Avtar Singh v. State of Punjab*, 2011 SCC OnLine P&H 15326 : ILR (2013) 1 P&H 566], dated 11-11-2011, is liable to be set aside, and the same is hereby set aside. The decision rendered by the Division Bench of the High Court in *State of Punjab v. Rajinder Singh* [*State of Punjab v. Rajinder Singh*, 2009 SCC OnLine P&H 125] is also liable to be set aside, and the same is also hereby set aside. We affirm the decision rendered in *State of Punjab v. Rajinder Kumar* [*State of Punjab v. Rajinder Kumar*, 2010 SCC OnLine P&H 13009], with the modification that the employees concerned would be entitled to the minimum of the pay scale, of the category to which they belong, but would not be entitled to allowances attached to the posts held by them."

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4. Notably, the expression "pay" was considered by this Court in *Contempt Petition (Civil) Nos.699-700 of 2015, Tej Singh and Others v. Sarvesh Kaushal and Ors., arising out of decision dated 11.12.2015 in Grah Rakshak, Home Guards Wel. Asso. v. State of H.P. & Others and connected matters, Civil Appeal No.2759 of 2015* Etc. In its order dated 04.05.2016 passed in said Contempt Petitions, this Court observed:

"After hearing learned counsel for the parties, we are of the opinion that the expression "minimum of the pay" mentioned in paragraph 22 is intended to mean not only the basic pay + grade pay, but also the dearness allowance that comes along with the basic pay and grade pay. This is in the context of the view expressed by this Court denying regular appointments to the petitioners, while taking into consideration the fact that the services of the Home Guards are used during an emergency and for other purposes and at the time of their duty they are empowered with the power of police personnel.

Accordingly, we make it clear that the word "minimum of the pay" used in paragraph 22 of the judgment and order dated 11th March, 2015 means the basic pay + grade pay + dearness allowances + washing allowance."

5. It is a matter of record that so far as the basic pay is concerned, the contempt petitioners have been paid the requisite amounts. However, it is submitted that the amounts towards Dearness Allowance as was accepted by this Court in its order dated 04.05.2016 have not been made over to the contempt petitioners.

6. We see force in the submissions made on behalf of the contempt petitioners.

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7. It is, therefore, directed that the amounts payable to all the contempt petitioners towards Dearness Allowance shall be made over to them within six weeks from today.”

4. To add a reason thereto, I may hastily observe here that Dearness Allowance cannot be divorced to the salary as is being done by the respondent for the simple reason that the Dearness Allowance is paid to the employees commensurating to the inflation index with an object to take care of increasing cost of living and thus cannot be denied by the authority. I am guided by the observations made by the Apex Court in the case of **Bengal Chemical and Pharmaceuticals Works Ltd. vs. Its Workmen (1969) 2 SCR 113**, wherein it has been held as under :-

“Before we deal with the contentions of the learned counsel, it will be desirable to refer to a few decisions of this Court laying down the principles that have to borne in mind when a claim for dearness allowance or revision of dearness allowance is considered.

18. In Clerks of *Calcutta Tramways v. Calcutta Tramways Co. Ltd.*, 1956 SCR 772 it is observed :-

"We can now take it as settled that in matters of the grant of dearness allowance except to the very lowest class of manual labourers whose income is just sufficient to keep body and soul together, it is impolitic and unwise to neutralise the entire rise in the cost of living by dearness allowance. More so in the case of the middle classes."

19. In the **Hindusthan Times case, (1964) 1 SCR 284** it is stated at p. 247 (of SCR) :-

"As was pointed out in (1962) 2 Lab LJ 352 (SC), the whole purpose of dearness allowance being to neutralise a portion of the increase in

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the cost of living it should ordinarily be on a sliding scale and provide for an increase on rise in the cost of living and a decrease on a fall in the cost of living."

20. In ***Greaves Cotton and Co. v. Their Workmen***, (1964) 5 SCR 362, after referring to the Hindusthan Motors case, (1962-2 Lab LJ 352 (SC)) and the French Motor Car Co.'s case, (1963) Supp. 2 SCR 16, this Court laid down that the basis of fixation of wages and dearness allowance is industry-cum-region and observed, at p. 368 (of SCR) :-

"The principle therefore which emerges from these two decisions is that in applying the industry-cum-region formula for fixing wage scales the Tribunal should lay stress on the industry part of the formula if there are a large number of concerns in the same region carrying on the same industry; in such a case in order that production cost may not be unequal and there may be equal competition, wages should generally be fixed on the basis of the comparable industries, namely industries of the same kind. But where the number of industries of the same kind in a particular region is small it is the region part of the industry-cum-region formula which assumes importance particularly in the case of clerical and subordinate staff, for, as pointed out in the French Motor Car Co.'s case, (1963) Supp 2 SCR 16, there is not much difference in the work of this class of employees in different industries." Again, at p. 374 (of SCR) it is stated :-

"Time has now come when employees getting same wages should get the same dearness allowance irrespective of whether they are working as clerks, or members of subordinate staff or factory-workmen."

21. In ***Ahmedabad Mill Owners' Association v.***

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The Textile Labour Association, (1966) 1 SCR 382

it has been emphasised that in trying to recognise and give effect to the demand for a fair wage, including the payment of dearness allowance to provide for adequate neutralisation, industrial adjudication must always take into account the problem of the additional burden which such wage structure would impose upon the employer and ask itself whether the employer can reasonably be called upon to bear such burden.

22. In ***Kamani Metals and Alloys Ltd. v. Their Workmen, (1967) 2 SCR 463*** it has been noted that one-hundred per cent neutralisation is not advisable as it will lead to inflation and therefore dearness allowance is often a little less than one-hundred per cent neutralisation.

23. The following principles broadly emerge from the above decisions:

1. Full neutralisation is not normal given, except to the very lowest class of employees.
2. The purpose of dearness allowance being to neutralise a portion of the increase in the cost of living, it should ordinarily be on a sliding scale and provide for an increase on the rise in the cost of living and a decrease on a fall in the cost of living.
3. The basis of fixation of wages and dearness allowance is industry-cum-region.
4. Employees getting the same wages should get same dearness allowance, irrespective of whether they are working as clerks or members of subordinate staff or factory workmen.
5. The additional financial burden which a revision of the wage structure or dearness allowance would impose upon an employer, and his ability to bear such burden, are very material and relevant factors to be taken into account.”

5. In view of above once the authority has

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decided to grant minimum pay scale attached to the post and is paying dearness allowance to its employees, the same cannot be denied to the petitioners.

6. Consequently, the present writ petition is allowed.

7. Respondents are directed to pay the salary to the petitioners at the rate of minimum pay-scale attached to the post of Beldar on which they are working along with Dearness Allowance at the rate being paid to other employees.”

8. In view of above, present writ petition is allowed. Respondents are directed to pay the salary to the petitioners @ minimum pay scale attached to the post to their respective posts on which they are working alongwith dearness allowance @ being paid to the other employees. The arrears are confined to 38 months prior to the date of filing of the writ petition.

9. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

31.05.2023

Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No