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

(1) LPA-1723-2019 (O&M)

State of Haryana & others ……Appellant(s)

Versus

Dayanand Arya & others ……Respondent(s)

(2) LPA-1802-2019 (O&M)

Dayanand Arya ……Appellant(s)

Versus

State of Haryana & others ……Respondent(s)

Decided on : 14.02.2023

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present:- Mr. Saurabh Mago, AAG, Haryana
for the appellants in LPA No.1723 of 2019 and
for respondent Nos.1 to 3 in LPA Nos.1802 of 2019

Mr. Mahendra Pal, Advocate
for the appellant in LPA No.1802 of 2019 and
for respondent Nos.1 & 2 in LPA No.1723 of 2019.

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G.S. Sandhawalia, J. :-

1. The present judgment shall dispose of 2 cross appeals bearing LPA-1723 & 1802-2019, wherein the order of the learned Single Judge dated 17.07.2019 passed in CWP-20361-2014 is subject matter of consideration.

2. The writ petition filed by the workman was partly allowed and it was held that the termination of the workman from service who had been appointed on contract upto 30.09.2014 had wrongly been done prior to the expiry of the term of the contract and there was nothing mentioned in the letter of contract dated 21.04.2014 (Annexure P-4) that the engagement could be terminated at any point of time without assigning any reason or prior notice. Resultantly, it was held that the outsourcing

policy dated 01.09.2006 wherein it was so provided could not have been relied upon or enforced upon the petitioners and thus, they were held entitled to the benefit from the date of termination i.e. 12.09.2014 till 30.09.2014. The interest element @ 7% per annum was ordered to be paid from 30.09.2014 till the date of disbursement. The fact that juniors had been retained was repelled on account of the fact that the petitioners had been engaged after retirement and there was no seniority maintained qua the retired employees.

3. State Counsel has argued that the learned Single Judge was not justified in granting the benefit for the period they had not worked and their services had been dispensed with on account of the fact that there was a condition that their services could be dispensed with on the regular appointees joining. Reliance was accordingly placed upon the service agreement dated 21.04.2014 wherein such a contingency is provided and the fact that the defence in the written statement was that 20 regular Clerks had been appointed. The said clause reads as under:

> "3. The services of the person so engaged shall hereafter cease on the expiry of the terms without providing her any claim for the regularization of services or any other consequential benefit; <u>and also services would cease as soon as the regular incumbent joins</u>."

4. Counsel for the workmen, on the other hand, submitted that the learned Single Judge failed to take into account the fact that there was additional prayer made to the extent that the writ petitioners were entitled to DC rates which was fixed for the employees/workmen who were working in UT Chandigarh for the period 01.04.2011 to 31.03.2012 and from 01.04.2012 to 31.03.2013 since they had already been paid the DC rates of Chandigarh from 01.04.2013 till their services were terminated on 12.09.2014 . It is pointed out that in para No.12 of the writ petition, this

fact was specifically pleaded that since they were engaged on contract basis in the office situated at Chandigarh and they had worked as Assistant in the territory of Chandigarh, they were liable to be paid at the said DC rates which were higher than the DC rates of Panchkula, pertaining to Haryana. Reference was also made to Annexures P-6 & P-7 which was order approving the DC rates for the years 2011-2012 respectively for Chandigarh.

5. A perusal of the paperbook would also go on to show that appointments were made on the basis of walk-in-interview and petitioner No.1 was appointed way back on 01.03.2010 and the contract was for 6 months as per the public notice (Annexure R-2) and it provided that it was at DC rates sanctioned from time to time. Relevant clause reads as under:

> "1. Appointment will be under outsourcing policy initially for a period of six months at D.C. Rate sanctioned from time to time."

6. Petitioner Nos.2 to 4 were appointed at a subsequent point of time in April, 2011 and July, 2011 and even qua their appointment orders dated 26.08.2010 (Annexure R-4), the salary was to be paid at the prevalent DC Rates. The factum of the liability to pay DC rates was also not denied which would be clear from para No.12 of the written statement, which reads as under:

> "12. That the contents of para no.12 of the Writ Petition are admitted to the extent that the petitioners were granted the salary according to the DC rates of Chandigarh for the year 2013-14 but the petitioners has not granted the salary according to DC rates of Chandigarh for the year 2011-12 and 2012-13. Rest of the contents of the para are wrong hence denied."

7. A perusal of the above would go on to show that DC rates were paid from April, 2013 onwards but for the period prior in point of time, the appellants have not been paid the same. The difference has also

been pointed out to us from Annexures P-6 & P-7 which would go on to show that for the Office Assistants for the year 2011-12, a sum of Rs.12,000/- per month was fixed and for the year 2012-13, it was enhanced to Rs.13,680/- per month by the Chandigarh Administration. In such circumstances, once the appellant had been appointed with the said stipulation the learned Single Judge failed to notice the legal right and decide the said part of the claim.

8. Accordingly, LPA-1802-2019 is allowed, to the extent that the order of the learned Single Judge is modified and the writ petitioners would be entitled for DC rates as claimed from the date of their appointment which would be payable to the employees serving in Chandigarh. Similarly, LPA-1723-2019 is also allowed that the employees will not be entitled for any benefits after their termination till 12.09.2014 till 30.09.2014, as ordered by the learned Single Judge since regular incumbents had joined. The amount be accordingly quantified and paid within a period of 2 months from the receipt of the certified copy of this order along with interest @ 8% per annum from the date it fell due.

The present appeals stand disposed of, accordingly.

(G.S. SANDHAWALIA)
JUDGE

14.02.2023 **(HARPREET KAUR JEEWAN)**
Sailesh **JUDGE**

Whether speaking/reasoned : Yes
Whether Reportable : No