

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA-387-2017

Reserved on : 20.12.2022

Date of Decision: 25.01.2023

Dr. Ujita Ballyan

.....Appellant

Vs.

Union of India and others

.....Respondents

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

Present: Mr. P.K. Dwivedi, Advocate, for the appellant.

Mr. Lalit Attri, Advocate, for
Mr. Sunil Kumar Sharma, Advocate, for UOI.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

Mr. Hitesh Pandit, Advocate, for respondents No. 3 and 4.

HARPREET KAUR JEEWAN, J.

The appellant has filed the present appeal against the impugned judgment dated 20.12.2016 passed by the learned Single Judge dismissing the writ petition filed by the appellants whereby the impugned order dated 04.06.2015 passed by respondent No. 4 and impugned order dated 29.10.2015 passed by respondent No. 2 were assailed.

2. The brief facts are that:-

(a) in pursuance to the advertisement dated 03.07.2011, the appellant was selected and issued appointment letter dated 29.09.2011 (Annexure P-2) for the post of Consultant (Civil Society Mainstreaming) [hereinafter referred to as the “Consultant (CSM)”] on contractual basis on a consolidated salary of ₹32,000/- per month with Haryana State AIDS

Control Society. The Selection Committee which approved the selection and appointment of the appellant was headed by the Principal Secretary, Health, Government of Haryana-cum Chairman Haryana State AIDS Control Society (respondent No. 2). The contract of service of the appellant was renewed from time to time, with certain monetary benefits as per the following orders passed by the respondent:-

Sr. No.	Order dated and Annexures	Contract renewed w.e.f.
1	30.03.2012 (Annexure P-3)	01.04.2012 to 31.03.2013
2	29.03.2013 (Annexure P-4)	01.04.2013 to 30.09.2013
3	24.09.2013 (Annexure P-5)	01.10.2013 to 31.12.2013
4	17.12.2013 (Annexure P-6)	01.01.2014 to 31.03.2014
5	21.03.2014 (Annexure P-8)	01.04.2014 to 31.03.2015
6	03.04.2015 (Annexure P-11)	01.04.2015 to 31.03.2016

The project under which the appellant was appointed was initiated under the name of NACP-I with a goal and objective to reduce the new infections by 50% and for comprehensive care, support and treatment to all persons living with HIV/AIDS. The said project was followed by NACP-II and then followed by NACP-III and ultimately NACP-IV was launched by the Ministry of Health and Family Welfare as per the target issued along with the component wise expenditure revised for the year 2013-14, 2014-15, 2015-16 and 2016-17. There was a recommendation to restructure the existing posts and also the remuneration for all posts w.e.f. 03.10.2013.

(b) As per the office order dated 09.01.2014 issued by the Government of India, Ministry of Health and Family Welfare, Department of AIDS control, the revised remuneration for contractual staff at Department of AIDS control (DAC)/State AIDS Control Societies

(SACS)/District/Facility levels was issued. Since there was no clarification about the re-designation of the post of Consultant (CSM), therefore, in pursuance to representation moved by the appellant and others, an order dated 17.12.2014 (Annexure P-10) was issued by the Government of India, Ministry of Health & Family Welfare, whereby it was clarified that the existing contractual personnel holding the posting of Consultant (Mainstreaming) and Consultant (CST) in SACS (State AIDS Control Society) falling in Categories I, II & III will be re-designated as Deputy Director (Social Protection & Mainstreaming). As such post of Consultant (CSM) held by the appellant was to be re-designated as Deputy Director (CSM).

(c) However, despite the order dated 03.04.2015 (Annexure P-11) whereby the appellant was granted consolidated salary of ₹35,750/- in terms of the agreement dated 13.04.2015. However, an agreement dated 15.05.2015 was executed for salary of ₹37,500/-, in terms of order dated 06.05.2015, inspite of that the salary of the appellant was reduced to ₹23,000/- by respondent No. 4 w.e.f. the date of joining by passing the impugned order dated 04.06.2015 (Annexure P-12). The said order was passed without giving any opportunity of hearing. Whereas the appellant was drawing a salary of ₹35,750/- on 12.10.2013 in terms of her contractual appointment which was reduced to ₹26,500/- per month and she was re-designated as “Assistant Director (CSM)”

(d) The appellant filed a Civil Writ Petition bearing No. 15556-2015, which was disposed of vide order dated 31.07.2015 directing respondent No. 2 to look into the matter/representation dated 15.06.2015 and pass a speaking order. However, respondent No. 2 rejected the claim of

the appellant by passing the impugned order dated 29.10.2015 (Annexure P-14).

(e) Both the impugned orders dated 04.06.2015 (Annexure P-12) and 29.10.2015 (Annexure P-14) were assailed by way of filing the writ petition which was dismissed by the learned Single Bench vide impugned order dated 20.12.2016.

3. The learned Single Bench observed that the appellant was wrongly granted the pay of ₹32,000/- per month when she was appointed in the year 2011. The said error was noticed by the respondents in the year 2015 and they proceeded to rectify the mistake. It was further observed that since the post of Consultant (CSM) was equated to the post of Assistant Director (CSM), the petitioner was given the pay of Assistant Director (CSM), i.e. ₹23,000/-. The learned Single Bench further observed that the petitioner could not point out any statutory provision/rule showing that pay attached to the post of Consultant (CSM) is ₹32,000/-. Apart from it, she was appointed only on contract basis for a specific period which does not vest any right in her favour to issue consolidated pay of ₹32,000/- plus.

4. We have heard the learned counsel for the parties and perused the paper-book.

5. The learned counsel for the appellant has submitted that as per the advertisement dated 03.07.2011 (Annexure P-1) it was specified that the consolidated pay range for the post of Consultant (CSM) is between ₹23,000/- to ₹35,000/-. The petitioner being qualified and holding necessary experience was shortlisted and called for the interview. She was issued the appointment letter dated 29.09.2011 (Annexure P-2) and a consolidated salary of ₹32,000/- per month was specifically fixed and

mentioned in the appointment letter. The terms and conditions on which she was appointed cannot be changed retrospectively especially when she has been granted various extensions of her contract. Even as per the order dated 09.01.2014 (Annexure P-7) issued by Government of India, the remunerations for contractual posts were prescribed and this fact has not been taken into consideration by the learned Single Judge. It was vehemently contended that the post of Consultant (CSM) is not equivalent to Assistant Director (CSM) as observed by the learned Single Bench but it is equivalent to Deputy Director, Level II, as mentioned in the office order dated 09.01.2014 (Annexure P-7) and letter dated 17.12.2014 (Annexure P-10). The impugned orders dated 04.06.2015 (Annexure P-12) and 29.10.2015 (Annexure P-14) are patently unsustainable in the background as those facts missed consideration by the learned Single Bench.

6. On the other hand, learned counsel for the respondents have submitted that initially remuneration of the appellant was wrongly fixed as ₹32,000/-. When the mistake was noticed, the remuneration of the appellant was re-fixed and before that clarification was sought regarding the same from the National Aid Control Organization, New Delhi, through e-mail dated 30.04.2015. The irregularity was committed inadvertently. Therefore, the salary of the appellant was re-fixed. It was further submitted that Government of India vide order dated 13.02.2014 revised the nomenclature of the post of Consultant GIPA equivalent to the post of Assistant Director (AD's), so the nomenclature for the post of Consultant (CSM) was given revised nomenclature as AD (CSM). Therefore, the post held by the appellant cannot be re-designated as Deputy Director (Social Protection & Mainstream). Hence, there is no illegality in the order dated

04.06.2015 and the speaking order dated 29.10.2015. As such, the learned Single Bench has rightly dismissed the writ petition.

7. We have considered the aforesaid submissions. The salary of the appellant was reduced w.e.f. 12.10.2011 and she was also redesignated as Assistant Director (Civil Society Mainstreaming), w.e.f. 03.10.2013 by passing the impugned order dated 29.10.2015 (Annexure P-14). The representation filed by the appellant was considered and declined. We have examined both the orders with regard to the justifications and reasons given by the respondents for “reduction in salary with retrospective effect” as well as for “redesignation of the appellant.”

REDUCTION IN SALARY WITH RETROSPECTIVE EFFECT:

8. It is an admitted fact that the appellant was appointed in pursuance to the advertisement, dated 03.07.2011 Annexure P-1, perusal of which would show that the post of Consultant (CSM) was advertised along with the other posts. Apart from the qualification and experience, the pay range was mentioned as ₹23,000 to ₹35,000. The appellant was issued appointment order whereby she was offered remuneration of a sum of ₹32,000/- per month. She accepted the said terms and conditions and joined the duty way back in the year 2011. As such, the act of the respondents by subsequently reducing her salary from ₹32,000 to ₹23,000 with retrospective effect w.e.f. her date of joining that too by way of unilaterally issuing another order is unjustified. It is also noticed that the said order was issued when the appellant had already worked for more than three and half years and she was asked to refund the difference in the salary. No notice was issued to the appellant before passing the said order. The appellant was not heard and her explanation has not been sought before reducing her

salary amounting to violation of Principles of natural justice.

9. The respondent No. 3 has given the justification that there was an audit objection that the salary of the petitioner was wrongly fixed as ₹32000/- instead of ₹23000. The said mistake was rectified by passing the said impugned order. The said justification is also not found plausible. The advertisement, dated 03.07.2011 (Annexure P-1) clearly indicates that the post was advertised by specifically mentioning the Pay range between ₹23,000 to ₹35,000. The pay was fixed in the middle of that range and apart from this, the appellant was given many extensions during the term of her appointment and she was also given certain monetary benefits while granting the said extensions. These extensions were given after application of mind and after considering the performance of the appellant. After getting services from the appellant under the terms of appointment order, later on the respondents have no authority to withdraw the part of the monthly remuneration only. It is not a case of clerical error. It is a matter where the respondents have taken the services from a contractual employee under the admitted terms of her employment that too when the state has ratified the said terms by way of granting subsequent extensions. It is also noticed that the appellant has specifically pleaded that the Selection Committee was headed by a Senior representative of the State Government, i.e. Principal Secretary, Department of Health, who is also Chairman of respondent No. 3. The learned Single Bench has failed to appreciate all these facts. Hence, the reasons recorded by the learned single bench are not in consonance with facts of the case. As such the finding of the learned single bench on this point are not liable to sustain.

REDESIGNATION OF THE APPELLANT:

10. In this regard the following question requires determination:

Whether redesignation of the appellant from Consultant (CST) to Assistant Director(CSM) w.e.f 03.10.2013 and consequently reducing her salary is justified?

It is not disputed that the appellant was appointed on contractual basis and at the time of her appointment the advertisement prescribed a "Remuneration Range". Vide order dated 09/01/2014 (Annexure P-7), the Government of India, Ministry of Health and Family Welfare Department of AIDS Control, revised the remuneration for contractual staff working at various levels, including the State AIDS Control Society. The said order further indicates that the "Remuneration Range" for all the contractual Posts were dispensed with and instead of that "Consolidated Remuneration" was prescribed. The revised remunerations were implemented with effect from 3.10.2013. As per the said order the existing staff, who were below the revised remuneration, their remunerations were required to be fixed at the Revised Consolidated Remuneration. However, the existing staff who were drawing more than the Revised Consolidated Remuneration, their salary was protected. The relevant portion of the said order (Annexure P-7) is reproduced as under:

"Recommendations made by the above committee have been examined and the following decisions have been taken to revise the remuneration for various levels of contractual staff at DAC/SACS/District/Facility levels under NACP-IV:-

XXXX

XXXX

XXXX

XXXX

viii. Existing staff who are below the revised remuneration on the date of issue of these orders, their remuneration will be fixed at the revised

consolidated remuneration.

viii. Existing staff who are drawing more than the revised consolidated remuneration, will continue to draw the same remuneration. Once such position becomes vacant, the new staff will join at the initial of the revised remuneration.”

11. At the time when the said order dated 09.01.2014 (Annexure P-7) was passed, the appellant was getting monthly remunerations of ₹34,500/-. This fact is clear from the office order dated 24.09.2013 (Annexure P-5), as per which the total salary of the appellant, w.e.f. 01.04.2013 has been mentioned as ₹34,500/- and she was granted the extension of three months w.e.f. 01.01.2014 to 31.03.2014, vide order dated 17.12.2013 (Annexure P-6) and no change in the monthly remunerations were made while granting the said extension. This means on 09.01.2014, the monthly remunerations of the appellant was ₹34,500/- as per Annexures P-5 and P-6. Since the Government of India vide order dated 09.01.2014 (Annexure P-7) has specifically provided that the existing staff who were drawing more than the revised consolidated remunerations will continue to draw the same remunerations, as such the remunerations of the appellant were protected and could not have been reduced to what she was getting on the day of passing the said order dated 09.01.2014 by the Government of India. The impugned order dated 04.06.2015 (Annexure P-12) was passed after the issuance of the said order dated 09.01.2014, despite that the remunerations of the appellant were reduced with retrospective effect from what she was getting at that time when the order dated 09.01.2014 was passed. The impugned order dated 04.06.2015 (Annexure P-12) is also bad in eyes of law in view of the protection of

remunerations granted to all the existing contractual employees who are working at the time of passing of the order dated 09.01.2014 by the Government of India.

12. The appellant was holding the post of Consultant (CSM) i.e. Consultant (Civil Society Mainstream) at the time when the said order was issued. Perusal of the said order clearly indicates that though the post of Consultant (Youth affairs) is mentioned which was redesignated as Assistant Director but no redesignation for the post which was held by the appellant was specifically mentioned in that order.

13. While relying upon the subsequent order issued by the Government of India dated 04.08.2014 (Annexure R-3/4), the learned counsel for the respondents has contended the National Aids Control Organization, New Delhi, permitted all State Aids Prevention and Control Societies (hereinafter referred to as the 'SACS') to manage their affairs independently with reference to trends of expenditure on head institutional Strengthening and Project Management. Apart from this, the SACS have been permitted to adopt State Government Rules and staff structure, nomenclature and pay scales. Considering these facts, the respondents have passed the speaking order dated 29.10.2015 (Annexure P-14).

14. We have considered the said submissions and also perused the order dated 04.08.2014 (Annexure R-3/4). No doubt the SACS have been permitted to adopt the State Government Rules and staff structure, nomenclature and pay scales but the respondents have failed to place on record any document showing that the Haryana State Aids Control Society has ever adopted the State Government Rules and staff structure, nomenclature and pay scale. The respondents have filed written statement

to the writ petition. No such averments have been made in the said written reply that any order adopting the State Rules and staff structure was passed either by respondent No. 2 (State of Haryana) or by respondent No. 3 (Haryana State Aids Control Society). Hence, those arguments do not help the respondents and does not justify that the redesignation of the appellant from Consultant (CST) to Assistant Director (CSM) was justifiable.

15. Though in the initial order dated 09.01.2014 (Annexure P-7), passed by Government of India, while fixing the revised remunerations for contractual staff and while revising the nomenclature of the existing post, the post held by the appellant, i.e. Consultant (Civil Society Mainstreaming) was not specifically mentioned but in the subsequent letter dated 17.12.2014 (Annexure P-10), the Government of India had approved that the existing contractual personnel holding the position of Consultant (Mainstreaming) and Consultant (CST) in SACS falling in the Categories I, II and II will be redesignated as Deputy Director (Social Protection & Mainstreaming) and Deputy Director (CST). The appellant fulfills the eligibility criteria regarding the post of Deputy Director (Social Protection and Mainstreaming), which is reproduced as under:-

Position	Eligibility Criteria
Deputy Director (Social Protection & Mainstreaming)	Post graduate degree in Social Science (Sociology/Anthropology/Psychology / Social Work/ Public Admin.) from a recognised university with 5 years experience in Social development sector including 2 years working experience HIV/AIDS Sector at State.

16. By issuing the said letter, dated 17.12.2014, the SACS (respondent No. 3) was asked to take necessary action accordingly. The

revised remunerations and revised nomenclatures clearly mentioned in the previous order dated 09.01.2014 regarding the post of Deputy Director and Assistant Director reads as under:-

Revised Remuneration at SACS level;

Level	Existing nomenclature	Revised nomenclature	Revised Consolidated Remuneration (per month)
Level 1	Joint Director	Joint Director	48,500/-
Level 2	Dy. Director	Dy. Director	36,200/-
Level 3	Assistant Director, M & E Officers, GIPA Coordinator, Admn. Officer, Consultant (youth affairs)	Assistant Director	25,000/-
Level 4	State Logistic Coordinator	State Logistic Coordinator	20,000/-
Level 5	Office Assistants/Divisional Assistants like Computer literates Steno etc.	Divisional Assistant	17000/-

17. In view of the fact that the appellant was drawing remunerations more than ₹25,000/- which has been fixed as revised consolidated remunerations for the post of Assistant Director and the fact that as per the order dated 09.01.2014 (Annexure P-7) the monthly remunerations of the existing staff could not have been reduced to their detriment, the redesignation of the post held by the appellant, i.e. Consultant (CSM) to Assistant Director is contrary to the spirit of the said order dated 09.01.2014 (Annexure P-7) as well as to the subsequent letter dated 17.12.2014 (Annexure P-10).

18. The appellant could not have been redesignated to a post for which the revised consolidated remunerations were less than which she was

already getting. She was getting ₹34,500/- at that time and in pursuance to the said subsequent letter dated 17.12.2014 (Annexure P-10), she is entitled for redesignation as Deputy Director for which the revised consolidated remunerations have been fixed at ₹36,200/- in the order dated 09.01.2014 (Annexure P-7). The act of the respondent while dismissing the representation of the appellant by not reading the order dated 09.01.2014 and the subsequent letter dated 17.12.2014 (Annexure P-10) in its true spirit have led to the passing of the impugned order dated 29.10.2015 which cannot be justified from any point of view.

19. Consequent to the above discussion, we have concluded that that the impugned order dated 04.06.2015 (Annexure P-12) and dated 29.10.2015 (Annexure P-14) are patently illegal, in view of the fact that the recovery has been ordered by way of reducing the monthly remunerations of a contractual employee with retrospective effect after a period of three and half years when she has already worked under the orders of contractual employment on fixed remunerations. Secondly, the redesignation of the appellant from consultant (CSM) to Assistant Director is contrary to the spirit of the order dated 09.01.2014 and the subsequent letter dated 17.12.2014 issued by Government of India (Annexures P-7 and P-12) respectively, especially, when the existing remunerations of the contractual employee who were already working in the SACS were protected by the said order dated 09.01.2014.

20. All these facts have not been properly appreciated by the learned Single Bench. Hence, the order passed by the learned Single Bench dated 20.12.2016 is liable to be set aside.

21. Consequently, the present appeal is accepted. The order passed

by the learned Single Judge dated 20.12.2016 is set aside. Consequently, the writ petition filed by the petitioner is allowed. As such, the impugned order dated 04.06.2015 and dated 29.10.2015 (Annexures P-12 and P-14) respectively, set aside. The appellant is held entitled for redesignation as Deputy Director as mentioned at Level II with the revised remunerations ₹36,200/- per month in pursuance to the order dated 09.01.2014 (Annexure P-7) and the letter dated 17.12.2014 (Annexure P-10) w.e.f. the date of the order dated 09.01.2014 till her contractual employment would be continued by respondent No. 3 subject to further enhancement if any permitted by respondent No. 3. The arrears be paid within 03 months and recovery of any effected be refunded within the said period, with 7% interest, on both amounts.

Pending miscellaneous application, if any, also stands disposed of.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

January 25th, 2023
nitin

Whether Speaking	Yes
Whether Reportable	Yes