

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

CWP-36576-2019

Date of decision : 22.05.2023

Seeshan Kumar and another

....Petitioners

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Pawan K. Mutneja, Senior Advocate with
Mr. Himanshu Mehta, Advocate
for the petitioners.

Mr. Inderpreet S. Kang, Asstt. Advocate General, Punjab.

Mr. M.S. Virk, Advocate for
Dr. Puneet K. Sekhon, Advocate for
respondents No.2 to 4.

PANKAJ JAIN, J. (ORAL)

By way of present writ petition the petitioners pray for issuance of a writ in the nature of certiorari quashing the decision taken by the respondents in reducing their salary from Rs.20,743/- to Rs.7500/- with the further relief in the nature of mandate directing the respondents to pay minimum of pay-scale of regular employees amounting to Rs.20,743/- as per the mandate of Apex Court in the case of **State of Punjab and others vs. Jagjit Singh and others, (2017) 1 SCC 148.**

2. So far as the claim of the petitioners for the minimum pay-scale is concerned the same is not denied by the respondent-Authority. What is being denied is that admissible Dearness Allowance. The reasons recorded

for doing so as spelled out in the short reply filed by way of affidavit of Ajay Kumar Garg, Divisional Engineer (Horticulture), PDA, PUDA Complex, Urban Estate, Phase-II, Patiala, read as under :-

“4. That at the outset, it is humbly submitted that earlier the petitioners had filed CWP No. 23467 of 2012 (Sheeshan Kumar and others versus PUDA and others), and vide order dated 13.11.2013, this Hon'ble Court had passed the following directions:

"Admitted.

Status quo with regard to service of the petitioners shall be maintained.

In the meantime, petitioners shall be paid minimum of the pay scale as is admissible to the regular employees in consonance of the judgment passed by this Court in *Avtar Singh vs. State of Punjab and others, 2012(1) Services Law Reporter, 832.*"

5. That in view of order dated 13.11.2013 passed in CWP no. 23467 of 2012 by this Hon'ble court, the salary of the petitioners had already been fixed. It would be clear from the above order that this Hon'ble Court has granted the petitioners minimum of the pay scale as is admissible to the regular employee in consonance of the judgment passed by this Hon'ble Court in *Avtar Singh vs State of Punjab and Others cited as 2012(1) SLR 832*. The relevant paragraph from the judgment of *Avtar Singh's case* is reproduced as under:

"37. However, it is also noticed that certain daily wagers are permitted to continue for long number of years. Keeping in view the ratio of the aforesaid judgments we that daily wagers, ad hoc or contractual appointees are not entitled to minimum of the regular pay scale from the date they were engaged merely for the reason that the physical activity

carried out by the daily wager and the regular employee is similar, but such general principle shall be subject to the following exceptions:

(1) A daily wager, ad hoc or contractual appointee against the regular sanctioned posts, if appointed after undergoing a selection process based upon fairness and equality of opportunity to all other eligible candidates, shall be entitled to minimum of the regular pay scale from the date of engagement.

*(2) But if daily wagers, ad hoc or contractual appointees are not appointed against regular sanctioned posts and their services are availed continuously, with notional breaks, by the State Government or its instrumentalities for a sufficient long period i.e. for 10 years, such daily wagers, ad hoc or contractual appointees **shall be entitled to minimum of the regular pay scale without any allowances** on the assumption that work of perennial nature is available and having worked for such long period of time, an equitable right is created in such category of persons. Their claim for regularization, if any, may have to be considered separately in terms of legally permissible scheme.*

6. That the above Judgment in Avtar Singh's case was challenged before Hon'ble Supreme Court which was heard in a bunch matter with **Civil Appeal No. . 213 of 2013 titled State of Punjab & Ors.vs S Jagjit Singh & Ors.** The said bunch of cases was decided by Hon'ble Supreme Court vide Judgment dated 26.10.2016, whereby the Judgment in Avtar Singh's case was set aside and held that all the temporary employees in the bunch of cases would be entitled to draw wages at the minimum of the pay-scale at the lowest grade, in the regular pay scales, extended to regular employees holding the same post. The relevant concluding

para from the judgment is reproduced as under: -

*"52. 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 & Ors. (CWP no. 14796 of 2003), 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 & Ors. v. Rajinder Singh & Ors. (2009(4) S.C.T. 88: LPA no. 337 of 2003, decided on 7.1.2009) is also liable to be set aside, and the same is also hereby set aside. We affirm the decision rendered in State of Punjab & Ors. v. Rajinder Kumar (LPA no. 1024 of 2009, decided on 30.8.2010), with the modification, that the concerned employees would OTAR 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.**"*

7. That after the above decision of the Hon'ble High Court as well as Hon'ble Supreme Court, the petitioner had filed COCP No. 2450 of 2017 and during the pendency of the said Contempt Petition, the Chief Administrator, PUDA, had passed order dated 12.03.2019, whereby the petitioners were granted minimum of the pay scales as is admissible to regular employees, w.e.f.13.11.2013, when the order was passed by this Hon'ble Court. Thereafter, the pay of the petitioners has been fixed vide Office Order dated 14.03.2019 as 5300+1650 grade pay+240 secretariat pay +360 IR. A copy of office order dated 14.03.2019 is being annexed herewith as **Annexure R-2/1**.

8. That from the above it would be clear that the petitioners have already been granted minimum of pay scale as is admissible to the regular employees, however, as per judgment passed by Hon'ble Supreme Court of India in bunch matter of **Civil Appeal No. 213 of 2013 titled State of Punjab & Ors vs S Jagjit Singh & Ors**. No allowances were to be granted to the petitioners either by the

answering respondents or by the Hon'ble Courts. Even the Hon'ble Courts have specifically observed that such employees would not be entitled to allowances attached to the posts held by them.

9. That while drawing the pay table of the petitioners, the allowances were included by misinterpretation of the orders passed by the Competent Authority and the Hon'ble Court. However, later on when the case of the similarly situated employees titled Gurdeep Singh and others vs Ravi Bhagat & Ors. vide COCP No. 2287 of 2017 decided on 05.07.2019 by this Hon'ble Court, it has been pointed out that the minimum pay scale is payable to the petitioners without allowance. Therefore, allowances have not been granted by the answering respondents to the petitioners after August, 2019 as they were not entitled for the same as per the orders passed by this Hon'ble Court. A copy of order dated 05.07.2019 is being annexed herewith as **Annexure R-2/2.**”

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."

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.

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 hastenly 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 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. 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 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. This order shall be applicable from the date this Dearness Allowance was withdrawn by the respondents.

9. Arrears shall be paid within a period of eight weeks from the date of receipt of certified copy of this order.

May 22, 2023
Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No