

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

215-2

CWP-2089-2021

Date of Decision : 04.03.2024

CHHAYA TOMAR

..... PETITIONER

Versus

NATIONAL INSTITUTE OF TECHNOLOGY NIT KURUKSHETRA

..... RESPONDENT

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Tejpal Dhull, Advocate
for the petitioner.

Mr. A.S.Virk, Advocate
for the respondents.

JAGMOHAN BANSAL, J. (Oral)

1. Mr. Tejpal Dhull, Advocate submits that grievance of the petitioner would be redressed if respondents are directed to pay minimum pay scale plus dearness allowance and grade pay in terms of judgment of Supreme Court in **State of Punjab vs. Jagjit Singh, (2017) 1 SCC 148** and **Bahadur Singh and others vs. Jaspreet Kaur Talwar and others, 2022 SCC OnLine SC 107**. He further submits that the petitioner was possessing requisite qualification, thus, she was fully eligible for minimum of pay scale available to regular employees.

2. Mr. A.S.Virk, Advocate does not dispute the fact that the petitioner was possessing requisite qualification, however, he submits that similar issue is pending before a Division Bench of this Court in LPA No.433 of 2024.

3. The petitioner is claiming minimum pay on the principle of equal pay for equal work. Supreme Court in **Jagjit Singh's case (supra)** has held that temporary employees are entitled to minimum of pay scale available to regular employees. The relevant extracts of the said judgment read as :

56. We shall now deal with the claim of temporary employees before this Court.

57. There is no room for any doubt that the principle of "equal pay for equal work" has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India under Article 141 of the Constitution of India. The parameters of the principle have been summarised by us in para 42 hereinabove. The principle of "equal pay for equal work" has also been extended to temporary employees (differently described as work-charge, daily wage, casual, ad hoc, contractual, and the like). The legal position, relating to temporary employees has been summarised by us, in para 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us yet again.

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60. Having traversed the legal parameters with reference to the application of the principle of "equal pay for equal work", in relation to temporary employees (daily-wage employees, ad hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the employees concerned (before this Court), were rendering similar duties and responsibilities as were being discharged by regular employees holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of "equal pay for equal work" summarised by us in para 42 above. However, insofar as the

instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals were appointed against posts which were also available in the regular cadre/establishment. It was also accepted that during the course of their employment, the temporary employees concerned were being randomly deputed to discharge duties and responsibilities which at some point in time were assigned to regular employees. Likewise, regular employees holding substantive posts were also posted to discharge the same work which was assigned to temporary employees from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State that any of the temporary employees would not be entitled to pay parity on any of the principles summarised by us in para 42 hereinabove. There can be no doubt, that the principle of “equal pay for equal work” would be applicable to all the temporary employees concerned, so as to vest in them the right to claim wages on a par with the minimum of the pay scale of regularly engaged government employees holding the same post.

61. *In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding that all the temporary employees concerned, in the present bunch of cases would be entitled to draw wages at the minimum of the pay scale (at the lowest grade, in the regular pay scale), extended to regular employees holding the same post.*

4. The said question has been subsequently clarified by Supreme Court in **Bahadur Singh's case (supra)**. The Court has held that minimum of pay would include dearness allowance as well as grade pay. The relevant extract of the judgment read as :

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 v. Sarvesh Kaushal, arising out of decision dated 11.05.2015 in Grah Rakshak, Home Guards Wel. Asso. v. State of H.P. 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. In view of afore-cited judgment of Supreme Court, there seems no reason to keep the matter pending. Accordingly, the present petition is disposed of with a direction to the respondent to pay the petitioner minimum of pay scale plus dearness allowance and grade pay. The needful shall be done within 06 months from today.

04.03.2024
anju

(JAGMOHAN BANSAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No