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

Date of decision : 10.07.2024

....Petitioners

Versus

...Respondents

Mr. Naveen S. Panwar, DAG, Haryana.

In the present writ petition filed under Article 226 of the Constitution of India, prayer is for issuance of writ in the nature of certiorari. Challenge is to the order dated 20th of May, 2020 (Annexure P-6).

2. The petitioners have been re-employed after retirement on contractual basis by the respondent/Corporation. They were employed on monthly remuneration of Rs.16,000/-. After Supreme Court in the case of **State of Punjab vs. Jagjit Singh and others, (2017) 1 SCC 148** issued certain guidelines underlying the principle of 'equal pay for equal work'. In compliance of the said judgment, policy decision was taken by the State which has been placed on record as Annexure P-1. Operative part thereof reads as under :

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“i) The principle of 'equal pay for equal work' shall be applicable to the contractual employees subject to application of parameters of the principle of 'equal pay for equal work' as summarized in para 12 of the judgment. In respect of contractual pay, these employees shall be entitled to the minimum of the pay-scale of the categories to which they belong but would not be entitled to any of the allowances attached to the post.”

3. The right of the petitioners for equal pay was declined vide Annexure P-6 on the ground that the policy decision will be applicable only on those people who were come in employment post 1st of November, 2017.

4. In the considered opinion of this Court, the stand taken by the State is against its own policy.

5. Before advertng to the merits of the case, it will be apposite to reproduce the ratio of law laid down by the Supreme Court in the case of *State of Punjab and others vs. Jagjit Singh and others* (supra). The same reads as under :

“49. It would also be relevant to mention, that to substantiate its inference drawn from the judgment rendered by this Court in the Secretary, State of Karnataka case, the full bench of the High Court, placed reliance on *State of Punjab v. Surjit Singh, 2009(3) S.C.T. 816 : (2009) 9 SCC 514*, and while doing so, reference was made to the following observations recorded in paragraphs 27 to 30 (of the said judgment). Learned counsel for the State of Punjab has reiterated the above position. Paragraphs 27 to 30 aforementioned are being extracted hereunder:-

"27. While laying down the law that regularisation under the constitutional scheme is wholly impermissible, the

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Court in *State of Karnataka v. Umadevi (3), 2006(2) S.C.T. 462 : (2006) 4 SCC 1*, had issued certain directions relating to the employees in the services of the Commercial Taxes Department, as noticed hereinbefore. The employees of the Commercial Taxes Department were in service for more than ten years. They were appointed in 1985-1986. They were sought to be regularised in terms of a scheme. Recommendations were made by the Director, Commercial Taxes for their absorption. It was only when such recommendations were not acceded to, the Administrative Tribunal was approached. It rejected their claim. The High Court, however, allowed their prayer which was in question before this Court.

28. This Court stated: (*Secretary, State of Karnataka v. Umadevi, 2006(2) S.C.T. 462 : (2006) 4 SCC 1, pp. 19-20, para 8*)

"8. ... It is seen that the High Court without really coming to grips with the question falling for decision in the light of the findings of the Administrative Tribunal and the decisions of this Court, proceeded to order that they are entitled to wages equal to the salary and allowances that are being paid to the regular employees of their cadre in Government service with effect from the dates from which they were respectively appointed. It may be noted that this gave retrospective effect to the judgment of the High Court by more than 12 years. The High Court also issued a command to the State to consider their cases for regularisation within a period of four months from the date of receipt of that order. The High Court seems to have proceeded on the basis that, whether they were appointed before 1-7-1984, a situation covered by the decision of this Court in *Dharwad District PWD Literate Daily Wage Employees Assn. v. State of Karnataka, (1990) 2 SCC 396*, and the scheme framed pursuant to the direction thereunder, or

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subsequently, since they have worked for a period of 10 years, they were entitled to equal pay for equal work from the very inception of their engagement on daily wages and were also entitled to be considered for regularisation in their posts."

29. It is in the aforementioned factual backdrop, this Court in exercise of its jurisdiction under Article 142 of the Constitution of India, directed: (*Secretary, State of Karnataka v. Umadevi, 2006(2) S.C.T. 462 : (2006) 4 SCC 1, p. 43, para 55*)

"55. ... Hence, that part of the direction of the Division Bench is modified and it is directed that these daily-wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in Government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily-wage earners, there would be no question of other allowances being paid to them. In view of our conclusion, that the courts are not expected to issue directions for making such persons permanent in service, we set aside that part of the direction of the High Court directing the Government to consider their cases for regularisation. We also notice that the High Court has not adverted to the aspect as to whether it was regularisation or it was giving permanency that was being directed by the High Court. In such a situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent. If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of selection. But when regular recruitment is undertaken, the respondents in CAs Nos. 3595-612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, waiving the age restriction imposed for

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the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time. That would be the extent of the exercise of power by this Court under Article 142 of the Constitution to do justice to them."

30. We, therefore, do not see that any law has been laid down in para 55 of the judgment in Umadevi case. Directions were issued in view of the limited controversy. As indicated, the State's grievances were limited."

Yet again, we are of the view, that the full bench erred in referring to the above observations, to draw its conclusions. Our reasons are summarised herein below:-

(i) It is apparent, that this Court in *State of Punjab v. Surjit Singh, 2009(3) S.C.T. 816 : (2009) 9 SCC 514*, did hold, that the determination rendered in paragraph 55 of the judgment in the Secretary, State of Karnataka case, was in exercise of the power vested in this Court, under Article 142 of the Constitution of India. But the above observation does not lead, to the conclusion or the inference, that the principle of 'equal pay for equal work' is not applicable to temporary employees. In fact, there is a positive take-away for the temporary employees. The Constitution Bench would, in the above situation, be deemed to have concluded, that to do complete justice to the cause of temporary employees, they should be paid the minimum wage of a regular employee, discharging the same duties. It needs to be noticed, that on the subject of pay parity, the findings recorded by this Court in the Secretary, State of Karnataka case, were limited to the conclusions recorded in paragraph 55 thereof (which we have dealt with above, while dealing with the case law, on the principle of 'equal pay for equal work').

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(ii) Even in the case under reference - *State of Punjab v. Surjit Singh, 2009(3) S.C.T. 816 : (2009) 9 SCC 514*, this Court accepted the principle of 'equal pay for equal work', as applicable to temporary employees, by requiring the State to examine the claim of the respondents for pay parity, by appointing an expert committee. The expert committee was required to determine, whether the respondents satisfied the conditions stipulated in different judgments of this Court including *State of Punjab v. Charanjit Singh, 2006(3) S.C.T. 170 : (2006) 9 SCC 321*, wherein this Court had acceded to the proposition, that daily-wagers who were rendering the same duties and responsibilities as regular employees, would be entitled to the minimum wage payable to regular employees. And had therefore, remanded the matter back to the High Court for a fresh adjudication. Paragraph 38 of the judgment in *State of Punjab v. Surjit Singh, 2009(3) S.C.T. 816 : (2009) 9 SCC 514*, wherein the remand was directed, is being extracted below:-

"38. We, therefore, are of the opinion that the interest of justice would be subserved if the State is directed to examine the cases of the respondents herein by appointing an expert committee as to whether the principles of law laid down herein viz. as to whether the respondents satisfy the factors for invocation of the decision in *State of Haryana v. Charajnit Singh, 2006(3) S.C.T. 170 : (2006) 9 SCC 321* in its entirety including the question of appointment in terms of the recruitment rules have been followed."

(iii) For all the above reasons, we are of the view, that the claim of the temporary employees, for minimum wages, at par with regularly engaged Government employees, cannot be declined, on the basis of the judgment in *State of Punjab v. Surjit Singh, 2009(3) S.C.T. 816 : (2009) 9 SCC 514*. "

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6. Based upon the aforesaid dictum of law, State admittedly formulated policy decision dated 3rd of November, 2017 (Annexure P-1) which reads as under :

“HARYANA GOVERNMENT
GENERAL ADMINISTRATION DEPARTMENT
(IN GENERAL SERVICES-II BRANCH)
No.16/36/2016-3GS-II

- To
1. All the Administrative Secretaries to Government Haryana.
 2. All Heads of the Departments of Haryana.
 3. Divisional Commissioners, Ambala/Hisar/Rohtak/
Gurugram/Faridabad/Karnal Divisions.
 4. The Registrar, Punjab & Haryana High Court, Chandigarh.
 5. All the Managing Directors/Chief Administrators of
Boards/Corporations/Public Undertakings Haryana.
 6. All the Deputy Commissioners and Sub Divisional Officers
(Civil) in Haryana.

Dated, Chandigarh the 03.11.2017

Subject: Application of "equal pay for equal work" in respect of
specified categories of employees.

Sir/Madam,

Hon'ble Supreme Court of India in Civil Appeal No.213 of 2013 titled 'State of Punjab Versus Jagjit Singh' issued judgment dated 26.10.2016 which clarified that the principle of equal pay for equal work constitutes a clear and unambiguous right and is vested in every employee whether engaged on regular or temporary basis if he qualifies the application of the parameters of the principle of equal pay for equal work as summarized by Hon'ble Supreme Court of India in paragraph 12 of the said judgment.

State Government has considered the matter and decided as under :-

- i) The principle of 'equal pay for equal work' shall be applicable to the contractual employees subject to application of parameters of the principle of 'equal pay for equal work' as summarized in para 12 of the judgment. In respect of contractual pay, these employees shall be entitled to the minimum of the pay- scale of the categories to which they

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belong but would not be entitled to any of the allowances attached to the post.

- ii) Equal pay for equal work principle shall be initially applied to employees engaged under outsourcing policy Part-II w.e.f. 1.11.2017.
- iii) A committee has been constituted vide notification No. 16/36/2016-3GSII dated 6.10.2017 to decide on cases of other categories of employees (i.e. other than those covered in Part-II of Outsourcing Policy to whom this principle of equal pay for equal work shall apply.

2. All the Departments/Boards/Corporations/Autonomous bodies who have engaged manpower under Part-II of the outsourcing policy are advised to apply the principle of 'equal pay for equal work' in respect of employees engaged under Part- II of the outsourcing policy w.e.f. 1.11.2017.

3. In respect of application of the principle of 'equal pay for equal work' to any other category of employees the concerned Departments/ Boards/ Corporations/Autonomous bodies may approach the committee constituted for the purpose.

4. This issues with the concurrence of Finance Department vide their U.O. No.2/33/2017IEG-1/32793 dated 03.11.2017.

Sd/-
Under Secretary,
Protocol For Chief Secretary to Government, Haryana.

Endst. No.16/36/2016-3GSII

Dated, Chandigarh the 03.11.2017

A copy is also forwarded to the following for information and necessary action :-

- 1. All the Registrars of Universities in the State of Haryana.
- 2. The MD/HARTRON.
- 3. The State Informatics Officers (NIC), Haryana Civil Secretariat, Chandigarh for uploading on the websites of the State Government and Chief Secretary's office as well. He is also requested to send this letter by e-mail to all concerned.

Sd/-
Under Secretary,
Protocol For Chief Secretary to Government, Haryana.

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Endst. No.16/36/2016-3GSII

Dated, Chandigarh the 03.11.2017

A copy is also forwarded to the Additional Chief Secretary to Government Haryana, Finance Department w.r.t. their U.O. No.2/33/2017-1FG-I/32793 dated 03.11.2017 for information and necessary action.

Sd/-
Under Secretary,
Protocol For Chief Secretary to Government, Haryana.

Endst. No.14892-952/Acctts-5 dated 30.11.17.

A copy is forwarded to all Police Head Officers for further necessary action.

Sd/-
Superintendent
For Director General of Police
Haryana.”

7. The policy nowhere differentiates between employees appointed before date of decision or thereafter.

8. After Supreme Court found that principle of ‘equal pay for equal work’ was required to be followed by the State amongst its employees irrespective of nature of their appointment, State rightly applied the same across the board. The stand taken in instant petition to deny relief to the petitioners is in teeth of policy decision taken by State itself.

9. Keeping in view the fact that the petitioners who were admittedly in contractual employment and were not being paid the salary equivalent to their counterparts despite the fact that they were doing the same work, the impugned order cannot be sustained. Resultantly, the present petition is allowed. Impugned order dated 20th of May, 2020 (Annexure P-6) is hereby quashed.

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10. Respondents are directed to make payment to the petitioners for the period they worked i.e. from 18th of October, 2017 to 17th of October, 2018 in terms of policy decision taken by the State vide Annexure P-1. The petitioners shall also be entitled for interest @ 9% per annum on the delayed payment.

July 10, 2024
Dpr

(Pankaj Jain)
Judge

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