

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

(Sr. No.120)

LPA-632-2024 (O&M)

Date of decision: 04.03.2024

State of Haryana and another

...Appellants

Versus

Suchitra and others

...Respondents

**CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Ms. Shubhra Singh, Addl. A.G., Haryana for the appellants.

Mr. Kanwal Goyal, Advocate
for the respondents No. 1, 4, 5 and 10-Caveators.

DEEPAK SIBAL, J. (ORAL)

1. The State of Haryana has preferred the instant intra court appeal to challenge therein judgment dated 29.09.2023 passed by a learned Single Judge of this Court holding respondents No. 1 to 10 entitled to receive remuneration equivalent to the minimum of the pay scale payable to their regularly appointed counterparts in the College of Pharmacy as also to the arrears for a period of 38 months prior to the filing of their writ petition.

2. Respondents No. 1 to 8 were appointed on temporary basis as Assistant Professors in the College of Pharmacy between August 2013 and October 2014 whereas respondents No. 9 and 10 were appointed on the same posts on similar terms on 21.02.2019. Respondents No. 1 to 10 were appointed on the basis of interviews conducted by a duly constituted selection committee. As per the terms of their appointment they were to be paid on hourly basis. On several occasions they represented to the University to grant

them entry level pay-scales as were being paid to their counterparts working on regular basis. The Executive Council of the affiliating university also passed resolutions in their favour but since their resolutions were not approved by the State, the benefit sought by respondents No.1 to 10 was not released in their favour. In these circumstances, they knocked the doors of this Court through a writ petition, seeking therein several reliefs but limiting their prayer only to the grant to them of entry level pay-scales as were being paid to their regularly appointed counterparts.

3. On being put to notice the University appeared before the learned Single Judge and admitted that respondents No. 1 to 10 had been appointed on the recommendations of a selection committee constituted in terms of the applicable Rules and that they were all appointed against sanctioned posts as also that they were discharging duties which were at least more than their counterparts appointed on regular basis.

4. The State also filed a separate written statement before the learned Single Judge through which the afore factual position was not disputed. However, the objection raised by the State was that since the pay-scales which respondents No. 1 to 10 were seeking from the date of their initial appointment had not been sanctioned by the Finance Department of the State, respondents No. 1 to 10 were not entitled to the grant thereof.

5. The learned Single Judge after considering the facts on record and the law laid down by the 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 Supreme Court 1077, allowed respondents No. 1 to 10's petition holding them entitled to the grant of entry level basic pay along with grade pay and dearness allowance as was being

paid to their regularly appointed counterparts. Respondents No.1 to 10 were also held entitled to the grant of arrears but the same were restricted to 38 months prior to the filing of their petition.

6. Learned State Counsel assails the judgment of the learned Single Judge by submitting that even though the Executive Council of the University had taken decisions to grant to respondents No. 1 to 10 the pay-scales being sought for by them but the same could not be released sans any approval by the Finance Department of the State.

7. Learned counsel for the parties have been heard and with their able assistance the record of the case has also been perused.

8. In ***Jagjit Singh's*** case (supra) the Supreme Court has held that on the principles of "equal pay for equal work" temporary employees would have the right to claim wages at par with the minimum of the pay scales being paid to their regularly appointed counterparts. In this regard relevant observations by the Supreme Court are as follows : -

"55. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

56. xx xx xx xx xx

57. *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 concerned employees (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' summarized by us in paragraph 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 concerned temporary employees 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 summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post."*

9. In ***Bahadur Singh's*** case (supra) the expression “*minimum of the pay*” as used by the Supreme Court in ***Jagjit Singh's*** case (supra) was held to include not only the basic pay and the grade pay but also dearness allowance. In this regard the following paragraphs of the judgment of the Supreme Court in Bahadur Singh's case (supra) would be useful to be referred: -

“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 11.05.2015 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.”

10. Thus, the Supreme Court has held that on the principle of “equal pay for equal work” a temporary employee was entitled to the minimum of the pay scale being paid to his regularly appointed counterpart and that the minimum of the pay would include not only basic and grade pay but also dearness allowance.

11. Neither the State nor the University disputes that respondents No.1 to 10, at the time of their initial appointment, were not only qualified but were appointed against sanctioned posts through a duly constituted selection committee. It is further the admitted position that the workload assigned to respondent Nos.1 to 10 is at least equivalent to their regularly appointed counterparts and that till date they have satisfactorily discharged all duties assigned to them.

12. In the light of the above factual position and the law laid down by the Supreme Court in **Jagjit Singh’s** case and **Bahadur Singh’s** case (supra) there is no reason to deny respondents No.1 to 10 the grant of entry level pay scales, which would include grade pay and dearness allowance being paid to their regularly appointed counterparts.

13. The objections sought to be raised by the State that sans approval of the Finance Department of the State of Haryana the relief prayed for by them cannot be granted is misconceived. Respondents No.1 to 10's entitlement to the pay scales sought by them is on the basis of the facts on the record and in terms of the law laid down by the Supreme Court, as above. That being so, denial by the Finance Department of the State is not a sustainable reason to deny them the pay to the grant of which they are entitled to in law.

14. In the light of the above discussion, we find no error, legal or factual, in the impugned judgment of the learned Single Judge.

15. Dismissed.

(Deepak Sibal)
Judge

04.03.2024
neeraj/gk

(Deepak Manchanda)
Judge

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No