

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

241+285

CWP-5417-2020 (O&M)
Date of decision: 01.05.2024

Deep Raja and others

Versus

....Petitioners

State of Punjab and another

...Respondents

Ashwani Kumar and others

Versus

CWP-9613-2024 (O&M)
....Petitioners

State of Punjab and another

...Respondents

Kirti Vijan and others

Versus

CWP-9204-2024 (O&M)
....Petitioners

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Kapil Kakkar, Advocate for the petitioners.
Mr. Arun Gupta, DAG, Punjab.

AMAN CHAUDHARY. J (Oral)

1. These cases involve similar issues and therefore, are being disposed of together by this common judgment.
2. The prayer made in the present petitions is for directing the respondents to grant the full pay in the regular pay scale of Rs.10300-34800+5000 Grade Pay w.e.f. the date of regularization of their services, in which regard the submission made is on behalf of the petitioners that they were appointed vide order dated 01.12.2014, on contractual basis to the post of Masters and Mistresses in various subjects, pursuant to advertisement dated 09.09.2012 and were to be

granted consolidated salary for 3 years, whereafter they vide order dated

09.12.2019, were shown to have completed the probation a day prior to the said date and the date of joining on regular basis was given to be 09.12.2017 but were held to be entitled to the pay scale with immediate effect i.e. the date of the order. Such condition is held to be oppressive by this Court in **Baljinder Kumar and others vs. State of Punjab and another**, CWP-12583-2020, decided on 07.02.2024, by observing thus:

“9. Indubitably, the petitioners, who were appointed through a regular process of selection as per statutory rules against sanctioned posts as Master/Mistresses, *albeit* on contractual basis and on a consolidated salary of Rs.6000/- per month, in pursuance to the terms and conditions of the advertisement dated 09.09.2012, which they had accepted and discharged their duties akin to those appointed on regular basis. Terming their appointment as contractual, was infact a misnomer. The incorporation of an exploitory condition in the appointment letter of the petitioners and the act of constraining them to knock the doors of the Court, even when the issue has been settled by Hon’ble the Supreme Court in Jagjit Singh (supra), is deprecated. As a sequitur, they are held entitled to the minimum of the pay scale.”

3. In **Polu Ram vs. State of Haryana**, 1998 SCC OnLine P&H 1778, the Division Bench held that, “In our opinion, the objection of the learned Advocate General to the maintainability of the writ petitions on the ground that the petitioners have accepted the terms of engagement without any protest is clearly misconceived. The petitioners do not have any say in the matters relating to enactment of the rules, creation of the posts or mode of selection. All these matters lie in the exclusive domain of the government/employer. They are not in a position to make a bargain with the government regarding the conditions of employment. They are not in a position to dictate the terms to the government. If they make an attempt to enter into a bargain with the government about the terms and conditions of employment/engagement and insist on incorporation of those conditions which are more favourable to them, the appointing authority can refuse to appoint/engage them. Therefore, acceptance of the conditions incorporated in the orders of

appointment/letters or engagement cannot be made a ground to deny hearing to the petitioners in support of their plea that the respondents have acted arbitrarily in appointing them with wholly unreasonable and oppressive conditions of employment.” The terms of appointment letter cannot be made a ground to deny the just claim, being arbitrary and oppressive, thus cannot operate as an estoppel, as held in **Rajni Bala vs. State of Haryana**, 1995 SCC OnLine P&H 787.

4. Insofar as the pre-condition is concerned, the issue stands squarely covered in favour of the petitioner in **Jeewan Jyoti and others vs. State of Punjab and others**, CWP-21750-2012, decided on 04.10.2013, wherein the action of the State, on not providing regular pay scale of regularised Computer Faculty from the date of regularisation, as it would be admissible to the employees upon joining the faculty and not earlier, was frowned upon by this Court, while allowing the writ petition, relevant paras whereof read thus:

“On due consideration I find that there is no justification for making the regular pay scale admissible to the petitioners from a date later than the date with effect from which their services have been regularised. The explanation given by respondent No.2 would have been relevant at the time of considering the case of the petitioners for regularisation, but having regularised their services they cannot fall back on any other pre-condition imposed upon the petitioners at the time of offering them employment and more particularly so when said pre-condition was also waived off as per the own showing of the respondents. Clearly, the stand of the respondents No.2 is absolutely incoherent and unsustainable and has forced the petitioners to come to this Court unnecessarily which has also resulted in wastage of time of the Court.

Consequently, the writ petition is allowed with costs of Rs.25,000/-, the impugned order is set aside and the petitioners are held entitled to the regular pay scale with effect from 1.7.2011 which is the date on which such regularisation has been conferred upon them. The costs shall be recovered from the personal pay of the officer who has passed the impugned order. The arrears shall be paid to the petitioners within a period of two months from the date of receipt of a certified copy of this order.”

5. The Division Bench in appeal preferred by the State, while dismissing it on 16.01.2014, against which the SLP filed met the same fate on

08.09.2015, observed thus:

“It was rightly said that the respondents were entitled to get salary from the date when their services were regularized. After regularizing their services, no condition can be put to restrict their salary from a later date. It is not in dispute that all the respondents were in service when their services were regularized.”

6. Learned State counsel, despite his best efforts, was unable to controvert the factual position and draw out any distinctive aspects in the aforementioned judgments or cite any contrary law.
7. In view of the above, the present writ petitions are disposed of in terms of **Jeewan Jyoti** (supra) *albeit* without costs.
8. A photocopy of this order be placed on the files of connected cases.

(AMAN CHAUDHARY)
JUDGE

01.05.2024
Hemant

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