



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.6747 of 1999 (O&M)
Reserved on: 06.11.2024
Date of pronouncement: 14.11.2024

Gurmukh Singh and others
.....Petitioners
Versus
State of Punjab and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. K.L. Arora, Advocate
for the petitioners.

Mr. Rajesh Sehgal, Addl. A.G., Punjab.

Mr. Dushyant Rana, Advocate
for respondent No.2.

NAMIT KUMAR J. (Oral)

1. The petitioners have filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ of mandamus, directing the respondents to grant salary at the minimum of the regular pay scale plus allowances i.e. Rs.950-1800/- with a basic start of Rs.1,000/- per month, which has been revised to Rs.3120-5160/- with a basic start of Rs.3220/- per month from 01.01.1996.
2. The brief facts of the case, as have been pleaded in the present petition, are that the petitioners were appointed in Nagar Panchayat, Bhikhiwind, as Clerks/Octroi Clerks in the month of September/October, 1993, on contract basis and thereafter in the month of April/May, 1995, they were converted to daily wager. Initially, they

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were paid salary of Rs.1200/- per month, which was subsequently increased to Rs.2100/- (approx.) per month. It is the case of the petitioners that they are discharging the same duties as are being discharged by the regular Clerks/Octroi Clerks, who have been placed in the regular pay scale of Rs.950-1800/- with a basic start of Rs.1,000/- per month, which has further been revised to Rs.3120-5160/- with a basic start of Rs.3220/- per month plus allowances w.e.f. 01.01.1996 and, therefore, the petitioners are also entitled to the minimum of the pay scale, along with admissible allowances. The petitioners served various representations upon respondents, but to no avail. Hence, this petition.

3. Written statement on behalf of respondent No.2 has been filed and relevant portion from the same is as under:-

“2. That the contents of para no.2 of the petition are denied being wrong and incorrect. The petitioners were appointed as peon/tractor driver/sweeper/clerk (not as octroi clerk) on contract basis for the period of four months according to the requirement of the work in the department of the respondent. The contract of the petitioners was extended time to time as per the requirement of the work till year 1999 and petitioners were being paid the contract price as per their respective contract and as per the government rules i.e. at the collector rate which were prevailed/enforced at that time for labour hired on out-source basis. It is pertinent to mention that Nagar Panchyat Bhikhiwind was initially a Notified Area Committee which was de notified by the government in 1999 and all dues to the petitioners were

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paid by the department of the respondent till 1999 and nothing was due. Moreover, department of the respondent i.e. Nagar Panchayat Bhikhiwind was re-constituted in the year 2013 and at that time petitioners were not re-employed in the newly constituted Nagar Panchayat. Rest of the fact stated in this para are matter of record and the petitioners are bound to put strict proof thereof.”

4. In nutshell, the stand of respondent No.2 – Nagar Panchayat is that the petitioners were initially appointed as Peon/Tractor Driver/Sweeper/Clerk (not as Octroi Clerk), on contract basis for a period of four months and the said contract was extended from time to time as per requirement of work till the year 1999 and the petitioners were being paid the contract wages as per their respective contract according to the Government Rules i.e. at the collector rate prevailed at that time for the labour hired on outsource basis. It has also been stated that the Nagar Panchayat, Bhikhiwind was initially a notified area committee, which was de-notified by the Government in the year 1999 and all the dues were paid to the petitioners by the department till 1999 and nothing was due. Thereafter, in the year 2013, the Nagar Panchayat, Bhikhiwind, was reconstituted and at that time, the petitioners were not re-employed in the newly constituted Nagar Panchayat.

5. Learned counsel for the petitioners submits that the petitioners are entitled for grant of minimum of the pay scale plus allowance for the period, they have performed their duties. He has placed reliance upon the judgment of Hon’ble Supreme Court in “**State of Punjab and others vs Jagjit Singh and others**”, 2016(4) SCT 641



and judgment passed in contempt petition (C) “**Bahadur Singh and others vs Jaspreet Kaur Talwar and others**”, 2022 INSC 830.

6. Per contra, learned counsel for respondents have opposed the claim of the petitioners by submitting that since the petitioners are no longer in service after 1999, therefore, they are not entitled for the minimum of the pay scale and allowances.

7. I have heard learned counsel for the parties and perused the record with their able assistance.

8. The issue which arises for consideration before this Court is as to whether the petitioners are entitled for the minimum of the pay scale along with allowances or not, for the service period rendered by them.

9. The said issue is not res integra as the same has been considered by a Division Bench of this Court in **LPA No.11 of 2018**, titled as “**Sukwinder Pal Singh and others vs Punjab School Education Board and another**”, decided on 10.05.2018, wherein after considering the judgment of the Hon’ble Supreme Court in **Jagjit Singh’s case (supra)**, it has been held as under:-

*4. Learned counsel appearing for the appellants has vehemently argued that the impugned order dated 28.11.2017 passed by learned Single Judge cannot sustain as it proceeds on a misreading of the judgement in **Jagjit Singh’s case (supra)**. As per learned counsel the relief granted by the Apex Court in **Jagjit Singh’s case (supra)** in favour of temporary employees was not only minimum of the pay scale admissible to the regular counterparts but the directions were for wages to be given at par with*

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minimum of the pay scale of the regular employees and which in fact would translate to include all allowances as revised from time to time and made admissible to a regular employee. It is urged that since the concept of wages includes all allowances, there was no justification in having denied to the appellants the arrears for a period of 3 years and 2 months prior to filing of the writ petition by virtue of the impugned order dated 28.11.2017.

5. Having heard counsel for the appellants at length and having perused the case paper book, we are of the considered view that the instant appeal is without merit.

*6. The issue with regard to the claim of equal pay for equal work raised by temporary employees had been considered by the Apex Court in **Jagjit Singh's** case (supra) and the dictum had been laid down in paras 57 and 58 of the judgement and which are reproduced hereunder:-*

“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

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*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 herein above. **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.***

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

7. Clearly the Supreme Court had granted to the temporary employees relief of minimum of pay scale at the lowest pay grade and not the total pay extended to a regular employee. Furthermore, there were no directions issued with regard to payment of allowances to the temporary employees at par with regular employees. We find the

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*impugned order dated 28.11.2017 passed by the learned Single Judge to be in consonance with the dictum laid down by the Apex Court in **Jagjit Singh's** case (supra).*

10. Further, reliance is placed upon a Division Bench judgment dated 30.04.2024 passed by this Court in **LPA No.733 of 2024** and other connected cases, titled as “**State of Haryana and others vs Kalyan Singh and others**”, wherein after considering the judgment of the Hon’ble Supreme Court in **Bahadur Singh’s case (supra)**, it has been held as under:-

“15. The said issue was never the subject matter of challenge before the learned Single Judge regarding the issue of allowances. The claim always was regarding the minimum of the pay scales as held in Jagjit Singh's case (supra). The reliance as such upon Bahadur Singh's case (supra), which was a contempt petition, by the learned Single was, thus, beyond what was pleaded and apparently, the State was never put to notice that the amount was payable or liable to be contested beyond the minimum of the pay scales.

*16. The closer reading of the said judgment would go on to show that an earlier order dated 04.05.2016 had been passed in the contempt petition wherein the Apex Court was dealing with the payments which were to be made to the Home Guards who had been denied the regular appointments in view of the law laid down in **Grah Rakshak, Home Guards Welfare Association vs. State of H.P. and others, (2015) 6 SCC 247**. It is in such circumstances, a specific benefit as such was given only to the Home Guards which would not only include Dearness allowance but also washing allowance. Reliance, thus,*

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upon the same by the learned Single Judge has been made while defining the basic pay which include basic pay, grade pay and dearness allowance and, therefore, fall back on the judgment in Bahadur Singh's case (supra) as such was not called for. The closer reading of the said order would go on to show that it was in pursuance of the earlier order dated 04.05.2016. The said observations had been made on 16.08.2022 while disposing of the contempt petition and could not be read over and above the principle laid down in Jagjit Singh's case (supra), relevant portion of which reads thus:-

“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.”

17. A perusal of the same would go on to show that it was minimum of the pay scale of the category to which they belong but there is a denial to the allowances attached to

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the posts.

*18. We have time and again and in an earlier round of litigation also, allowed the appeal of the State i.e. **LPA-132-2021, State of Haryana and others vs. Sandeep and others** wherein, the learned Single Judge granted 38 months' arrears in view of the law laid down by the Apex Court and resultantly directed that the payment would only be made from 01.11.2017 in view of the instructions. We are informed that the matter was taken to the Apex Court in SLP (C) No.16093 of 2002 and the same has been further upheld. Reliance upon an order passed by the co-ordinate Bench in **LPA-292-2023, Haryana State Legal Services Authority and others vs. Karam Pal and others** whereby, the co-ordinate Bench as such had granted the benefit on 14.12.2023 is without any basis since RA-LP-5-2024 in LPA-292-2023 filed in the said case was allowed by us on 15.03.2024 and the order stands recalled. The said order reads thus:-*

“2. By way of present application, the applicants-appellants sought review of the judgment/order dated 14.12.2023 (Annexure A-1) passed by a Coordinate Bench of this Court on the ground that the said order suffers from an error apparent on record since apparently the contractual employees have been held to be entitled the dearness allowance in terms of the order dated 16.08.2022 passed by the Supreme Court in Contempt Petition (Civil) Nos. 399- 2020, 400-2020 and 401 of 2020.

3. It has been pointed out that a specific plea was taken before the learned Single Judge that as per Rule 8(3) ‘dearness allowance’ has been termed as compensatory allowance granted to the Government

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employee in the Haryana Civil Services (Allowances to Government Employees) Rules, 2016 and as per Rule 8(36) the 'government employee' does not include an employee appointed on contract basis in Haryana Civil Services (General) Rules, 2016.

*4. It is accordingly pointed out that even the Apex Court in **State of Punjab and others vs. Jagjit Singh and others 2017(1) SCC 148**, has held that the employees would be entitled to the minimum of the pay scale of the category to which they belong but would not be entitled to allowance attached to the posts held by them.*

5. Mr. Nehra, learned counsel appearing for the non-applicants-respondents has opposed the prayer for review of the order on the ground that the Apex Court has already considered the same in the contempt order (supra).

6. We are of the considered opinion that keeping in view the fact that the Rule in question thus was not brought to the notice of the Apex Court as well as of the Coordinate Bench. Accordingly, a case for review of the order in question is made out. The application for review of the order dated 14.12.2023 passed by this Court is allowed and the said order is recalled.

7. The appeal is restored to its original number and be set down for hearing on-merits as per roster.”

19. In such circumstances, we are of the considered opinion that the judgment of the learned Single Judge needs to be modified to that extent that the payment of the minimum of the pay scale, as ordered by the Apex Court in Jagjit Singh's case (supra), will be payable w.e.f.

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01.11.2017 as per instructions of the State itself minus allowances. Resultantly, the break up as such and the benefits which had been granted in Para No.8 to that extent are modified, while partially allowing the appeals of the State. It is made clear that the date of payment as such and the entitlement would be 01.11.2017 in view of the express instructions of the State.”

11. In view of what has been discussed hereinbefore, the present petition is allowed and respondent No.2 – Nagar Panchayat (Bhikhiwind) is directed to grant minimum of the pay scale of the post(s) held by the petitioners from the date of their joining i.e. April/May, 1995 till the date they were in service, but without any allowances, and necessary arrears shall be calculated and paid to the petitioners, within a period of three months from the date of receipt of certified copy of this order.

12. Pending application(s), if any, also stand disposed of.

14.11.2024	(NAMIT KUMAR)
<i>yakub</i>	JUDGE
Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No