

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

111, 117 and 124

*2024:PHHC:059009-DB*LPA Nos.733, 1066 and 1065 of 2024 (O & M)Date of Decision: 30.04.2024

State of Haryana and others

.....Appellant(s)

Versus

Kalyan Singh and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE LAPITA BANERJI**

Present: Mr. Deepak Balyan, Addl. A.G., Haryana.

Mr. R.K. Malik, Sr. Advocate,
with Mr. Varun Veer Chauhan, Advocate,
for the caveator-respondents (in LPA-733-2024).

Mr. Anurag Goyal, Advocate,
for the caveator-respondents (in LPA-1065-2024).

G.S.SANDHAWALIA, ACTING CHIEF JUSTICE (Oral)**Delay Applications**

1. Applications for condonation of delay of 76/118 days in filing the appeals are allowed, in view of averments made in the applications supported by affidavits.
2. Delay condoned.
3. CMs stand disposed of.

Main Cases

4. The present judgment shall dispose of three letters patent appeals i.e. LPA Nos.733, 1066 and 1065 of 2024, since all the appeals arise out of common judgment dated 28.11.2023 passed by the learned Single Judge in three writ petitions, lead case of which is CWP-1887-2019, Kalyan Singh and others vs.

State of Haryana and others. Facts are being taken from ***LPA-733-2024, State of Haryana and others vs. Kalyan Singh and others.***

5. Challenge in the present appeal filed by the State, primarily, is restricted only to the observations made by the learned Single Judge who granted the rate of initial basic pay by including basic pay, grade pay and dearness allowance meant for regular Assistant Professors while granting the benefit of minimum of the pay scale admissible to the regular Assistant Professor keeping in view the law laid down by the Apex Court in ***State of Punjab and others vs. Jagjit Singh and others, 2016 (4) SCT 641.*** The benefit was granted from 03.11.2017 to 26.06.2019 subject to ascertaining that each one of them was allotted full workload at par with that of a regular Assistant Professor during this period. Primarily, the learned Single Judge placed reliance upon the judgment of the Apex Court passed in a contempt petition i.e. ***Bahadur Singh and others vs. Jaspreet Kaur Talwar and others, 2022 SCC Online SC 1077*** and reproduced only Para No.4 of the said order in his judgment.

6. The State secondly is also aggrieved by the implementation w.e.f. 3rd(01.11.2017) in terms of the instructions dated 03.11.2017 (Annexure P-4) and it is the contention that the amount should have been granted from 27.06.2019 (Annexure R-2). By virtue of the said communication as such to all the government colleges, the amount of remuneration was fixed at Rs.57,700/- per month to the eligible contractual guest/extension Lecturers working in the Government colleges and to the ineligible incumbents at Rs.35,400/-.

7. It is not disputed that post 04.03.2020, a new policy has come into force which would govern the terms and conditions post the said date, which was subject matter of challenge in ***Suman Devi vs. State of Haryana and others, 2020***

and guidelines. The said policy also specifically provides that no allowances are to be paid on the fixed sum of Rs.57,700/-. However, we are not involved with the said policy as such in the present case.

8. The learned Single Judge noticed that the engagement initially was as per the policy/guidelines dated 20.07.2017 (Annexure P-1) whereby sum of Rs.25,000/- was payable to the extension Lecturers subject to the fact that they would perform their duties alongwith any other official duty assigned by the concerned Principal as per the requirement of the College and as per University Calendar/State Government norms. Subsequently, another set of instructions dated 03.11.2017 (Annexure P-4) were also issued which were keeping in view the judgment in *Jagjit Singh's case (supra)* while keeping in view the principle of “equal pay for equal work” which was to be applied to contractual employees. The State Government had decided to pay the minimum of the pay scales to the categories to which they belong but they would not be entitled to any allowances attached to the post. The relevant portion reads thus:-

“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 42 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.”

9. Clauses (ii) and (iii) talk about the outsourcing policies, with which we are not concerned.

10. Clause 3 reads thus:-

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

11. The said communication was also addressed to all the Registrars of the Universities in the State of Haryana. Apparently, representation was filed by the Association on 05.10.2018 (Annexure P-5) and legal notice dated 20.12.2018 (Annexure P-6) seeking the benefit to the Extension Lecturers of the same minimum pay scales as that of the Assistant Professors was served. It was, thus, never the case of the writ petitioners that they were entitled to anything more than the minimum of the pay scale or any allowances. In the writ petition also filed, the same prayer was made for seeking claim from 20.07.2017. The prayer clause reads as under:-

“iv) a writ in the nature of mandamus be issued to the respondents to grant the minimum pay scale/gross salary admissible to the regular Assistant Professors from 20.7.2017 from which date the Extension Lecturers were directed to perform the same duties and responsibilities which were being performed by regular Assistant Professors and all arrears be released to the petitioners with market rate interest;”

12. In the reply filed by the Joint Director, Administration, Office of the Director, Higher Education, Haryana, it was pleaded that the claim as such was being considered w.e.f. 27.06.2019 and the benefit as such has already been granted of the minimum of the pay scales at Rs.57,700/- to the eligible Extension Lecturers whereas ineligible lecturers were given Rs.35,400/- per month. The additional affidavit of the Director, Higher Education, Haryana was also filed referring to the subsequent policy dated 04.03.2020 and the instructions dated

27.06.2019.

13. The said plea has accordingly not been accepted on the ground that the Apex Court as such has already issued necessary directions and the instructions dated 03.11.2017 had been issued by the State itself. The fall back on 27.06.2019 was held as only a memorandum issued to convey the decision of the committee which had been constituted earlier to identify other categories of employees and that in principle it had already been decided vide the notification itself. The same had only to fall back on the instructions dated 03.11.2017. The reasoning as such given by the learned Single Judge cannot be held to be suffering from any illegality, in principle regarding, the aspect of the minimum pay scales from 01.11.2017 in pursuance of the instructions dated 03.11.2017 and, therefore, the argument raised by the State to this extent is not liable to be accepted.

14. A perusal of Annexure R-2 would go on to show that basically it is a communication in terms of instructions dated 27.08.2018 issued by the Chief Secretary to Government of Haryana whereby, the contractual guest/extension lecturers were allotted all additional duties at par with regular Assistant/Associate Professor except the financial responsibilities. It is specifically mentioned that the amount equal to the initial basic pay of the regular Assistant Professors is to be given to the above mentioned beneficiaries but no allowances are to be paid.

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

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, 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 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 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. 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

State.

20. Resultantly, we allow the appeals partially, as noticed above. Pending applications also stand disposed of accordingly.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

30.04.2024
shivani
Whether reasoned/speaking
Whether reportable

(LAPITA BANERJI)
JUDGE
Yes
Yes