

CWP-9648-2023 (O&M)
CWP-9653-2023 (O&M)
CWP-21534-2024 (O&M)

- 1-



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

227

CWP-9648-2023 (O&M)
Date of decision: 25.09.2024

Sonia and Others
....Petitioners
Versus

State of Haryana and Others
...Respondents

CWP-9653-2023 (O&M)

Vinod Kumar and Others
....Petitioners
Versus

State of Haryana and Another
...Respondents

CWP-21534-2024 (O&M)

Devinder Sharma and Others
....Petitioners
Versus

State of Haryana and Another
...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Ravinder Malik (Ravi), Advocate for the petitioners

Mr. Tapan Kumar, DAG Haryana

AMAN CHAUDHARY, J. (ORAL)

1. These cases involve similar issues and therefore, are being disposed
of together by this common judgment.



2. The prayer in the present petitions is for quashing the impugned orders, whereby the claim of the petitioners for granting them the benefit of minimum of the pay scale of the post being held by them, has been rejected.

3. Learned counsel submits that the petitioners had been working since the year 2011, on the posts of Data Entry Operators, Accountants and Counsellors in the Department of Women and Child Development, Haryana, on consolidated salary of Rs.18,536/- and are entitled to minimum pay scale, in light of the judgment passed by this Court in **Varun Gupta vs. State of Haryana and Another** in CWP-4881-2018, decided on 03.07.2019, relating to the employees of the same organization, wherein also similar plea was taken as in the present case, the relevant paras whereof read thus:

“xx xx xx

Mr. Harish Nain, learned Assistant Advocate General, Haryana representing the State submitted that such relief cannot be granted as the petitioner's appointment was under the scheme and there is no sanctioned post. He was allowed to work till regular candidates were appointed and, therefore, there was no cause of action to file the present writ petition. There is no minimum pay scale or any post mentioned in the scheme nor any rules prescribed the pay scales of the Assistant. After the order of this Court, the contractual period of the petitioner was extended for a period of another three years expiring on 16.11.2020, but did not deny the directions in the judgment relied upon by the petitioner.

In rebuttal, Mr. Saini drew the attention of this Court to Annexure P-1, the appointment letter which did not indicate that the appointment of the petitioner on contractual basis was under any scheme.

I have heard the learned counsel for the parties and appraised the paper book.

In **Hargurpratap Singh's case** (supra), Hon'ble Supreme Court while considering the case of relieving of the contractual employee, passed the following order:-

“(1) Leave granted.

(2.) The appellants in these cases were employed on ad hoc basis in several colleges in the State of Punjab.



There being a threat of termination of their services, they filed writ petitions before the High Court seeking for the relief of regularisation, minimum pay scale and to continue in their present posts until regular appointments are made. All the reliefs were rejected by the High Court and so far as the relief relating to continue them in their present posts until regular incumbents are appointed, the High Court stated that the Government will have to follow its policy decision dated 23.07.2001.

(3.) We have carefully looked into the judgment of the High Court and other pleadings that have been put forth before this Court. It is clear that though the appellants may not be entitled to regular appointment as such it cannot be said that they will not be entitled to the minimum of the pay scale nor that they should not be continued till regular incumbents are appointed. The course adopted by the High Court is to displace one ad hoc arrangement by another ad hoc arrangement which is not at all appropriate for these persons who have gained experience which will be more beneficial and useful to the colleges concerned rather than to appoint persons afresh on ad hoc basis. Therefore, we set aside the orders made by the High Court to the extent the same deny the claim of the appellants of minimum pay scale and continuation in service till regular incumbents are appointed. We direct that they shall be continued in service till regular appointments are made on minimum of the pay scale. The appeals shall stand allowed in part accordingly.;

It is revealed that even the case of minimum pay scale was also ordered to be protected. It is settled law that the person, who is discharging similar kind of duties as that of the regular incumbent, cannot be discriminated and denied the same minimum pay scale, which, in the instant case is Rs. 16,500/- odd amount.

It is strange that the department fully knowing the decision of the Hon'ble Supreme Court and the instructions dated 03.11.2017, which had not been denied in the written statement, refused to grant the relief compelling the effected person to approach this Court resulting into flood of cases of similar nature. The officers at the helm of affair should direct the concerned officials for addressing the grievance/cause of the effected employees. That cavalier or callous attitude cannot go unnoticed.

The appointment letter does not indicate the appointment of the petitioner on contractual basis under any scheme. The argument of the learned State counsel regarding the



appointment under the scheme must fail.

Resultantly, the writ petition is allowed. Mandamus is directed to the respondents to pay the minimum pay scale to the petitioner from the date of joining and for the present period within a period of three months from the date of receipt of certified copy of this order, failing which it will entail interest @ 12% per annum. The petitioner, who has been compelled to approach this Court, is entitled to costs of ` 25,000/-, to be recovered from the salary of the Director General, Department of Women & Child Development-respondent No.2 for not addressing the issue of the petitioner.”

4. The LPA-1598-2019 filed by the State against the above, was also dismissed by the Division Bench on 15.03.2022, relevant paras whereof read thus:

“XX XX XX

Similarly, LPA-674-2021 has been filed against the judgment passed in CWP-38238-2018 '**Nitesh Sharma State of Haryana and another**' wherein the above view has been followed by another Co-ordinate Bench on 16.03.2021. In the said case, the respondents have been directed to pay the minimum Pay-Scales from the date of joining till date within a period of 3 months from the date of receipt of certified copy of the order.

The issue already stands settled by the Apex Court in **State of Punjab & others Vs. Jagjit Singh & others** (2017) 1 SCC 148 regarding the grant of minimum Pay-Scale. It is not disputed that the State itself has issued the instructions dated 03.11.2017 which provide that the benefit is to flow from 01.11.2017. In such circumstances, we do not find any justification on behalf of the State that he is not entitled for the benefits of minimum of Pay-Scales, as has been held by the Apex Court and to distinguish the same. Thus, there is no valid basis not to grant the said benefits to the writ petitioner who has been appointed as a Assistant at Headquarters on contractual basis @ Rs.8000/- per month. The said instructions would be equally applicable to the writ petitioner and the distinction which has now been sought to be made that the appointment was under the Special Cell for Women & Child to work on the issue of Protection From Domestic Violence Act and Prohibition of Child Marriage Act, 2006 and he is not liable, is not justifiable in any manner from the appointment letters.

In such circumstances, the respondents were bound by the instructions dated 03.11.2017 whereby the payment is to be



made on the minimum of the Pay-Scales given to similarly situated persons and no fault can be found in the orders of the Learned Single Judge. From the perusal of the record, nothing could be shown that the writ petitioner was discharging duties which was less than the similarly situated persons who had been appointed as Assistant on contractual basis in the Headquarters to perform the same nature of duties as a person who was appointed on regular basis. Therefore, the distinction which has now been sought to be made, is without any basis. Accordingly, LPA-1598-2019 is dismissed.

However, in LPA-674-2021, the Learned Single Judge has apparently issued directions that the petitioner would be entitled for the minimum Pay-Scales from the date of joining which was 21.08.2017 (Annexure P-3). As noticed, the instructions were issued for payment from a specific date and once the State has taken a categorical decision, the entitlement would be from 01.11.2017 and not from the date of joining and even the claim of the writ petitioner was on the basis of the instructions dated 03.11.2017. Similar argument has been raised that appointment of the respondent was as Assistant who was under the State Resource Centre for Women on a consolidated salary of Rs.15,000/- per month. Therefore, the said instructions would not be applicable, is without any basis as nothing could be shown from the said instructions that the persons appointed under the said scheme would not be entitled for the benefits of the judgment passed in Jagjit Singh (supra) as per instructions dated 03.11.2017 as per the reasoning given above. Resultantly, LPA-674-2021 is allowed, to the extent that the amount payable would be from 01.11.2017.”

5. The SLP preferred by the State was withdrawn on 05.12.2022 to file review in the LPA, wherein notice has yet not been issued.
6. Learned counsel on instructions from the petitioners prays for disposing of the present petitions in view of the aforesaid judgments, subject to the outcome of the review petition.
7. Learned State counsel has been unable to controvert the factual position and draw out any distinctive aspects in the aforementioned judgments or cite any contrary law.
8. In wake of the aforesaid, the present petitions are disposed of in terms



of the judgment passed in **Varun Gupta** (supra). However, the petitioners shall remain bound by their above statement.

9. A photocopy of this order be placed on the file of the connected cases.

(AMAN CHAUDHARY)
JUDGE

25.09.2024
M.Kamra

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