

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

Sr. No.283**CWP-12583-2020****Date of decision : 07.02.2024**

Baljinder Kumar and others

..... Petitioners

VERSUS

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Kapil Kakkar, Advocate, for the petitioners.

Mr. D.K. Singal, Addl. AG, Punjab.

AMAN CHAUDHARY, J. (Oral)

1. The present Civil Writ Petition has been filed under Articles 226/227 of the Constitution of India for the issuance of a writ in the nature of mandamus directing the respondents to grant a minimum of the pay scale from the date of initial appointment on contract, as granted to others working in the same Department, on the ground that this issue already stands decided by Hon'ble the Supreme Court in **State of Punjab vs. Jagjit Singh**, 2016 (4) SCT 641. Learned counsel would contend that the colleagues of the petitioners working in the same Department had approached this Court by filing CWP-2031-2016, titled as **Harvinder Singh and others vs. State of Punjab and others**, decided on 21.01.2020, Annexure P-8, and on basis of the aforesaid judgment, were held entitled to minimum of pay scale, however, restricting the arrears upto 38 months prior to the date of filing of that petition. Further submission is that the sole ground taken to deny the relief to the petitioners in the reply dated 26.03.2021, filed to the present petition by the respondents, is that LPA-29-2021 was pending, alongwith connected cases, but the said plea is no longer available in wake of the

fact that the same stand dismissed by a judgement dated 11.05.2022. Consequent thereto, it also stood implemented vide orders dated 29.11.2023 and 31.01.2024.

2. Learned State counsel though, has not been able to controvert the basic facts or cite any contrary law, but stoutly resists the prayer on the ground that the petitioners had accepted the conditions of the contract on appointment, as per which, consolidated pay of Rs.6000/- was to be paid to them.

3. Heard the learned counsel on either side.

4. Pertinently, the issue as involved in the present case stood decided initially by the Hon'ble the Supreme Court in **Jagjit Singh**, (supra), wherein the parameters guiding the principle of 'equal work for equal pay' were reiterated by observing that, "...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."

5. As is evident from the written statement, two grounds were raised to resist the claim, one being that the judgment of the learned Single Judge in the case of **Harvinder Singh** (supra) as relied upon by the petitioners to buttress their claim, was made a subject matter of challenge by the State in LPA-29-2021 and connected cases, which no longer is an impediment, it having been dismissed by the Division Bench of this Court vide judgment dated 11.05.2022. The petitioners in the aforesaid case had also been appointed on contract basis pursuant to the same very advertisement against which even the petitioners in the instant case had been and had been held entitled to minimum of the pay-scale by observing that, "It is, thus, apparent that the writ petitioners have been duly regularized. In such circumstances, finding which has been recorded by the learned Single Judge cannot be faulted that they had been appointed against regular sanctioned posts as

per statutory Rules and putting them on contract basis was totally unjustified. Rather proper selection process as such was adopted and the finding cannot be found to be suffering from any infirmity or illegality in view of the above facts. In such circumstances, 38 months arrears have been granted prior to the filing of the writ petitions whereby, the writ petitioners have been held entitled for payment of their dues as per the law laid down by the Apex Court in **Jagjit Singh** (supra). The fact that they were working and discharging similar duties and responsibilities as regular employees, thus, cannot be as such distinguished by the State. ”

6. The aforesaid judgment has been stated to be implemented by the Department, and necessary benefits stand released to the petitioners therein, a fact the learned State counsel was unable to rebut.

7. The second plank of argument raised by the learned State counsel that the petitioners had accepted their salary to be Rs.6000/- per month, as per the advertisement dated 09.09.2012, thus, they could not make a claim, cannot be countenanced in view of **Somesh Thapliyal vs. HNB Garhwal University**, (2021) 10 SCC 116, wherein Hon’ble the Supreme Court had held that it is open to an employee to challenge the terms, which are not in conformity with statutory requirements and prescribed procedure and he is not estopped from questioning at a stage where he is aggrieved.

8. A judgment of the Division Bench of this Court in **Polu Ram vs. State of Haryana**, 1998 SCC OnLine P&H 1778, can be gainfully referred to, wherein it was observed and 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 Department being in a domineering position, the petitioners had no option but to accept any condition. The terms of appointment letter being arbitrary and oppressive cannot operate as an estoppel and cannot be made a ground to deny the just claim, as held in **Rajni Bala vs. State of Haryana**, 1995 SCC OnLine P&H 787.

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.

10. On a cumulative consideration of the facts and circumstances of the case, while keeping the judgments referred to above in mind, the writ petition deserves to be and is hereby allowed in terms of the judgment in **Harwinder Singh** (supra). The necessary relief be granted within a period of six weeks from the date when a web-print of this judgement is received by the Department.

11. The present writ petition stands disposed of accordingly.

(AMAN CHAUDHARY)
JUDGE

07.02.2024
Ramandeep Singh

Whether speaking / reasoned	Yes/No
Whether Reportable	Yes/No