

CWP-17282-2024 (O&M)
Date of Decision : 25-07-2024

VIKAS KUMAR AND ORS

.....Petitioner(s)

VERSUS

STATE OF PUNJAB AND ORS

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rajeev Godara, Advocate
for the petitioners.

Mr. Swapan Shorey, DAG Punjab assisted by
Mr. Gupreet Singh Sandhu, B.P.E.O, Dehlon-1,
District Ludhiana.

HARSIMRAN SINGH SETHI, J. (Oral)

In the present petition, the grievance raised by the petitioners is that the arrears of salary paid to them on account of retrospective regularisation of their services, is sought to be recovered by the respondents on the ground that the same was not admissible.

The facts of the present case are that the petitioners were appointed as Teaching Fellows in pursuance to the Advertisement dated 05.09.2007. The appointment of the petitioners was on consolidated salary on contract basis. While the petitioners were working on the said post, the respondents vide Instructions dated 20.10.2010 (Annexure P-3), decided that the Teaching Fellows as well as the Education Service Providers, who were

appointed in pursuance to the Advertisement dated 05.09.2007 and 29.08.2007, whose work and conduct is satisfactory, they should be regularised in service w.e.f. 01.04.2011.

In pursuance to the said decision taken, in April 2012, the services of the petitioners were regularised in a regular pay scale w.e.f 01.04.2011.

It may be noticed that the petitioners were also granted the arrears from the date of retrospective regularisation by the concerned District Education Officer, under whom the petitioners were working.

Certain employees, who also claimed that they are covered under the Instructions/Policy dated 20.10.2010 (Annexure P-3) approached the Department as well as this Court seeking regularisation of their services under the Instructions dated 20.10.2010 (Annexure P-3). During the pendency of the said petitions, keeping in view the decision dated 20.10.2010 (Annexure P-3), the Department regularised their services with a clear condition that no arrears/financial benefit is to be given on account of the retrospective regularisation of their services and only notional benefit is to be given.

The employees whose services were regularised but denying them the arrears upon retrospective regularisation of their services, raised a grievance before this Court by filing various writ petitions that the employees who were also recruited along with them in pursuance of the same Advertisement, and whose services have also been regularised under the Instructions dated 20.10.2010 (Annexure P-3), they have been given the benefits of arrears upon retrospective regularisation of their services hence,

denying the said benefit to them amounting to discrimination hence, they should also be given the benefit of arrears.

Keeping in view the said factual position, action was taken by the respondent-State by issuing notice to the petitioners in the year 2018 as to why, the benefit of arrears upon retrospective regularisation be not withdrawn as the same were given by the authority concerned without there being any approval of the competent authority.

Impugned orders have been passed for the recovery of the arrears which have been paid upon the retrospective regularisation of their services, which orders are under challenge in the present petition.

Learned counsel appearing on behalf of the petitioners argues that though in the Instructions/Policy dated 20.10.2010 (Annexure P-3), only decision was taken to regularise the services of the employees w.e.f 01.04.2011 but, once the respondent themselves interpreted the same to mean that the arrears are also to be given upon retrospective regularisation of their services, the benefit which was extended to the petitioners i.e. arrears upon retrospective regularisation, is perfectly valid and legal.

Learned counsel for the petitioner further submits that the non-grant of financial benefit is only qua the employees, whose services were regularised under Instructions dated 20.10.2010 (Annexure P-3) after the year 2015 hence, the reason being given by the respondent to withdraw the said benefit of arrears on the ground that similarly situated employees are also seeking the arrears of pay on retrospective regularisation of their services is incorrect.

The last argument which has been raised by the learned counsel for the petitioner is keeping in view of the judgment of the Hon'ble Supreme

Court of India in *State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195*, it has been held that no recovery of the excess amount already paid can be done from the petitioners.

Notice of motion.

Mr. Swapan Shorey, DAG Punjab on instructions from Mr. Gupreet Singh Sandhu, BPEO, Dettlon-1, District Ludhiana submits that as, the issue in hand has already been decided by this Court while passing order in CWP No.25452 of 2016 titled as “*Sukhbir Singh and anr. Vs. State of Punjab and ors.*” decided on 24.07.2024, no specific written statement needs to be filed as all the facts were already brought to the notice of this Court in the written statement filed to the said writ petition, wherein it has been stated that upon retrospective regularisation of service, no arrears were to be paid.

Learned State counsel further submits that arrears were paid to the petitioners by the District Education Officers concerned, where the petitioners were serving without there being any approval by the concerned authority to grant the same and rather, disciplinary actions in the form of show cause notices have been initiated against the said District Education Officer for granting the benefit of arrears, for which they did not had any jurisdiction.

I have learned counsel for the parties and have gone through the records of the present case with their able assistance.

From the facts which have been mentioned hereinbefore, it is clear that the petitioners’ services were to be regularised keeping in view the Instructions dated 20.10.2010 (Annexure P-3). In the said policy, the only relief granted was that the employees who were appointed in service in

pursuance to the Advertisement dated 05.09.2007 and 29.08.2007, whose work and conduct is satisfactory, are to be regularised in service w.e.f 01.04.2011. No such benefit of arrears was admissible as per the said policy. Even while granting the benefit of regularisation, the pay scale was given to the petitioners from 01.04.2011 but the District Education Officers while interpreting the Instructions/Policy dated 20.10.2010 (Annexure P-3), granted the benefit the of arrears also to the petitioners.

When the said fact came to the notice of the competent authority, while dealing with the cases of other similarly situated employees, whose services were yet to be regularised under the Instructions dated 20.10.2010 (Annexure P-3), that upon retrospective regularisation only notional benefits were to be given on fixation of their salary from 01.04.2011 but no arrears were to be given hence, action was taken in accordance with law and the employees who were yet to be regularised in service under Instructions dated 20.10.2010 (Annexure P-3), they were not given any arrears of salary upon retrospective regularisation.

That being the factual position, it is clear that no arrears were admissible upon retrospective regularisation of services of the petitioners and only the notional benefits were to be given to them upon fixation of their pay in the regular pay scale w.e.f 01.04.2011.

Further, the District Education Officers did not had any jurisdiction to grant the benefit of arrears to the petitioners once, the State never granted the said benefit of arrears. District Education Officers granted the benefit of arrears without seeking approval from the competent authority hence, the arrears were being granted by an authority not competent to do so. Hence, once the State Government came to know about the said fact,

appropriate directions were given to the District Education Officer concerned to take remedial action of withdrawing the arrears extended to the petitioners, which extended benefits was contrary to the Instructions dated 20.10.2010 (Annexure P-3). Keeping in view of the facts and circumstances of the present case, the impugned decision of the State cannot be treated as arbitrary and illegal.

Further the argument of the learned counsel for the petitioners is that the decision not to grant the arrears was only in respect of the employees, who were to be regularised in service after the year 2015 though under the same Instructions dated 20.10.2010 (Annexure P-3). The said argument of the learned counsel for the petitioners cannot be accepted. Once, the benefit of regularisation in service was being given to the employees concerned, who were appointed in pursuance to the Advertisement dated 05.09.2007 and 29.08.2007, in pursuance to the Instructions dated 20.10.2010 (Annexure P-3), it cannot be said that two different yardsticks are to be brought into operation keeping in view of the date of the grant of the said benefit under the Instructions dated 20.10.2010 (Annexure P-3). Similarly situated employees cannot be discriminated so as to hold that the services of the petitioners, which were regularised in the year 2012, under the Instructions dated 20.10.2010 (Annexure P-3), will be entitled for the arrears whereas the similarly situated employees, who were services were liable to be recognised in 2012 but was actually regularised in the year 2015, the arrears are to be declined.

Every employee, who is being considered for regularisation of their services under Instructions dated 20.10.2010 (Annexure P-3), is to be treated on the same footing otherwise, the action will be discriminatory. Two

different yardsticks/rule for grant of same benefit cannot be applied upon the similarly situated employees.

Further considering the Instructions dated 20.10.2010 (Anneuxre P-3), it has already been held by this Court while deciding CWP No.18275 of 2013 titled as “**Maghar Singh and ors. Vs. State of Punjab and ors.**” decided on 15.07.2015, that no arrears are admissible upon retrospective regularisation of service, hence the withdrawal of the said benefit of arrears from the petitioners cannot be treated as arbitrary or illegal or contrary to any settled principle of law.

The last question which has been raised by the counsel for the petitioners that the benefit of arrears was granted to the petitioners in the year 2012 but, the same was withdrawn only in the year 2018 hence, once a particular benefit was being extended to the petitioners for a period of 5 years, the same should not be withdrawn as it will create hardship.

Keeping in view above factual position and the settled principle of law settled by the Hon’ble Supreme Court of India in **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195**, the plea of the petitioners is to be considered under the facts and circumstances of the present case as to whether the withdrawal of the benefit of arrears will create hardship for the petitioners or will create a financial hardship for the State.

In the facts and circumstances of the present case, wherein the services of more than 300 employees have been regularised by the respondent under Instructions dated 20.10.2010 (Anneuxre P-3) and the benefit of arrears were only given to approximately 40 employees, if the petitioners are allowed to retain the said benefit, then the claim for the grant

of arrears has to be given to the other similarly situated employees also. In case, the petitioners are allowed to retain the arrears on the ground of hardship, the respondents will have to shell out the finances to grant the same benefit to the other similarly situated employees also in order to avoid discrimination.

In the facts and circumstances of the present case, the plea raised that the benefit of arrears should be allowed and no recovery should be done from the petitioners, cannot be allowed.

At this stage, learned counsel for the petitioners submits that the similarly situated employees from whom the recovery is also being done has filed a CWP No.21971 of 2023, wherein by the interim order recovery has been stayed and it might be a possibility that the petitioners in those petitions are allowed to continue with the said benefits hence, in that scenario the petitioners be given liberty to revive the claim for retaining the arrears.

It may be noticed that in the said writ petition, the recovery could not be made due to interim order granted whereas, the present petition is being decided on merits finally hence, the benefit of interim order granted by this court in case of other employees, will not give a right to the petitioners to claim that they should also be allowed to retain the arrears despite the fact that this Court has come to conclusion that the petitioners were not entitled for arrears of salary upon retrospective regularisation of service.

As a matter of precaution, it is made clear that in case, any of the similarly situated employees are allowed to retain the benefits either by

judicial pronouncement or by respondents-State themselves, the petitioners will have a liberty to revive their claim for retaining of the arrears.

The recovery to be done from the petitioners is Rs.1,50,000/- hence, in order to avoid any hardship, the same be not done in one go. Appropriate amount be recovered from the salaries of the petitioners every month keeping in view the date of retirement of each of the petitioners, so that the amount paid to the petitioners as arrears is recovered in installments.

Keeping in view the above, no ground is made out for interference by this Court.

No other argument is raised.

Hence, the present petition is dismissed.

Pending application, if any, also stand disposed off.

25-07-2024
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES/NO
Whether reportable: YES/NO