

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-7531-2017

Date of decision: 27.02.2024

Amar Kumar and ors.

...Petitioners

vs.

State of Punjab and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Vijay Pal, Advocate for the petitioners.

Mr. Manipal Singh Atwal, D.A.G, Punjab.

AMAN CHAUDHARY. J.

1. The prayer in the present Civil Writ Petition filed under Articles 226/227 of the Constitution of India, is for directing the respondents to grant equal pay scales of Rs.10300-34800+5000/- Grade Pay and allowances w.e.f the date of appointment of the petitioners.
2. Learned counsel submits that pursuant to the advertisement dated January, 2012 (Annexure P-1) petitioners were appointed as Pendu Sehyogi Adhyapak (Rural Associate Teachers) (Master Cadre) on contract basis, as per the recommendation made by Recruitment Board, Education Department, Punjab, against regular sanctioned posts. They were to be paid Rs.6000/- per month in lump sum on account of remuneration on purely contract basis with enhancement of Rs.500/- per year, preliminary for a period of three years. Though they are now getting regular pay scale after regularization of their service w.e.f. 2019, however, their claim for grant of minimum pay scale for the period after initial appointment till regularization i.e from 2014 to 2019, is not being considered. It is submitted that a similar issue, as involved in the present petition has already been decided by

Singh and others, 2016 (4) SCT 641, followed in **Harvinder Singh and others vs. State of Punjab and others**, CWP-2031-2016, decided on 21.01.2020, against which the State had filed LPA-29-2021, which was dismissed on 11.05.2022 and based on the aforesaid judgments, this Court had allowed CWP-12583-2020, titled as **Baljinder Kumar and others vs. State of Punjab and another**, decided on 07.02.2024, which related to the same advertisement against which the present petitioners were appointed, wherein it was observed and held thus:

“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."

3. Learned State counsel was unable to controvert the factual position and draw out any distinctive aspects in the aforementioned judgments or cite any contrary law.
4. In view of the aforesaid, the present petition is disposed of in terms of the judgments passed in **Jagjit Singh, Harvinder Singh and Baljinder Kumar and others** (supra).

(AMAN CHAUDHARY)
JUDGE

27.02.2024
G Arora

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No