



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

**Reserved on: 15.01.2025
CWP-15874-2020 (O&M)
Pronounced on : 28.01.2025**

Shamsher Singh

...Petitioner

VERSUS

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. T.S. Dhull, Advocate for the petitioner.

Mr. Tapan Kumar, DAG Haryana.

VINOD S. BHARDWAJ, J.

1. Prayer in the present petition is for issuance of a writ of Certiorari for quashing the decision of the respondents to pay salary to the petitioner through a service provider despite the petitioner being an employee of the respondent-department. Further prayer is to direct the respondents to grant minimum regular pay scale meant for the post of Patwari along with dearness allowance as well as arrears of salary from the initial date of appointment at the market rate of interest to the petitioner.

2. Briefly, the facts claimed by the petitioner are that he claims to be appointed by the respondents as a Canal Patwari on contractual basis in the year 2008. However, on 30.11.2009, his services were terminated by the respondents without giving any notice and without assigning any reasons.

3. The petitioner challenged the order of his termination before the Labour Court, Rohtak and the said reference was allowed vide award dated



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13.11.2014 wherein the petitioner was ordered to be reinstated on his previous post with continuity of service and 50% backwages from the date of demand notice i.e. 18.08.2010. Respondent-department challenged the said award before this Court by filing CWP No. 17009 of 2015. Vide order dated 08.11.2016, this Court dismissed the petition and upheld the award passed by Labour Court, Rohtak. The relevant part of the order is extracted hereunder:

“6.) Perusal of the evidence adduced by the then Executive Engineer, Sh. Viney Grover, it is evident that he has examined agreement entered into with M/s Friends Corporate Service Pvt. Ltd. wherein the licence has been given for supplying labourers and not Canal Patwaris so as to contend that the respondent-workman was appointed through M/s Friends Corporate Service Pvt. Ltd. Further it is evident from Roznamcha/Attendance Register Exhibit W-8 and W-2 which reveals that the respondent-workman was working with the petitioner from 30.4.2004 to 30.11.2009. Therefore, it is evident that there is a relationship of employee and employer among the petitioner and the respondent-workman. Hence, there is no infirmity in the Labour Court award. Insofar as grant of 50% back wages is concerned. Even the respondent-workman was admitted to have gainfully employed, the Labour Court has granted only 50% back wages. Therefore, there is no infirmity in the award passed by the Labour Court dated 13.11.2014. No



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interference is called for.

7.) Petition stands dismissed.”

4. Aggrieved thereof, the respondent-department preferred LPA No. 294 of 2017 and the same was allowed vide order dated 27.02.2017 and the matter was remanded to the Labour Court, Rohtak for deciding the case afresh in accordance with law. The relevant part of the order is extracted hereunder:

“5. Faced with this, learned counsel for respondent No.2 fairly states that the matter may be remitted to Labour Court for its fresh adjudication so as to give specific findings as to whether; (i) respondent no.2 was engaged in the year 2004 directly and not through Service Provider?, if so, (ii) what was the mode of engagement of respondent No.2?; (iii) whether respondent No.2 was engaged in the year 2004 or in the year 2008?; (iv) since when the Service Provider was hired by the department to provide employment?; (v) for how much period the agreement between the Executive Engineer and the Service Provider continued to operate?

6. With a view to decide the above formulated questions effectively, we allow the appeal; set-aside the order passed by the learned Single Judge as well as the Award dated 13.11.2014 and remit the matter to the Industrial Tribunal-cum-Labour Court, Rohtak with a direction to re-decide the case afresh and in accordance with law and determine the



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above mentioned questions along with the issues which had arisen earlier for adjudication. It shall be appreciated if the Labour Court decides the matter expeditiously and preferably within a period of four months from the date of receiving a certified copy of this order.”

5. On re-consideration of the matter, Labour Court, Rohtak vide its award dated 17.07.2017 allowed the reference again. The operative part of the Award is extracted hereunder:

“19. After giving my thoughtful consideration to the rival contentions and appreciating the entire evidence adduced on the file, I am of the considered opinion that the present petition deserves to be allowed. It is not disputed by the parties that the petitioner had worked with the respondent as Canal Patwari from 29.4.2008 to 30.11.2009. However, case of the petitioner is that he was engaged by the respondent directly and that his services were illegally terminated by the respondent itself. On the other hand, case of the respondent is that the petitioner has worked with the respondent by way of outsourcing through the service provider – M/s Friends Corporate Service (P) Ltd. In support of its contentions, the respondent is relying upon the service agreement Ex. M1/C dated 25.4.2008 executed between the respondent and M/s Friends Corporate Service (P) Ltd. However, admittedly, it is



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not mentioned in the said service agreement as to for how much period the same continued to operate. The details of the services to be provided by the said service provider are also not mentioned in the said service agreement Ex. M1/C and it is only mentioned therein that “services (labour)” is required to be provided by the said service provider. The post of the Canal Patwari is not that of a labourer. In other words, there was no contract of the respondent with M/s Friends Corporate Service (P) Ltd. to provide the services of the Canal Patwari. MW1 Vinay Grover, Executive Engineer (Vigilance) admitted in his cross examination that service agreement Ex. M1/C was for providing the labour and not Canal Patwari. No record has been produced by the respondent to prove that any payment of wages pertaining to the petitioner was made to M/s Friends Corporate Service (P) Ltd. for onward payment to the petitioner. The said record could very well be produced by the respondent but the same was withheld, for which, an adverse inference is drawn against the respondent. No evidence has been produced by the respondent to show that requisition of Canal Patwari was sent to said M/s Friends Corporate Service (P) Ltd. or that Canal Patwaris were provided to the respondent by the said service provider and as to what were the terms and conditions or the wages. In fact, there is a letter dated 30.9.2009, copy of Ex. W1, written by the Deputy



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Collector, Rohtak Water Services Division, Rohtak, to the respondent vide which, it is mentioned that the petitioner is adjusted as Halqua Patwari, Village Gharouthi, against vacant post. There is also a letter dated 2.6.2009, copy Ex. W2, addressed to the respondent written by the Deputy Collector, Rohtak Water Services Division, Rohtak, vide which, it is mentioned that adjustment of the petitioner from Village Madina Gindran to Village Bhagwatipur may be approved, as per his request. There is also the reference of several other Canal Patwaris in the said letter. These documents go to prove that the respondent has adjusted the petitioner by way of transfer from one place to the other, which goes to show that he was their employee. Thus, the respondent has miserably failed to prove that services of the petitioner as Canal Patwari were hired by way of outsourcing through service provider – M/s Friends Corporate Service (P) Ltd. Therefore, since the petitioner has continuously worked with the respondent from 29.4.2008 to 30.11.2009, it entails that he was engaged by the respondent and he was their employee as Canal Patwari. In this way, the petitioner had completed more than 240 days in the preceding 12 calendar months of his termination and admittedly, no notice, notice pay or retrenchment compensation was given to him and, thus, mandatory provisions of Section 25F of the Industrial Disputes Act, 1947 were violated. The law



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*does not make any distinction between a regular employee or a daily wager as far as compliance of the mandatory provisions of Section 25F of the Act is concerned. In support of this view, a decision of our own Hon'ble High Court rendered in **Rakesh Kumar Aggarwal** Vs **The Management of M/s Milk Plant, Ambala** reported as 1992 (2) Recent Services Judgments, page 466, may be referred to.*

20. *As a sequel to what has been discussed above, it is held that the petitioner has worked as a Canal Patwari with the respondent as their employee with effect from 29.4.2008 to 30.11.2009 and termination of his services is a violation of Section 25F of Industrial Disputes Act, 1947, as he had completed more than 240 days in the preceding 12 calendar months of his termination and no notice, notice pay or retrenchment compensation was given to him. It is further held that the petitioner is, thus, entitled to reinstatement with continuity in service and all other consequential benefits but for back wages. It may be mentioned here that the petitioner had made a statement on 12.7.2017 to the effect that he foregoes his back wages if he is reinstated with continuity in service. Accordingly, both these issues are decided in favour of the petitioner.*

Issue No.3 (Relief)

In view of my findings on issues No.1 and 2, the present petition



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is allowed and the petitioner is ordered to be reinstated as Canal Patwari by the respondent within 15 days from the date of publication of this award with continuity in service and all other consequential benefits but for back wages. This reference is accordingly, answered in the aforesaid terms. File be consigned to record room after due compliance.”

6. When the petitioner was about to file for an execution of the Award passed by the Labour Court, Rohtak, the respondent department issued an appointment letter, in view of the opinion given by the Engineer-in-Chief. Thereafter, the petitioner made many representations to the respondents to grant him the regular pay scale for the post of the Patwari along with dearness allowance and with a further prayer not to be paid through a service provider. However, the same was not done whereupon the petitioner approached this Court through CWP No. 29978 of 2018. Vide order dated 28.11.2018, the petition was disposed of with a direction to the respondents to consider the representation of the petitioner in light of the judgment of Hon’ble Supreme Court in **Civil Appeal No.213 of 2013** titled as “**State of Punjab and others Vs. Jagjit Singh and others**”. The relevant part of the order is extracted hereunder:

“Prayer in the present petition is to grant of payment of minimum of the regular pay scale meant for the post of Patwari and arrears of the salary paid to the petitioner from the initial date of his appointment along with market rate of interest. The



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petitioner has also challenged the action taken by the respondents in continue to pay salary through service provider in violation of the award dated 17.07.2017 passed by the Labour Court. It is further stated that his case is purely covered by the judgment rendered in Civil Appeal No.213 of 2013 titled as “State of Punjab and others Vs. Jagjit Singh and others”.

The petitioner has filed representation dated 14.04.2018 (Annexure P-4) seeking the said relief but in vain. The same has not been decided till today.

In view of the above, the present petition is disposed of with a direction to respondent No.2 to consider the said representation in the light of judgment rendered in the case “State of Punjab and others Vs. Jagjit Singh and others” and decide the same by way of passing a speaking order as expeditiously preferably within a period of three months from the date of receipt of certified copy of this order. In case the petitioner is found entitled or covered under the aforesaid judgment, necessary relief(s) be granted to him.”

7. Since the petitioner’s representation was not decided in light of the order of this Court, he filed COCP No.1689 of 2019 and the same was dismissed as withdrawn vide order dated 20.5.2019 in light of the statement of State Counsel that a speaking order had already been passed on 17.5.2019, vide which, claim of the petitioner was considered and allowed.



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The petitioner was granted the minimum regular pay scale without any D.A. despite working on the post of Canal Patwari for the last 10 years.

8. Aggrieved thereof, the present petition has been filed.

9. Learned Counsel for the petitioner argues that the issue regarding inclusion of dearness allowance within the ambit of expression of pay is no longer *res integra*. He relies on the judgment of this Court in CWP No.36576 of 2019 titled as “Seeshan Kumar and another vs State of Punjab and others” in this regard.

10. Written statement dated 18.02.2021 was filed by Ram Niwas, Executive Engineer, Rohtak Water Services Division, Rohtak on behalf of respondents No.1 to 3. Learned Counsel for the respondents relied on the written statement to argue that as the petitioner had been working on DC rates without being regularized, he could not seek the benefits of DA arrears of salary and ACP for the post of Canal Patwari. The relevant part of the written statement is extracted hereunder:

“4. That the petitioner has been reinstated in service as per the Hon’ble Court direction and the petitioner is continuous in service. The petitioner was working on DC Rates and his services are not regularised and as such the petitioner cannot seek the benefits of DA arrears of salary and ACP from the post of canal patwari as per Haryana Service Rule including ACP Rules 2016. After passing of the order by Hon’ble Court, the department/respondent is paying the salary direct to the



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petitioner @ Rs-19900 i.e. initial pay of ACPL-2.”

11. No other argument has been made nor any judgment cited by the Learned Counsel for the respondents.

12. I have heard learned Counsel for the parties and have gone through the documents appended along with the present petition.

13. The key issue that comes up for consideration before this Court is as to whether DA can be excluded from the ambit of pay or not. The said issue is no more *res integra* in light of the judgment of this Court in CWP No.36576 of 2019 titled as “**Seeshan Kumar and another vs State of Punjab and others**”. The relevant part of the judgment is extracted hereunder:

“3. The question as to whether the employees held to be entitled for minimum pay-scale would be entitled for dearness allowance or not is no more res integra and the same came up for consideration before the Apex Court that too in contempt proceedings wherein it was held as under:

*“2. The instant Contempt Petitions arise out of the Order dated 10.01.2018 passed by this Court disposing of Special Leave Petition preferred by the Principal Secretary, Government of Punjab, PWD Public Health & Others, in terms of the order entered by this Court in **State of Punjab & Ors. v. Jagjit Singh & Ors., (2017) 1 SCC 148.***



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3. Paragraph 55 of the decision in *Jagjit Singh (supra)* was to the following effect:

"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."

4. Notably, the expression "pay" was considered by this Court in *Contempt Petition (Civil) Nos.699- 700 of 2015, Tej Singh and Others v. Sarvesh*



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Kaushal and Ors., arising out of decision dated 11.12.2015 in Grah Rakshak, Home Guards Wel. Asso. v. State of H.P. & Others and connected matters, Civil Appeal No. 2759 of 2015 Etc. In its order dated 04.05.2016 passed in said Contempt Petitions, this Court observed: "After hearing learned counsel for the parties, we are of the opinion that the expression "minimum of the pay" mentioned in paragraph 22 is intended to mean not only the basic pay + grade pay, but also the dearness allowance that comes along with the basic pay and grade pay. This is in the context of the view expressed by this Court denying regular appointments to the petitioners, while taking into consideration the fact that the services of the Home Guards are used during an emergency and for other purposes and at the time of their duty they are empowered with the power of police personnel. Accordingly, we make it clear that the word "minimum of the pay" used in paragraph 22 of the judgment and order dated 11th March, 2015 means the basic pay + grade pay + dearness allowances + washing allowance."

5. *It is a matter of record that so far as the basic pay is concerned, the contempt petitioners have been paid the requisite amounts. However, it is submitted*



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that the amounts towards Dearness Allowance as was accepted by this Court in its order dated 04.05.2016 have not been made over to the contempt petitioners.

6. *We see force in the submissions made on behalf of the contempt petitioners.*

7. *It is, therefore, directed that the amounts payable to all the contempt petitioners towards Dearness Allowance shall be made over to them within six weeks from today.”*

4. *To add a reason thereto, I may hastenly observe here that Dearness Allowance cannot be divorced to the salary as is being done by the respondent for the simple reason that the Dearness Allowance is paid to the employees commensurating to the inflation index with an object to take care of increasing cost of living and thus cannot be denied by the authority. I am guided by the observations made by the Apex Court in the case of **Bengal Chemical and Pharmaceuticals Works Ltd. vs. Its Workmen (1969) 2 SCR 113**, wherein it has been held as under :-*

“Before we deal with the contentions of the learned counsel, it will be desirable to refer to a few decisions of this Court laying down the principles that have to borne in mind when a claim for dearness allowance or revision of dearness allowance is considered.



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18. *In Clerks of Calcutta Tramways v. Calcutta Tramways Co. Ltd., 1956 SCR 772* it is observed :-

"We can now take it as settled that in matters of the grant of dearness allowance except to the very lowest class of manual labourers whose income is just sufficient to keep body and soul together, it is impolitic and unwise to neutralise the entire rise in the cost of living by dearness allowance. More so in the case of the middle classes."

19. *In the Hindusthan Times case, (1964) 1 SCR 284* it is stated at p. 247 (of SCR) :-

"As was pointed out in (1962) 2 Lab LJ 352 (SC), the whole purpose of dearness allowance being to neutralise a portion of the increase in the cost of living it should ordinarily be on a sliding scale and provide for an increase on rise in the cost of living and a decrease on a fall in the cost of living."

20. *In Greaves Cotton and Co. v. Their Workmen, (1964) 5 SCR 362*, after referring to the *Hindusthan Motors case, (1962-2 Lab LJ 352 (SC))* and the *French Motor Car Co.'s case, (1963) Supp. 2 SCR 16*, this Court laid down that the basis of fixation of wages and



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dearness allowance is industry-cum-region and observed, at p. 368 (of SCR) :-

"The principle therefore which emerges from these two decisions is that in applying the industry-cum-region formula for fixing wage scales the Tribunal should lay stress on the industry part of the formula if there are a large number of concerns in the same region carrying on the same industry; in such a case in order that production cost may not be unequal and there may be equal competition, wages should generally be fixed on the basis of the comparable industries, namely industries of the same kind. But where the number of industries of the same kind in a particular region is small it is the region part of the industry-cum-region formula which assumes importance particularly in the case of clerical and subordinate staff, for, as pointed out in the French Motor Car Co.'s case, (1963) Supp 2 SCR 16, there is not much difference in the work of this class of employees in different industries." Again, at p. 374 (of SCR) it is stated :-

"Time has now come when employees getting same wages should get the same dearness



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allowance irrespective of whether they are working as clerks, or members of subordinate staff or factory-workmen."

21. *In Ahmedabad Mill Owners' Association v. The Textile Labour Association, (1966) 1 SCR 382 it has been emphasised that in trying to recognise and give effect to the demand for a fair wage, including the payment of dearness allowance to provide for adequate neutralisation, industrial adjudication must always take into account the problem of the additional burden which such wage structure would impose upon the employer and ask itself whether the employer can reasonably be called upon to bear such burden.*

22. *In Kamani Metals and Alloys Ltd. v. Their Workmen, (1967) 2 SCR 463 it has been noted that one-hundred per cent neutralisation is not advisable as it will lead to inflation and therefore dearness allowance is often a little less than one-hundred per cent neutralisation.*

23. *The following principles broadly emerge from the above decisions:*

1. *Full neutralisation is not normal given, except to the very lowest class of employees.*
2. *The purpose of dearness allowance being to*



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neutralise a portion of the increase in the cost of living, it should ordinarily be on a sliding scale and provide for an increase on the rise in the cost of living and a decrease on a fall in the cost of living.

3. *The basis of fixation of wages and dearness allowance is industry-cum-region.*

4. *Employees getting the same wages should get same dearness allowance, irrespective of whether they are working as clerks or members of subordinate staff or factory workmen.*

5. *The additional financial burden which a revision of the wage structure or dearness allowance would impose upon an employer, and his ability to bear such burden, are very material and relevant factors to be taken into account.”*

5. *In view of above once the authority has decided to grant minimum pay scale attached to the post and is paying dearness allowance to its employees, the same cannot be denied to the petitioners.”*

14. Similar issue came up for consideration in CWP No.23153 of 2019 titled as “**Kamal Kumar and others vs State of Punjab and others**” wherein the petitioners had sought pay parity vis-a-vis regular employees while working as daily wagers with Punjab Urban Development Authority.



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Learned Counsel for the respondents therein had made a similar argument that since the petitioners were being paid at the DC rates i.e. as per the provisions of Minimum Wages Act, they were only entitled for minimum pay scale, but the same shall not include dearness allowance. However, vide judgment dated 31.05.2023, this Court went on to reject this contention while referring to the ratio laid down in ***Seeshan Kumar (supra)***.

15. Surprisingly, in the reply filed initially by the respondents, an objection was taken to the effect that the petitioner was not appointed by them and had been engaged through the outsourcing agency namely M/s Friends Corporate Service Pvt. Limited on 29.04.2008 and that he willfully left the job on 30.11.2009. The department had the audacity to raise the said objection notwithstanding that Labour Court award passed against it had already attained finality. It is clearly an attempt on the part of the respondents to over-reach the orders passed by the Court and to compel an employee to approach Court of law for each and every relief notwithstanding that the same is an inherent consequential relief which accrues in his favour. That too despite the respondent-State having an access to best legal assistance and notwithstanding that the position in law had been consistent and well settled. Clearly the respondent-department has shown scant regard to settled law and even its own litigation policy. The State as a model employer does not rob an employee of his due or subject him to duress and financial stress to seek its right. Invariably, the failure of authorities to take a decision is abdication of responsibility of decision making and outsourcing of such decision through a litigative process has been the most prominent



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factor in burdening the Court docket. It has been a continuous litigation for the petitioner over last 15 years firstly to establish his relationship with respondent-department , then for the minimum of pay-scale and now for the D.A. leaving apart the ancillary execution proceeding/contempt.

16. As can be gleaned from the observations of this Court in *Seeshan Kumar (supra)* as well as *Kamal Kumar (supra)*, the respondent-department cannot deny dearness allowance to the petitioner once he has been held entitled to the minimum of pay scale as is admissible to the regular employees.

17. I find that it is a fit case for this Court to exercise its powers under Article 226 of the Constitution of India. The present petition is accordingly **allowed**. Respondents are directed to pay the dearness allowance to the petitioner as being paid to the other employees, from the date it fell due till its actual payment alongwith interest @6% p.a. The respondent-department is also liable to pay a cost of Rs.50,000/- to be deposited with *the* Poor Patient Welfare Fund (PPWF) of PGIMER, Chandigarh. The Department is granted liberty to effect recovery of increased financial burden from the officials who ignored the settled law and compelled institution of multiple cases.

(VINOD S. BHARDWAJ)
JUDGE

28.01.2025

Mangal Singh

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