

(2017) 05 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 17003 of 2011 (O&M)

Rupinder Kaur

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 17-05-2017

Acts Referred:

Constitution of India, 1950 — Article 14, Article 16, Article 226, Article 39
Punjab Ad Hoc, Contractual, Daily Wage, Temporary, Work Charged and Outsourced
Employees Welfare Act, 2016 — Section 3, Section 4

Citation : (2017) 3 SCT 173

Hon'ble Judges : Jaishree Thakur, J.

Bench : Single Bench

Advocate : Vikas Chatrath, Ms. Neeru Thakral, Jatinder Pal Singh and
Khushkaran Singh, Advocates, for the Petitioners; Ms. Amarjit Kaur Khurana,
Addl. AG Punjab, for the Respondents

Final Decision : Allowed

Judgement

Jaishree Thakur, J.—By way of the instant writ petition, the petitioners seek for an issuance of writ in the nature of certiorari to quash the clause in advertisement dated 15.02.2010, whereby their pay has been restricted to Rs.7,500/- per month, despite the fact that they are performing the same nature of duties and shoulder the same responsibilities as regular staff nurses appointed in the Department, with a further prayer that their services be regularized in terms of policy dated 18.03.2011.

2. In brief, the petitioners having the requisite qualification for appointment as Staff Nurse applied with the Department Of Health and Family Welfare pursuant to an advertisement dated 15.02.2010. After facing a regular selection, they were appointed on contract basis against vacant posts of staff nurses on a consolidated salary of Rs. 7,500/- per month. While discharging duties as staff nurse, the Department issued an advertisement dated 26.07.2011 by which it was proposed to fill up 602 posts of staff nurse in the pay scale of

10,300-34,800+ grade pay of 4500 on a regular basis. Fearing that they might be replaced the instant writ petition has been filed, claiming a right of regularization, as well as salary at par with regularly selected persons on the principles of 'equal pay for equal work'.

3. Mr. Vikas Chatrath learned counsel appearing on behalf of the petitioners contends, that the petitioners who are staff nurses working on contract basis with the Department Of Health And Family Welfare were appointed after facing a regular selection in 2010. At the present moment the petitioners are discharging the same duties and working at par with the regular staff nurses but are being denied equal pay which is violative of Article 14 and 16 of the Constitution of India. It is also argued that as per instructions dated 18.03.2011 they would be regularized having completed 3 years of service on contract. It is also submitted that similarly situated staff nurses who had been appointed pursuant to an advertisement that was issued in the year 2006 have been regularized, and the petitioners herein would be entitled to the same consideration.

4. Per contra, Ms. Amarjit Kaur Khurana, learned Additional Advocate General for the respondents urges that the petitioners are not entitled for regularization in terms of instructions dated 18.03.2011 since they were appointed only in the year 2010 and at the time of filing of the writ petition had not completed 3 years as specified. Moreover once the petitioners had accepted the terms and conditions of the contract of consolidated salary of Rs. 7,500/- they were estopped from claiming 'equal pay for equal work' on parity with regularly appointed staff nurses working in the Department.

5. I have heard the counsel for the parties and with their assistance have gone through the pleadings of the case.

6. It is not in dispute that the petitioners herein have been appointed as staff nurses with the Department after facing a regular selection. The only difference between them and the regular staff would be that the petitioners herein are working on contract basis. In the reply filed, the respondents have not been able to point out, that the nature of duties of the petitioners in the instant writ petition, and the regular staff nurses in the Department are different or that they do not shoulder the same responsibilities while discharging their duties.

7. The Government of Punjab in its Cabinet meeting held on 9.3.2011 decided to regularize those employees who were working on contract basis in various departments. Instructions dated 18.3.2011 were issued, wherein, in principle it was decided that employees who are working on contract basis against a sanctioned post and were appointed on fulfilling the prescribed eligibility qualifications by adopting the proper procedure in a transparent manner, would have their services regularized w.e.f. 01.04.2011 or on the completion of 3 years service on contract basis whichever is later with a stipulation no new posts will be created. The petitioners faced a regular selection process, which was initiated pursuant to a advertisement issued on the 15.2.2010. Thereafter they were

appointed with the Department. Staff nurses who had applied pursuant to a advertisement issued in the year 2006 have since been regularized under instructions dated 18.03.2011 and the petitioners herein would be entitled to the same benefits. The only reason for denying them the same was that they had not completed the 3 years in service before they could have been considered for regularization which is an argument not available to them now. The petitioners were appointed in the year 2010 and as on date have completed more than 7 years in service which would entitle them to be considered for regularization under the instructions issued.

8. During the pendency of this writ petition The Punjab Ad Hoc, Contractual, Daily Wage, Temporary, Work Charged And Outsourced Employees' Welfare Act, 2016 (Punjab Act No. 55 Of 2016) An Act to provide for the regularization of services of Group "A", "B", "C" and "D" employees working on ad hoc, contractual, daily wage, temporary and work charged basis under the State Government or its entities and further to take on contract basis, the out sourced employees working under the State Government or its entities has come into effect. As per Section 3 and 4 of the said Act all those persons who are working on ad hoc, temporary, work charge basis, contract basis etc are to be regularized if they have been working on the said post for the past 3 years and have the necessary qualification and eligibility. Once the said Act of 2016 has come into force, which also clearly permits persons working on contract to be regularized, the petitioners would certainly be entitled to consideration under the same. It is contended that the said Act is under challenge and is pending consideration before the division bench of this court in CWP No. 4187 of 2017 titled as Anika Gupta and Another v. State Of Punjab and another. Be that as it may, the petitioners would be entitled to be considered for regularization either under the instructions dated 18.03.2011, since they now fulfil the qualification as specified or under the Act of 2016 and having completed 3 years of service on contract basis after having been regularly selected.

9. The other question that arises for consideration would be whether the petitioners herein who are admittedly working on contract basis as staff nurses can claim the benefit of "equal pay for equal work" on par with staff nurses of the Department of Health And Family Welfare who are regularly appointed ?

10. The law in this regard is well-settled and is no longer res integra. The Apex Court in Jagjit Singh and others case (supra) delineated the law as settled regarding the principle of "equal pay for equal work" and came to hold as under:

"Having traversed the legal parameters with reference to the application of the principle of "equal pay for equal work", in relation to temporary employees (daily-wage employees, adhoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same corresponding posts. This exercise would require

the application of the parameters of the principle of 'equal pay for equal work' summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre. establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State that any of the temporary employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 herein above. 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."

11. The law as laid down in Jagjit Singh and others case (supra) is applicable upon the petitioners who are admittedly contractual employees and discharging duties of a regular employee. In view of the above, once the law is settled in this regard that those persons who are daily wager/adhoc, contractual employees and the like would be entitled to 'claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post.', the same would be made applicable to the petitioners. Moreover an affidavit has been filed in court today of Dr. Dharam Pal, Director Health Services Family Welfare Punjab Chandigarh on behalf of respondents No. 1 and 2, wherein it is submitted that the petitioners under the present civil writ petition are covered with the judgment relied upon in State Of Punjab v. Jagjit Singh, 2016 (4) SCT 641.

12. Therefore, in view of the above the writ petition is allowed. The petitioners who were appointed after facing a selection process on contract basis, against sanctioned posts, are discharging the same duties and responsibilities as are being discharged by regular employees. There can be no doubt that the principle of 'equal pay for equal work' would be applicable to the petitioners. In view of the above and relying upon the law as settled the petitioners would be entitled to draw wages at the minimum of the pay scale (at the lowest grade in the regular pay scale) extended to regular employees holding the same post.

13. This writ petition is being disposed of by giving a direction to the respondents to grant the said wages in consonance with the law as settled in Jagjit Singh's case supra. The petitioners would be entitled to the said benefit from the date the judgment was rendered that is from 26.10.2016 and the benefits should be released to them within a period of six months on receipt of a certified copy of this order. As far as the claim of regularization is concerned the respondents are directed to consider the claim of the petitioners either under the instructions of 2011 or under the Act of 2016. The consideration for regularization should also be done within a period of six months and if eligible necessary orders be issued.

14. The writ petition stands allowed accordingly.