

(2016) 05 P&H CK 0425

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 12280 of 2015 (O&M).

Vinod Kumar Soni and Others - Petitioners @HASH State of Haryana and Others

Date of Decision : 30-05-2016

Acts Referred:

Citation : (2017) 2 RSJ 336 : (2017) 1 SCT 71

Hon'ble Judges : Ritu Bahri, J.

Bench : Single Bench

Advocate : Dalbir Singh, Advocate, for the Petitioner; Hitesh Pandit, Additional Advocate General, Haryana, for the Respondent; N.R. Dahiya, Advocate, for the Respondent-UGC.; Kuldeep Tiwari, Advocate, for the Respondent No.4.

Final Decision : Disposed Off

Judgement

Ritu Bahri, J. (Oral)—This order shall dispose of the above three petitions as common question of facts are involved in both these petitions. However, for the facility of reference, the facts are being taken from CWP No.12280 of 2015.

2. Petitioners are seeking a writ in the nature of certiorari to quash the practise of the concerned respondents to relive them during vacations and further direction to allow them to continue till regular appointments are made and to grant the minimum scale prescribed by UGC, vide letter dated 05.02.2010 (Annexure P-5).

3. Pursuant to advertisement (Annexure P-1), the Government College for Women, Ratia (Fatehabad), advertised the posts of extension faculty in the subjects of Commerce, English, Hindi, Punjabi, History, Political Science, Geography, Mathematics, Economics and Environment Studies and essential qualifications was as per the UGC and Haryana Government guidelines. The petitioners being eligible experience as per certificate (Annexure P-2) and requisite experience as per (Annexure P-3) applied and were appointed in the academic sessions for 2014-15. The petitioners were eligible as per the qualification of the posts of Assistant Professors as per the instructions issued by the Financial Commissioner and Principal Secretary to Government of Haryana,

Higher Education Department dated 21.07.2011 (Annexure P-4). Further, as per the notification dated 05.02.2010 (Annexure P-5), the UGC had issued necessary instructions for payment to a guest/part time teacher, which will be paid Rs. 1000/- per lecture to a maximum of Rs. 25,000/- per month. The Haryana Government has taken a conscious decision to implement the said scheme for Colleges and University Teachers as is evident from the affidavit filed in CWP No.7176 of 2010 (Annexure P-6).

4. The respondents in the written statement have placed on record letter dated 03.08.2015 (Annexure R-1) whereby a provision have been made that a candidate who has been working last year and his work is found satisfactory he shall continue to work until his work satisfactory. A more qualified person, if available, could be appointed only if his work is not found satisfactory.

5. The present writ petition was adjourned to 12.07.2016 and pursuant to the advertisement (Annexure P-1) the respondents were proceeded further selection of similar situated persons as the petitioners.

6. Learned counsel for the petitioners has referred to order (Annexure P-14) whereby the office of Indira Gandhi, Post Graduate Government College, Tohana has taken a decision to relieve all the resource persons and English Language Lab Instructor on 19.04.2016 on account of semester examination of April/May-2016 from 23.04.2016 in Choudhary Devi Lal University, Sirsa. He further referred to an order dated 12.10.2015 passed in CWP No.18877 of 2015 (Annexure P-15) whereby in the case of Extension Lecturers a statement was made that petitioners were working as Extension Lecturers, who would continue in the same capacity till regular appointments are made, however, subject to their good work, conduct and existence of work. The said writ petition was disposed of as having become infructuous.

7. At the same time, applicant-petitioner No.9 has filed an affidavit vide CM. No.6638 of 2016. He has also placed on record counter affidavit filed by UGC (Annexure P-16) in the case of similar nature and also given the details of the lecturer delivered for one month (Annexure P-17) to show that the Extension Lecturers are delivering lectures on all working days and letter (Annexure P-18) by which the funds allotted to all colleges for the payment of extension lectures under Plan 69-contractual services have been given.

8. Reference, at this stage, can be made to judgment of Hon''ble the Supreme Court in a case of Hargurpratap Singh v. State of Punjab and others, 2007(13) SCC 292 (P-4) whereby Hon''ble the Supreme Court has allowed the petitioners to continue to work on the contract basis till regular selections are made on minimum of pay scale. The above said judgment has been followed by this Court in a case of Shivkesh and others v. State of Haryana and others, passed in CWP No. 13555 of 2013, decided on 02.07.2013.

9. Further, reference can be made to a judgment of this Court in a case of Dr. Anil Khuranna v. MDU, Rohtak and others, passed in CWP No. 13946 of 2004

whereby this Court while disposing of the writ petition by referring to the judgment of Hon"ble the Supreme Court of India in a case of Rattan Lal v. State of Haryana passed in Civil Appeal No. 4600 of 1985, dated 16.08.1985 and in terms of full bench judgment of Avtar Singh v. State of Punjab in CWP No.14796 of 2003, decided on 11.11.2011 has observed as under:-

"2. As regards the second relief relating to the practise of discontinuing the contract during the vacation period and reemploying them, the issue has been settled by the Supreme Court in the judgment in Civil Appeal No.4600 of 1985, dated 16.08.1985 in Rattan Lal and others v. State of Haryana and others where the Court has held that the practise of discontinuing during summer holidays and reemploying them was to be deprecated and all the ad hoc teachers shall be paid salary and allowances during the period of summer vacation as long they held the post after the vacation also. The petitioners will have consideration of such pay during the summer vacations for all the periods commencing from 3 years next prior to the filing of the petition till they held the service beyond the vacation. As regards the third prayer that regarding the consolidated pay, that was paid to the petitioners, the principal contention was that they were selected after a regular process of selection and, therefore, in terms of the judgment of Full Bench in Avtar Singh v. State of Punjab in CWP No.14796 of 2003, decided on 11.11.2011, all the petitioners would be entitled to the minimum of regular pay scales for the period of 3 years commencing prior to the institution of the writ petition till the date when the respective services were terminated. The amounts shall be calculated and the benefits released to the petitioners within a period of 8 weeks from the date of receipt of order. The petitioners are at liberty to make a representation giving out the calculations for release of benefits.

LPA filed against the above said judgment was dismissed by this Court on 21.11.2014, vide LPA No. 2104 of 2013. The relevant para reads as under:-

"Before us, the only grievance so raised on behalf of the appellant- University was that the respondents have wrongly been held entitled to the grant of minimum of the regular pay scales. This argument made on behalf of the appellant-University is to be considered only to be rejected. When questioned, learned counsel appearing on behalf of the appellant-University admitted before us that before the respondents has been appointed, the posts has been duly advertised and that their selection and appointments were through a duly constituted Selection Committee. Thus, it is clear that the respondents has been appointed by adopting a fair and transparent procedure. That being so, the Full Bench decision of this Court in Avtar Singh v. State of Punjab (Supra) fully covers the case against the appellant-University and in favour of the respondents. The relevant paragraph of the Full Bench decision is reproduced below for ready reference:-

"However, it is also noticed that certainly daily wagers are permitted to continue for long numbers of years. Keeping in view the ration of the aforesaid judgments, we hold that daily wagers, ad hoc or contractual appointees are not entitled to

minimum of the regular pay scale from the date they were engaged merely for the reason that the physical activity carried out by the daily wager and the regular employee is similar, but such general principle shall be subject to the following exceptions:

(1) A daily wager, ad hoc or contractual appointee against the regular sanctioned posts, if appointed after undergoing a selection process based upon fairness and equality of opportunity to all other eligible candidates, shall be entitled to minimum of the regular pay scale from the date of engagement."

SLP (C) No. 8504 of 2015 filed against the judgment passed by the Division Bench on 21.11.2014, has also been dismissed by Hon"ble the Supreme Court on 17.04.2015.

The Hon"ble CAT in a bunch of cases in Vandana Jain and others v. Union of India and others, passed in O.A. No. 33-CH of 2011 and connected matters, decided on 31.03.2011 whereby denying the salary to the petitioners in vacation period was held to be unconstitutional.

Recently, in a case of Mrs. Menka and others v. State of Haryana and others, decided on 05.05.2016, this Court was dealing with a case of Assistant Professor/ Extension Lectures appointed in different degree subjects. The said writ petition was allowed and direction was given to the respondents to grant the petitioners remuneration @ Rs. 1000/- per lecture subject to a maximum of Rs. 25000/- per month.

10. After hearing the learned counsel for the parties, going through the record and after perusing the above said judgments, this Court is of the considered view that the case of the petitioners is squarely with the above mentioned judgments. Accordingly, the present writ petitions are allowed and the petitioners are allowed to continue to work on their post till the regular selections are made and they are entitled to get the salary of the vacation period and remuneration @ Rs. 1000/- per lecture subject to a maximum of Rs. 25000/- per month.

11. However, the respondents are at liberty to verify the qualifications of the petitioners as per UGC guidelines and can take appropriate steps to dispense with the services of the petitioners, who are not qualified.

12. However, it is made clear that the contractual employees shall work to the satisfaction of the respondents and in case posts are abolished or their work and conduct is not found satisfactory, their services can be dispensed with by the respondents.