

Before G.S. Sandhawalia & Vikas Suri, JJ.

STATE OF PUNJAB AND OTHERS—Appellants

versus

BALBIR SINGH AND OTHERS—Respondents

LPA No.706 of 2020

March 29, 2022

Constitution of India, 1950—Arts. 14, 226 and 227— Letter Patents Appeal— Punjab Civil service Rules—Punjab Information and Communication Technology Education Society (PICTES)—Regularization of non-teaching staff along with entitlement to difference of pay scale for a period of 38 months — Order of the writ Court upheld—Regularization benefit was given to Teaching staff but the non-Teaching staff was ignored—Instructions of the organization indicate that denial cannot have been to one set of persons in the same department once benefit has been extended to Teaching staff— Decision of the government held arbitrary and discriminatory, hence non-Teaching staff was allowed regularization—LPA dismissed.

Held that a perusal of the said clause would go on to show that the denial could not have been to one set of persons in the same department, who are similarly situated and once the benefit had been extended to teaching staff. It is pertinent to notice that in the proposal (Annexure P-6) it had been noticed that only 66 nonteaching administrative employees would be involved, whereas as per the earlier meeting of the Hon'ble Chief Minister dated 06.11.2011 (Annexure P-5), which had been reproduced above goes on to show that total of 6452 Computer Teachers as such were involved whose services were to be regularized. Thus, the fall back on Clause 5 as such is totally on untenable grounds in comparison to the ratio as such of the teaching staff, who had been regularized whereas the non-teaching staff have been given a short shrift. The decision of the Government as such is apparently arbitrary and discriminatory on the face of it and not sustainable, in view of Article 14 of the Constitution of India.

(Para 15)

SPS Tinna, Addl. AG, Punjab
for the appellants.

Amit Jhanji, Senior Advocate with

Abhishek Premi, Advocate
for the respondents in LPA-706-2020.

Satnam S. Chauhan, Advocate and
T.S. Chauhan, Advocate
for the respondent LPA-702-2020 and
for respondent No.5 in LPA-705-2020.

G.S. SANDHAWALIA, J. (ORAL)

CM-1964-LPA-2020 in LPA 706-2020

CM-1950-LPA-2020 in LPA-702-2020

CM-1960-LPA-2020 in LPA-705-2020 &

CM-2019-LPA-2020 in LPA-738-2020

(1) Applications for condoning the delay of 274 days in filing the appeals against the judgment of the learned Single Judge dated 04.12.2018 have been filed.

(2) A perusal of the paper-book would go on to show that certified copy was applied on 13.12.2018 and the same was received on 28.05.2019. A decision was taken by the competent authority to file the LPA, which was received on 11.10.2019 by the office of Advocate General, Punjab, wherein opinion was given that it was a fit case for filing the appeal. In such circumstances, the appeal was filed on 28.08.2020 and reasons given in the application is that draft appeal was prepared and details were given to the office of Advocate General, Punjab and, therefore, the delay has occurred.

(3) Applications are opposed by filing reply.

(4) Keeping in view the fact that the issue is of regularization of 35 persons and a policy matter was subject matter of consideration, sufficient cause has been made out to condone the delay. The applications are accordingly allowed and delay of 274 days in filing the appeals is condoned.

CMs stand disposed of.

Main appeals

(5) Present letters patent appeals i.e. **LPA Nos.706, 702, 705 and 738 of 2020** are directed against the order of the learned Single Judge dated 04.12.2018 passed in CWP No.7764 of 2015 'Balbir Singh and others Vs. State of Punjab and others' in a bunch of four cases. The learned Single Judge vide the impugned order had directed

regularization of the writ petitioners who are non-teaching staff of Punjab Information and Communication Technology Education Society (PICTES) and limited the entitlement to difference of pay-scales only for a period of 38 months, keeping in view of the judgment of the Full Bench passed in *Saroj Kumari* versus *State of Punjab*¹.

(6) The reasoning which weighed with the learned Single Judge was that for similarly situated persons mainly for the Computer Teachers of the said Society, a decision was taken to regularize them and similar benefit had not been granted to the writ petitioners who are the non-teaching staff.

(7) The defence as such of the respondent-Department of Finance for denying the claim was on account of paucity of funds while relying upon policy dated 17.11.2011, which was accordingly rejected on the ground of applicability of Article 14 of the Constitution of India and the discriminatory attitude as such. It was also noticed that the PICTES was a wholly State controlled society and, therefore, would come within the definition of State under Article 12 of the Constitution of India while relying upon the proposal dated 02.12.2010 (Annexure P-3), wherein the benefit was given to the Computer Teachers. The directions had been issued by placing reliance upon the judgment of the Apex Court passed in *Workmen of Bhurkunda Colliery of Central Coalfields Ltd.* versus *Management of Bhurkunda Colliery of Central Coalfields Ltd.*².

(8) Mr. Tinna has submitted that the proposal as such did not materialize and, therefore, directions could not have been issued as there were no funds as such available with the PICTES to bear the burden as such of regularization.

(9) Senior Counsel Mr. Amit Jhanji has taken us through the paper-book to demonstrate the manner in which the writ petitioners have been discriminated, who are now stated to be 35 persons, though they have been appointed way back on 13.09.2005 (Annexure P-2) as in the case of one Avtar Chand @ consolidated salary of Rs.5,000/- per month.

(10) A perusal of Annexure P-2 would go on to show that the contractual employment was offered and it is not disputed that they had sought regularization in pursuance of the same. Initially the proposal

¹ 1998 (3) SCT 664

² 2006 (1) SCT 584

was made on 02.12.2010 (Annexure P-3) for regularizing the services of 6500 Computer Teachers w.e.f. 01.07.2011 with the condition that Punjab Civil Services Rules would be applicable to the said teachers who had completed 2 ½ years of service on 01.07.2011. The request for regularization had thereafter followed on 07.12.2010 (Annexure P-4) by the Administrative staff/writ petitioners as such and resultantly on 06.11.2011 (Annexure P-5) under the Chairmanship of the then Hon'ble Chief Minister, a decision in principle was taken which was approved that the demand of the non-teaching staff is genuine. A perusal of the said proceedings would go on to show that concerned official including the Chief Secretary and the Secretary of the School Education and the Director General Secondary Education etc. were also present. Relevant portion of the proceedings reads as under:-

“2. Under PICTES two types of employees work- Computer Teacher (Total 6452) and Non-Teaching Administrative Staff (Total 65), Punjab Government by issuing notification on 02.12.2010 has decided to regularize computer teachers under PICTES w.e.f. 01.07.2011. Keeping this in view, non-teaching administrative staff has also demanded to regularize them.

3. Said demand was considered in detail and a decision has been taken that the demands of the non-teaching administrative staff are genuine and their services should also be regularized. Simultaneously the decision was also taken that as is the case with computer teachers the deficit in the salary shall be completed by the State Government.

Meeting ended with thanks.

Approved by the Honourable CM, Punjab on 15.11.11 on file.”

(11) A proposal thereafter was put up before the BOG of the Society on 29.08.2014 (Annexure P-8) for regularization of the non-teaching staff, as noticed in principle which had already been accepted by the office of Chief Minister. Keeping in view the same, the proposal dated 15.12.2011 (Annexure P-6) was floated regarding the regularization of the non-teaching administrative employees who had completed 3 years service as on 01.11.2011. The proposal of the teaching staff in the meantime had been duly modified on 05.07.2011 (Annexure P-7) wherein apart from 2 ½ years service, there was also a

condition put that in every four months those computer teachers who will complete the service of 2½ years their services would also be regularized. The pay scale was also fixed at Rs.10300-34800 & Grade Pay of Rs.3800 per month, which was equivalent to the Vocational Masters. The initial pay was fixed @ Rs.10,790/- per month and the Secretary of the Society was to be the appointing authority.

(12) The Finance Department in its usual stand put a spoke in the wheel on 24.12.2014 (Annexure P-9) on the ground that it was unable to accept the proposal of administrative staff. Reliance as such in the defence by the State in its written statement has been placed upon the instructions dated 17.11.2011 (Annexure P-10). It has been contended that Clause 5 of the said policy as such provided that only those departments could propose for regularization which are in a position to bear the financial burden after regularization of the services of their employees and would be granted permission as such and the Government shall not extend any direct or indirect financial support to these departments. Thus, the stand was that instructions dated 06.11.2011 (Annexure P-5) which the Hon'ble Chief Minister had approved were superseded in view of the instructions dated 17.11.2011 (Annexure P-10). Thus, the stand was taken that the Department of Finance had not given the approval correctly.

(13) Mr. Tinna has thus relied upon the said defence that the Society was not in a position to bear the financial burden, therefore, the Finance Department had rightly rejected the case.

(14) The said argument as such needs to be rejected outrightly. Firstly the instructions dated 17.11.2011 pertained also to Cooperative Organization and other Societies under various departments, which would be clear from the subject index of the said instructions, which reads as under:-

“Subject: To regularize the services of Daily wages/ work charge and contractual working in Board/ Corporations/commissions/cooperative organizations/other societies under various department.”

Secondly Clause 5 which has been strongly relied upon reads as under:-

“5. Concerned Board of Directors/Competent Authority will recommend to regularize the services of contractual employees and daily wages/workcharge working in various Board/Corporations/commissions under their departments,

keeping in view of their financial conditions. So those departments will recommend regularize services of these employees, who are in a position to bear the financial burden after regularization of services of their employees. No direct or indirect financial burden will be given by the Government for the said purpose.”

(15) A perusal of the said clause would go on to show that the denial could not have been to one set of persons in the same department, who are similarly situated and once the benefit had been extended to teaching staff. It is pertinent to notice that in the proposal (Annexure P-6) it had been noticed that only 66 non-teaching administrative employees would be involved, whereas as per the earlier meeting of the Hon'ble Chief Minister dated 06.11.2011 (Annexure P-5), which had been reproduced above goes on to show that total of 6452 Computer Teachers as such were involved whose services were to be regularized. Thus, the fall back on Clause 5 as such is totally on untenable grounds in comparison to the ratio as such of the teaching staff, who had been regularized whereas the non-teaching staff have been given a short shrift. The decision of the Government as such is apparently arbitrary and discriminatory on the face of it and not sustainable, in view of Article 14 of the Constitution of India.

(16) Resultantly, the findings which have been recorded by the learned Single Judge on the issue of parity are not liable to be interfered in any manner. The appeals are accordingly dismissed. All pending civil miscellaneous applications also stand disposed off.

Payel Mehta