



Dr. Krishan Lal

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A consultancy firm to provide help for the problems of govt. employees & retired pensioners

Probation Period ਦੌਰਾਨ ਮੂਲ ਵੇਤਨ ਦੀ ਥਾਂ ਪੂਰਾ ਤਨਖਾਹ ਸਕੇਲ ਲੈਣ ਸੰਬੰਧੀ ।

15.01.2015 ਤੋਂ ਭਰਤੀ ਹੋਏ ਪੰਜਾਬ ਦੇ ਸਰਕਾਰੀ ਮੁਲਾਜ਼ਮਾਂ ਜਿਹੜੇ ਘੱਟ ਤਨਖਾਹ ਉੱਤੇ ਕੰਮ ਕਰ ਰਹੇ ਸੀ ਉਹਨਾਂ ਨੂੰ ਪੂਰੀ ਤਨਖਾਹ arrear ਸਮੇਤ ਤਿੰਨ ਮਹੀਨੇ ਵਿੱਚ ਦੇਣ ਦਾ ਆਦੇਸ਼ ਪੰਜਾਬ ਅਤੇ ਹਰਿਆਣਾ ਹਾਈਕੋਰਟ ਨੇ CWP No. 17064 of 2017 ਅਤੇ ਹੋਰਾਂ ਵਿੱਚ 16.02.2023 ਦੇ ਆਪਣੇ ਫੈਸਲੇ ਵਿੱਚ ਦੇ ਦਿੱਤਾ ਹੈ । ਪੰਜਾਬ ਅਤੇ ਹਰਿਆਣਾ ਹਾਈਕੋਰਟ ਦੇ ਡਿਵੀਜ਼ਨ ਬੈਂਚ ਨੇ 15.01.2015 ਦੀ ਨੋਟੀਫਿਕੇਸ਼ਨ ਨੂੰ ਰੱਦ ਕਰ ਦਿੱਤਾ ਅਤੇ ਜਿਸ ਵਿੱਚ ਕੈਰ-ਬਰਾਬਰ ਤਨਖਾਹ ਅਤੇ ਕਰਮਚਾਰੀ ਦੇ ਪ੍ਰੋਬੇਸ਼ਨ ਨੂੰ ਸਰਵਿਸ ਪੀਰੀਅਡ ਵਿੱਚ ਨਾ ਜੋੜਨ ਦੇ ਆਦੇਸ਼ ਨੂੰ ਵੀ ਰੱਦ ਕਰ ਦਿੱਤਾ ਹੈ । ਇਸ ਹਾਈ ਕੋਰਟ ਨੇ ਰਾਜ ਸਰਕਾਰ ਨੂੰ 15.01.2015 ਤੋਂ ਬਾਅਦ ਸਾਰੇ ਨਵੇਂ ਭਰਤੀ ਕੀਤੇ ਕਰਮਚਾਰੀਆਂ ਨੂੰ ਨਿਯਮਤ ਤਨਖਾਹ ਸਕੇਲਾਂ ਸਮੇਤ ਅਤੇ ਤਨਖਾਹਾਂ ਦੇ ਅਨੁਸਾਰ ਬਣਦੇ ਬਕਾਏ (arrear) ਦਾ ਭੁਕਤਾਨ ਕਰਨ ਅਤੇ ਪ੍ਰੋਬੇਸ਼ਨ ਪੀਰੀਅਡ ਨੂੰ ਸੇਵਾ ਦੀ ਮਿਆਦ ਵਜੋਂ ਗਿਣਨ ਦੇ ਨਿਰਦੇਸ਼ ਦਿੱਤੇ ਹਨ ।

ਪੰਜਾਬ ਅਤੇ ਹਰਿਆਣਾ ਹਾਈਕੋਰਟ ਵਲੋਂ ਪੰਜਾਬ ਸਰਕਾਰ ਦੇ ਮੁਲਾਜ਼ਮਾਂ ਨੂੰ Probation Period ਦੌਰਾਨ ਮੂਲ ਵੇਤਨ ਦੀ ਥਾਂ ਪੂਰਾ ਤਨਖਾਹ ਸਕੇਲ ਦੇਣ ਦੇ ਹੁਕਮ ਦਿੱਤੇ ਹਨ । ਇਸ ਸੰਬੰਧੀ CWP No. 8922 ਆਫ 2017 (O&M) ਰੂਰਵਿੰਦਰ ਸਿੰਘ ਬਨਾਮ ਪੰਜਾਬ ਸਰਕਾਰ 13-09-2018 ਨੂੰ Allow ਹੋ ਚੁੱਕੀ ਹੈ ।

“The regular pay scale along with all other emoluments like increment etc. from the date of their initial appointment with the further prayer to count the period spent on probation as regular service for the purpose of determination of total length of service under the Service Rules”. ਇਸ ਫੈਸਲੇ ਦੇ ਵਿਰੁੱਧ ਸੁਪਰੀਮ ਕੋਰਟ ਵਿੱਚ SLP(C) The State of Punjab v/s Chief Engineer / HRD Punjab State Power Corporation Ltd. V/s Gurwinder Singh ਯਾ ਦਿੱਤੀ ਹੈ ਜਿਸਦਾ Dairy No. 4762 of 2020 ਹੈ ਜਿਸ ਦੀ ਅਫਲੀ ਤਰੀਕ 28.03.2023 ਹੈ ।

ਇਸੇ ਵਿਸ਼ੇ ਸੰਬੰਧੀ CWP No. 6391 Of 2016 (O&M) Dr. Vishavdeep Singh V/s Punjab Government 26-10-2018 ਨੂੰ Allow ਹੋ ਚੁੱਕੀ ਹੈ । ਜਿਸ ਵਿੱਚ ਸਰਕਾਰ ਵਲੋਂ ਜਾਰੀ Probation ਪੀਰਡ ਦਾ notification dated. 15-01-2015 ਨੂੰ ਰੱਦ ਕਰ ਦਿੱਤਾ ਹੈ ।

“Notification dated 15.1.2015 (Annexure-P-3), so far as it substitutes Rule 4.1 of PCS Rules and provides for payment of only fixed monthly emoluments in terms of Rule 2.20-A of PCS Rules and also providing that period spent on probation by a Government employee shall not be treated to be the time, spent on such post, is hereby quashed.

All such employees shall be entitled to same salary as paid to regular employees with effect from the date of passing of this judgment.”

ਉਪਰੋਕਤ ਫੈਸਲੇ ਵਿਰੁੱਧ ਪੰਜਾਬ ਸਰਕਾਰ ਵਲੋਂ ਪਾਈ ਗਈ Review Application No. RA-CW-388-2018 In CWP No. 6391 of 2016 (O&M) 08-11-2019 ਨੂੰ dismiss ਹੋ ਗਈ ਹੈ। ਇਸ ਫੈਸਲੇ ਦੇ ਵਿਰੁੱਧ ਵੀ SLP(C) The State of Punjab v/s Dr. Vishavdeep Singh ਯਾ ਦਿੱਤੀ ਹੈ ਜਿਸ ਦਾ Dairy No. 11476 of 2020 ਹੈ ਜਿਸ ਦੀ ਅਫਲੀ ਤਰੀਕ 28.03.2023 ਹੈ ।

It is not in dispute that SLP No.4762 of 2020 was filed by the State of Punjab in the Supreme Court of India against the order in **Gurwinder Singh and others** and SLP No.11476 of 2020 was filed by it against the order in **Dr. Vishavdeep Singh and others** and that only notice was issued in the SLPs and contempt proceedings only were stayed. There is no stay granted by the Supreme Court of the judgments rendered in both cases.

Therefore, we reject the plea of the counsel for the State that these cases ought not to be decided till the SLPs preferred against the judgments of this Court in **Gurwinder Singh and others** and **Dr. Vishavdeep Singh and others** are decided by the Supreme Court or till the SLP filed in the Supreme Court against the judgment of the Rajasthan High Court in **Gopal Kumawat's** case is decided.

ਅਕਾਲੀ -ਭਾਜਪਾ ਸਰਕਾਰ ਵਲੋਂ ਸਾਲ 2015 ਤੋਂ ਬਾਅਦ ਭਰਤੀ ਕੀਤੇ ਲਗਭਗ 25000 ਮੁਲਾਜ਼ਮਾਂ ਨੂੰ ਮੁਢਲਾ ਤਨਖਾਹ ਸਕੇਲ ਹੀ ਦਿੱਤਾ ਜਾ ਰਿਹਾ ਸੀ । ਮੁਢਲਾ ਤਨਖਾਹ ਸਕੇਲ ਲੈਣ ਵਾਲੇ ਮੁਲਾਜ਼ਮਾਂ ਨੂੰ ਸਰਕਾਰ ਵਲੋਂ ਮਹਿੰਬ 10 ਹਜ਼ਾਰ ਰੁਪਏ ਤਨਖਾਹ ਦਿੱਤੀ ਜਾਂਦੀ ਸੀ । ਇਸ ਫੈਸਲੇ ਅਨੁਸਾਰ Probation Period ਤੋਂ ਹੀ ਪੂਰਾ ਤਨਖਾਹ ਸਕੇਲ ਅਤੇ ਸਲਾਨਾ ਤਰੱਕੀਆਂ ਦਿੱਤੀਆਂ ਜਾਣਗੀਆਂ ਅਤੇ ਇਸ ਫੈਸਲੇ ਅਨੁਸਾਰ ਸਾਰਾ ਸਮਾਂ ਕੁੱਲ ਸਰਵਿਸ ਵਿੱਚ ਗਿਣਿਆ ਜਾਵੇਗਾ । ਭੱਤਿਆ ਸਮੇਤ ਪੰਜਾਬ ਦੇ ਮੁਲਾਜ਼ਮਾਂ ਨੂੰ ਤਨਖਾਹ ਘੱਟ ਤੋਂ ਘੱਟ 40 ਹਜ਼ਾਰ ਰੁਪਏ ਪ੍ਰਤੀ ਮਹੀਨੇ ਦੇਣੀ ਬਣਦੀ ਹੈ । ਅਕਾਲੀ ਭਾਜਪਾ ਸਰਕਾਰ ਵਲੋਂ ਨਵਾਂ ਕਾਨੂੰਨ ਬਣਾ ਕੇ ਨਵੇਂ ਭਰਤੀ ਹੋਏ ਮੁਲਾਜ਼ਮਾਂ ਨੂੰ ਤਿੰਨ ਸਾਲਾਂ ਦਾ ਪ੍ਰੋਬੇਸ਼ਨ ਸਮਾਂ ਨਿਰਧਾਰਤ ਕਰਕੇ ਮੂਲ ਵੇਤਨ ਹੀ ਦੇਣ ਦਾ ਫੈਸਲਾ ਕੀਤਾ ਸੀ ਤਾਂ ਜੋ ਦਿੱਤੀ ਸੰਕਟ ਟਾਲਿਆ ਜਾ ਸਕੇ ।

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**A consultancy firm to provide help for the problems of govt. employees & retired pensioners
PERFORMA (ENGLISH CAPITAL LETTERS) Writ Regarding To Count Probation Period
Service for All Benefits**

Name	
Father's Name	
Designation	
Office Name	
Belt No.	
Date Of Birth	
Aadhar Card No.	
Date Of Appointment	
Date Of Regular	
Date Of Total Probation Period Service and Category	
Mobile Number	
Whats App Number	
Email Address	
Residence Address	
Signature	

Important Points:-

Paytm, Google Pay and PhonePe Payment Mobile Number:- 9915031482

1. Send one copy of each Performa, Power of Attorney and Aadhar Card both sides by whatsapp and one by post.
2. Only Signature on Power of Attorney left side as written Signature or Thumb Impression of client.

State Bank of India Budhlada
Distt. Mansa(Punjab)
Current A/c No.39453963229
In Favour of: Krishana Consultancy
IFSC Code: SBIN0050050
Whatsapp No - 98157-13297

POWER OF ATTORNEY

In the Court of

..... [Plaintiff/Appeallant
Complainant
Petitioner

VERSUS

..... [Defendant
Respondent,
Accused

KNOW ALL to whom these present shall come that I/We undersigned appoint

for the in the above mentioned case to do all the following acts deeds and things or any of them that is to say :-

1. To act appear and plead in the above mentioned case in the court or any other Court in which the same may be tried or heard in the execution or in any stage of its progress until its final decision.
2. Present pleading appeals letter patent appeal cross objection or petitions for execution review, revisions withdrawal compromise or other petitions or affidavit or other documents as shall deemed necessary or advisable for the prosecution of the said case in all its stage.
3. To file and take back documents and to file application for restoration there of in case it is dismissed in default.
4. To withdraw or compromise the said case or submit for arbitration any difference or disputes that shall arise touching or in any manner relating to the said case.
5. To deposit draw any receive money and grant receipt there of and to do all other acts and things which may be necessary to be done for the progress and in the case of prosecutions of said case.
6. To employee and other legal practitioner authorising him to exercise the power and authorities hereby conferred on the advocate whenever he may think fit to do so.

And I/We hereby agree to ratify whatever the Advocate or his substitute shall do in the promises.

And I/We hereby agree not to hold the Advocate or his substitute responsible for the result of said for hearing case in consequence from the court when the said case is called up or for any negligence of the said Advocate or his substitute.

And I/We hereby agree that in the event of whole or any part of fee agreed by me to be paid to the Advocate, remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid if any costs are allowed for an adjournment the advocate would be entitled to the same.

IN WITNESS WHERE OF I/We agree to set my/our hands to the represent the contents of which have been explained to understand by me/us this the

.....day..... 20.....

(Signature or Thumb Impression of client)

Accepted :

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

1. **CWP-17064-2017**
Ajay Kumar Singla & Others
..... Petitioners
Versus
State of Punjab and Others
..... Respondents

2. **CWP-6232-2017**
Mohammad Daud Alam and Others
..... Petitioners
Versus
State of Punjab and Others
..... Respondents

3. **CWP-15869-2017**
Gurcharan Singh and Others
..... Petitioners
versus
State of Punjab and Others
..... Respondents

4. **CWP-6062-2019**
Bickramjit Singh
..... Petitioners
versus
State of Punjab and Others
..... Respondents

5. **CWP-31056-2018**
Anita and another
..... Petitioners
versus
State of Punjab and Others
..... Respondents

6. **CWP-12522-2019**
Jaswinder Singh and Others
..... Petitioners
versus
State of Punjab & Another
..... Respondents

7. **CWP-31137-2018**
Kulbir Singh
..... Petitioner
versus
State of Punjab & Another
..... Respondents

- 8.** Gagandeep Bhardwaj
..... Petitioners
versus
State of Punjab & Others
..... Respondents

- 9.** Dr. Amandeep Singh Brar & Others
..... Petitioners
versus
State of Punjab & Another
..... Respondents

- 10.** Gagandeep & Others
..... Petitioners
versus
State of Punjab & Another
..... Respondents

- 11.** Navjeet Kaur & Another
..... Petitioners
versus
State of Punjab & Others
..... Respondents

- 12.** Tara Chand
..... Petitioners
versus
State of Punjab & Others
..... Respondents

- 13.** Chandan Kumar Singh & Others
..... Petitioners
versus
Guru Angad Dev Veterinary and Animal Sciences University, Ludhiana
..... Respondents

- 14.** Gurminder Singh Randhawa & Others
..... Petitioners
versus
State of Punjab & Others
..... Respondents

- 15.** Rajpal Singh & Others
versus
State of Punjab & Others

CWP-29351-2018
.... Petitioners
.... Respondents
- 16.** Gouravjeet Singh & Others
versus
State of Punjab & Others

CWP-29355-2018
.... Petitioners
.... Respondents
- 17.** Chanan Ram & Others
versus
State of Punjab & Others

CWP-31105-2018
.... Petitioners
.... Respondents
- 18.** Gurpreet Singh & Others
versus
State of Punjab & Others

CWP-25919-2018
.... Petitioners
.... Respondents
- 19.** Punit Gupta & Others
versus
State of Punjab & Another

CWP-4964-2019
.... Petitioners
.... Respondents
- 20.** Sumitpal Kaur
versus
State of Punjab & Others

CWP-7966-2019
.... Petitioners
.... Respondents
- 21.** Sukhchain Singh & Others
versus
State of Punjab & Others

CWP-8755-2019
.... Petitioners
.... Respondents

- 22.** **CWP-26033-2018**
Kulwinder Singh & Another Petitioners
versus
State of Punjab & Others Respondents

- 23.** **CWP-25727-2018**
Gurwant Singh & Others Petitioners
versus
State of Punjab & another Respondents

- 24.** **CWP-26014-2018**
Baljit Singh & Others Petitioners
versus
State of Punjab Respondent

- 25.** **CWP-28972-2018**
Deepak Kumar & Others Petitioners
versus
State of Punjab through Principal Secretary, Dept. of Finance & Others Respondents

- 26.** **CWP-11788-2019**
Urvinder Kaur Petitioners
versus
State of Punjab & Others Respondents

- 27.** **CWP-4573-2019**
Simerjit Kaur & Others Petitioners
versus
State of Punjab & Others Respondents

- 28.** **CWP-28204-2018**
Amandeep Kaur Petitioner
versus
State of Punjab & Others Respondents

29. **CWP-30924-2018**
Kulwinder Singh & Others Petitioners
versus
State of Punjab & Others Respondents

30. **CWP-5399-2022**
Gurmeet Singh Girn & Others Petitioners
versus
State of Punjab & Another Respondents

31. **CWP-3466-2018**
Rajesh Chauhan & Others Petitioners
versus
State of Punjab & Others Respondents

32. **CWP-25019-2017**
Lovepreet Singh & Another. Petitioners
versus
State of Punjab & Others Respondents

33. **CWP-23206-2017**
Amarjit Singh & Others Petitioners
versus
State of Punjab & Others Respondents

34. **CWP-19162-2017**
Satbir Singh & Others Petitioners
versus
State of Punjab & Others Respondents

35. **CWP-7834-2017**
Dr. Vikramjot Singh & Others Petitioners
versus
State of Punjab & Others Respondents

- 36.** Vishavpal Goyal & Others
State of Punjab
- versus
- ****
- CWP-23710-2018**
.... Petitioners
.... Respondent
- 37.** Gurpreet Singh & Others
State of Punjab and Others
- versus
- ****
- CWP-13922-2017**
.... Petitioners
.... Respondents
- 38.** Jagtar Singh and Others
State of Punjab and Others
- versus
- ****
- CWP-19909-2017**
.... Petitioners
.... Respondents
- 39.** Sukhjinder Kaur
State of Punjab and Others
- Versus
- ****
- CWP-17673-2017**
.... Petitioners
.... Respondents
- 40.** Chamkaur Singh and Others
State of Punjab and Others
- Versus
- ****
- CWP-16115-2017**
.... Petitioners
.... Respondents
- 41.** Ranjit Singh Dhillon & Others
State of Punjab and Another
- Versus
- ****
- CWP-19910-2017**
.... Petitioners
.... Respondents
- 42.** Harpal Singh and Others
State of Punjab and Others
- versus
- ****
- CWP-22484-2017**
.... Petitioners
.... Respondents

- ****
- 43.** **CWP-27410-2017**
Harman Singh Rehal and Another. Petitioners
versus
State of Punjab and Another Respondents
- ****
- 44.** **CWP-31727-2019**
Gurpreet Singh and Others Petitioners
versus
State of Punjab and Another Respondents
- ****
- 45.** **CWP-23213-2019**
Ankush Jindal and Others Petitioners
versus
State of Punjab and Another Respondents
- ****
- 46.** **CWP-35879-2019**
Amritpal Singh Randhawa Petitioners
versus
State of Punjab and Others Respondents
- ****
- 47.** **CWP-33835-2019**
Navdeep Singh Chahal and Others Petitioners
versus
State of Punjab and Others Respondents
- ****
- 48.** **CWP-20755-2019**
Sushil Kumar and Others Petitioners
versus
State of Punjab and Others Respondents
- ****
- 49.** **CWP-34747-2019**
Gurvinder Singh and Others Petitioners
versus
State of Punjab and Others Respondents

50. Jagjit Singh and Others		CWP-6404-2020 Petitioners
	versus	
State of Punjab and Others		.... Respondents

51. Jagdeep Sangar and Others		CWP-19967-2019 Petitioners
	versus	
State of Punjab and Others		.... Respondents

52. Harleen Kaur and Others		CWP-15642-2019 Petitioners
	versus	
State of Punjab and Others		.... Respondents

53. Madhav Jindal and Others		CWP-35680-2019 Petitioners
	versus	
State of Punjab and Another		.... Respondents

54. Partik Bansal and Others		CWP-33303-2019 Petitioners
	versus	
State of Punjab and Others		.... Respondents

55. Davinder Singh and Others		CWP-36464-2019 Petitioners
	versus	
State of Punjab and Others		.... Respondents

56. Gurvinder Singh and Others		CWP-5432-2020 Petitioners
	versus	
State of Punjab and Others		.... Respondents

- ****
- 57.** **CWP-35332-2019**
Baljinder Kaur and Another Petitioners
versus
State of Punjab and Others Respondents
- ****
- 58.** **CWP-12100-2022**
Pankaj Khatana Petitioners
versus
State of Punjab and Others Respondents
- ****
- 59.** **CWP-13197-2020**
Lovepreet Singh and Others Petitioners
versus
State of Punjab and Others Respondents
- ****
- 60.** **CWP-26291-2022**
Kirti Garg and Others Petitioners
versus
State of Punjab and Others Respondents
- ****
- 61.** **CWP-25984-2022**
Kapil Garg and Others Petitioners
versus
State of Punjab and Others Respondents
- ****
- 62.** **CWP-18118-2022**
Malkeet Singh and Others Petitioners
versus
State of Punjab and Others Respondents
- ****
- 63.** **CWP-10346-2022**
Punjab Agricultural University Teacher Association Petitioners
versus
The Punjab Agricultural University and Others Respondents

- ****
- 64.** Inderpal Singh and Others **CWP-11260-2022**
..... Petitioners
- versus
- State of Punjab and Others
..... Respondents
- ****
- 65.** Harbinder Singh and Others **CWP-1729-2018**
..... Petitioners
- versus
- State of Punjab and Others
..... Respondents
- ****
- 66.** Saurabh Nath & Others **CWP-3061-2018**
..... Petitioners
- versus
- State of Punjab and Others
..... Respondents
- ****
- 67.** Sandeep Vinayak & Others **CWP-1728-2018**
..... Petitioners
- versus
- State of Punjab and Others
..... Respondents
- ****
- 68.** Revenue Union Irrigation Department Punjab **CWP-3579-2018**
..... Petitioners
- versus
- State of Punjab and Others
..... Respondents
- ****
- 69.** Prabhjot Singh & Others **CWP-3354-2018**
..... Petitioners
- versus
- State of Punjab and Others
..... Respondents
- ****
- 70.** Bakshish Singh and Others **CWP-6584-2018**
..... Petitioners
- versus
- State of Punjab and Others
..... Respondents
- ****

71. Sarbjit Singh & Others		CWP-1681-2018
		.... Petitioners
	versus	
State of Punjab and Others		.... Respondents

72. Mandeep Singh and Others		CWP-2476-2018
		.... Petitioners
	versus	
State of Punjab and Others		.... Respondents

73. Ajay Singh and Others		CWP-7958-2018
		.... Petitioners
	versus	
State of Punjab and Others		.... Respondents

74. Joginder Pal		CWP-6735-2018
		.... Petitioners
	versus	
State of Punjab and Others		.... Respondents

75. Harmanpreet Singh and Others		CWP-1713-2018
		.... Petitioners
	versus	
State of Punjab and Others		.... Respondents

76. Maninder Kaur & Others		CWP-1696-2018
		.... Petitioners
	versus	
State of Punjab and Others		.... Respondents

77. Varinder Kumar and Others		CWP-5354-2018
		.... Petitioners
	versus	
State of Punjab and Others		.... Respondents

78. Amandeep Joshi and Others		CWP-3332-2018
		.... Petitioners
	versus	
State of Punjab and Others		.... Respondents

79. Jagdeep Singh and Others		CWP-16779-2018
		.... Petitioners
	versus	
State of Punjab and Others		.... Respondents

80. Manpreet Singh Etc.		CWP-6888-2018
		.... Petitioners
	versus	
State of Punjab and Others		.... Respondents

81. Rohit Mehra & Others		CWP-3052-2018
		.... Petitioners
	versus	
State of Punjab		.... Respondents

82. Bhim Singh and Others		CWP-3353-2018
		.... Petitioners
	versus	
State of Punjab and Others		.... Respondents

83. Sukhpreet Singh and Others		CWP-24420-2017
		.... Petitioners
	versus	
State of Punjab and Another		.... Respondents

84. Tejinder Singh and Others		CWP-6045-2018
		.... Petitioners
	versus	
State of Punjab and Others		.... Respondents

85. Gurjinder Singh and Others **CWP-1106-2018**
..... Petitioners
versus
State of Punjab and Others
..... Respondents

86. Amandeep Chaudhary and Others **CWP-3862-2018**
..... Petitioners
versus
State of Punjab and Others
..... Respondents

87. Manpreet Singh & Others **CWP-3352-2018**
..... Petitioners
versus
State of Punjab and Others
..... Respondents

88. Jasbir Singh and Others **CWP-6443-2018**
..... Petitioners
versus
State of Punjab and Others
..... Respondents

89. Gunbir Singh Saini and Others **CWP-4146-2018**
..... Petitioners
versus
State of Punjab and Others
..... Respondents

90. Sandeep Singh and Others **CWP-5877-2018**
..... Petitioners
versus
Chandigarh Administration and Others
..... Respondents

91. Amandeep Singh and Others **CWP-3244-2018**
..... Petitioners
versus
State of Punjab and Others
..... Respondents

92.		CWP-4542-2021
Abishek Saini and Another		.... Petitioners
	versus	
State of Punjab and Another		.... Respondents

93.		CWP-20795-2020
Satbir Singh and Others		.... Petitioners
	versus	
State of Punjab and Another		.... Respondents

94.		CWP-22025-2020
Kapil Kundra and Others		.... Petitioners
	versus	
State of Punjab and Others		.... Respondents

95.		CWP-18232-2020
Gurbaj Singh and Others		.... Petitioners
	versus	
State of Punjab and Another		.... Respondents

96.		CWP-20515-2020
Dinesh Kumar and Another		.... Petitioners
	versus	
State of Punjab		.... Respondents

97.		CWP-11187-2020
Chitresh		.... Petitioners
	versus	
State of Punjab and Another		.... Respondents

98.		CWP-16813-2020
Jagdip Singh and Others		.... Petitioners
	versus	
State of Punjab and Others		.... Respondents

- ****
- 99.** **CWP-20682-2020**
Lakhbir Singh Bhatti and Others Petitioners
versus
State of Punjab and Others Respondents
- ****
- 100.** **CWP-22232-2020**
Ankush Goyal and Another Petitioners
versus
State of Punjab and Others Respondents
- ****
- 101.** **CWP-10597-2021**
Poonam Gupta And Others Petitioners
versus
State of Punjab and Others Respondents
- ****
- 102.** **CWP-11771-2022**
Gurloveleen Singh and Others Petitioners
versus
State of Punjab and Another Respondents
- ****

Reserved on: 02.02.2023

Date of Decision: 16.02.2023

**CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS JUSTICE SUKHVINDER KAUR**

Present:

FOR THE PETITIONERS

Mr. Vikas Chatrath, Ms. Tanya Sehgal, Mr. Ujjwal Sharma,
Mr. Nitin Kaushal, Mr. BPS Thakur & Mr. Abhishek Singla,
Advocates (in CWP No. 17064 of 2017 and 35680 of 2019)

Mr. H.C. Arora, Advocate and
Ms. Sunaina, Advocate (in CWP No. 6232 of 2017)

Mr. Pardeep Singh Mirpur, Advocate
(in CWP-18118-2022, CWP-12522-2019 & CWP-13197-2020)

Ms. Kriteka Sheokand, Advocate (in CWP No. 1681, 1696,
1713, 3332 of 2018 and 15642 of 2019)

Mr. Jatinder Nagpal, Advocate
(in CWP-11187-2020, 25984 & 26291 of 2022)

Mr. J.P.S. Sidhu, Advocate
(in CWP-6404-2020)

Mr. Sunil Kumar Bansal, Advocate
(in CWP-33835-2019)

Mr. Vishal Mittal, Advocate
(in CWP-35332-2019 and 20682-2020)

Mr. Ramesh Goyat, Advocate (in CWP No.3579 of 2018)

Mr. Abhishek Singla, Advocate
(in CWP-6888-2018)

Mr. M.K. Bhatnagar, Advocate for
Mr. S.K. Bawa, Advocate
(in CWP-25889-2018)

Ms. Rajvinder Kaur, Advocate,
(in CWP No. 7966 of 2019)

Mr. Dilraj Singh, Advocate
(in CWPs-3244 & 26033 of 2018)

Mr. Sunny Singla and Mr. Riti Aggarwal, Advocates
(in CWP-4573 & 8755-2019, CWP-10597-2021 and CWP-5432-
2020)

Mr. L.S. Virk, Advocate (in CWP No. 36464 of 2019)

Mr. Shubham Saroha, Advocate (in CWP No. 11771 of 2022)

Mr. Satnam Chauhan, Advocate
(in CWP-19910-2017)

Mr. Vijay Pal & Mr. Ashish, Advocates (in CWP-16779-2018)

Mr. H.S. Saini, Advocate (in CWP-24420-2017)

Mr. Gagneshwar Walia, Advocate (in CWP-15869-2017 &
CWPs-6735 & 29461-2018)

Mr. Sehaj Bir Singh, Advocate
for PSPCL (in CWP-19910-2017)

Mr. Hardeep Singh Dhillon, Advocate
(in CWPs-2476 & 3466- 2018 & CWP-16813-2020)

Mr.Parvesh Kumar Saini, Advocate
(in CWP-19909-2017, CWPs-29355, 29351, 25727, 31105-
2018, CWPs-6062 & 33303-2019)

Mr. Sunil Hooda, Advocate for
Mr. Samrat Malik (in CWPs No. 19162 of 2017, 31040, 30891
of 2018, 5399 of 2022)

Mr. Baldev Singh Maan, Advocate
(in CWP-19967-2019, CWP-20755- 2019, CWP-35879-2019 &
CWP-34747-2019)

Mr. Mohit Garg, Advocate (in CWP-27410-2017)

Mr. Puneet Gupta, Advocate
(in CWP No.5877 of 2018)

Mr.Ravi Mishra, Advocate, for Mr. Karan Singla, Advocate (in
CWP No.4146, 6443 of 2018)

Mr.Kapil Kakkar, Advocate and
Mr. Shreesh Kakkar, Advocate (in CWP-16115-2017)

Mr.Ravi Kant Sharma, Advocate (in CWP-28972-2018)

FOR THE RESPONDENTS

Mr. Suvir Sidhu, Advocate and
Mr. S.S.Gill, Advocate
for respondents (in CWP-10346-2022)

Mr. Anil Kumar, Advocate for
Mr. Abhilaksh Grover, Advocate
for respondent No.2 -PSPCL (in CWP No.27410 of 2017)

Mr. Aman Sharma, Advocate,
for respondents No.1 to 3 (in CWP-6045-2018)

Mr. Bachan Singh, Advocate for
Mr. R.S. Cheema, Advocate
for respondent Nos.5 to 9 (in CWP-5877-2018)

Mr. Arshdeep Bhullar, Advocate
for respondent No.5 (in CWP-4146-2018) and
for respondent No.4 (in CWP-6443-2018)

Mr. P.P.Rana and Ms. Madhu Dayal, Advocates
for respondent Nos.1 to 3-UT, Chd. (in CWP-5877-2018)

Mr.Anu Chatrath, Sr. Advocate assisted by
Ms. Divya Sharma, Advocate
for respondent No.3/PUDA (CWP-3862-2018)

Mr. Indresh Goel, Advocate, for respondent No.4
(in CWP-5877-2018)

Mr. Vikas Mohan Gupta, Addl. A.G., Punjab.

M.S. RAMACHANDRA RAO, J.

In this batch of Writ Petitions, certain notifications issued by the State of Punjab are challenged.

I. Notifications No.7/204/2012-4FP1/60 dt.15.01.2015, GSR.3/Const/Article 309/AMD.(5)/2015 dt.22.12.2015 and GSR.56/Const./ Art.309/ AMD.(18)/2016 dt. 05.09.2016 are challenged in following Writ Petitions:

CWPs- 6232, 16115, 17064, 17673, 19162, 19909, 19910, 22484, 23206, 25019, 27410 of 2017; CWPs- 1106, 1681, 1696, 1713, 1728, 1729, 3244, 3332, 5354, 29351, 29355, 31003, 31010, 31105, 3862, 25727, 25889, 25940, 6045, 31137, 6888, 7958, 26033 of 2018; CWPs- 35680, 33303, 35332, 4573, 8755, 12522 of 2019; CWPs- 6404, 13197, 11187, 5432, 20795, 18232, 22025, 22232 of 2020; CWP- 10597-2021; and CWPs- 25984, 26291, 10346, 18118 of 2022.

II. Only Notification No.7/204/2012-4FP1/60 dt.15.01.2015 and GSR.56/Const./ Art.309/ AMD.(18)/2016 dt.05.09.2016 are challenged in following Writ Petitions:

CWPs- 3352, 3353, 3061, 3052, 3354, 3579, 26014, 23710, 25919, 6584, 5877 of 2018; CWPs- 4964, 31727, 23213 of 2019; CWPs- 20682, 20515 of 2020; CWP- 4542 of 2021; and CWP- 11771 of 2022.

III. Only Notification No.7/204/2012-4FP1/60 dt.15.01.2015 is challenged in following Writ Petitions:

CWPs- 15869, 7834 of 2017; CWPs- 29461, 6735, 30891, 16779, 28972, 31040, 30924, 31056 of 2018; CWPs- 7966, 36464 of 2019; and CWPs- 5399, 11260 of 2022.

IV. Only Notifications No.7/204/2012-4FP1/60 dt.15.01.2015 and GSR.3/Const/Article 309/AMD.(5)/2015 dt. 22.12.2015 are challenged in following Writ Petitions:

CWPs-13922, 24420 of 2017; CWPs- 2476, 3466, 4146, 6443, 28204 of 2018; CWPs- 6062, 11788, 34747, 35879, 19967, 15642, 20755, 33835 of 2019; CWP-16813-2020; and CWP-12100-2022.

The petitioners in all these Writ Petitions are persons employed in various departments of the State Government or working in aided posts in private schools in the State of Punjab.

The background facts are as under:

Notification No.7/204/2012-4FP1/60 dt.15.01.2015 and clarification No.7/204/2012-4FP.1/166 dt.15.01.2015

The notification dt.15.01.2015 amended the Punjab Civil Services (Second Amendment) Rules, Volume I, Part I, 2015 and added Rule 2.20-A and substituted in Rule 4.1 thereof, for sub Rule (1). They are as under: -

“Rule 2.20-A:

Fixed Monthly Emoluments’ means the emoluments, drawn by a Government employee, but the said emoluments shall not include any Grade Pay, annual increment or any other allowance, except the travelling allowance as per entitlement of the post held by such employee;

New Sub Rule (1) substituted in Rule 4.1:

“(1) Subject to the rules contained in this Chapter, a competent authority may fix the pay of a Government employee, but his pay shall not be so increased as to exceed the pay sanctioned for his post without the sanction of the authority competent to create a post in the same cadre on a rate of pay equal to his pay when increased:

Provided that the Government employee [except a member of service of the Punjab Civil Services (Judicial Branch) and the employees covered under Clause (a) of Rule 4.4], shall be entitled to receive the emoluments, as specified in Rule 2.20A, during the period of his probation.

Provided further that if a Government employee falling under Clause (a) of Rule 4.4, is appointed to a post, his pay during the period of his probation, shall not exceed the pay, which he was drawing on the post on which he holds lien;

Provided further that when the services of a Government employee, are regularized, in that case the period spent on probation by him, shall not be treated to be the time, spent on such post."

A combined reading of both indicates a government employee (except a member of service of the Punjab Civil Services (Judicial Branch) and the employees covered under Clause (a) of Rule 4.4 (Permanent Employees, who had lien in the permanent post and who are appointed substantively to another post on a time scale of pay) would be entitled to receive only *fixed monthly emoluments* as specified in Rule 2.20-A during the period of probation and such emolument *shall not include* any Grade pay, annual increment or any other allowance except the Travelling Allowance as per entitlement of the post held by such employee. Also the *period spent on probation would not be treated as spent on such post* even if the services of the Government employee are regularized on satisfactory completion of probation.

There was a clarificatory note issued by the Government of Punjab on the same day i.e. 15.01.2015 reiterating the same i.e. that during period of two years probation on recruitment, the fixed emoluments shall be paid to the employee, which shall be equal to the minimum of Pay Band applicable to such new post of employee and during probation period, he shall not be entitled to annual increments or any other allowances except Travelling Allowance; on successful completion of the probation period, he shall be entitled to the salary in the minimum Pay Band including Grade pay

from the beginning on the said post; the period of probation, and if any increase made therein, shall not be considered while fixing the salary.

The decision of Division Bench of this Court in Gurwinder Singh and others Vs. State of Punjab¹

In *Gurwinder Singh and others* (1 Supra), a Division Bench of this Court followed a decision of the Rajasthan High Court in *Gopal Kumawat Vs. State of Rajasthan and others*² wherein similar provision in the Rajasthan Service (Amendment) Rules, 2006 was quashed by the said High Court and held that the above condition prescribed by the notification dt.15.01.2015 and the clarificatory letter dt.15.01.2015 introduced unconscionable terms of contract between the State and its employees, and such terms cannot be made part of appointment orders. It also relied on the decision of the Supreme Court in *Central Inland Water Transport Corporation and another Vs. Brojo Nath Ganguly and another*³ which held that such terms in the appointment order are unconscionable terms of contract; that the State must act as a model employer and cannot take undue advantage of the need of the employee, who does not have any choice in the matter of employment, due to economic compulsions. It held that the employees of the Punjab State Government, who were on probation, did not have any alternative except to accept what the Government has dictated i.e. to accept fixed emoluments during the period of probation without increments or any other allowance except Travelling Allowance.

The Division Bench in *Gurwinder Singh and others* (1 Supra) approved the reasoning of the Rajasthan High Court in *Gopal Kumawat's* case (2 Supra) that the State cannot dictate that employees who were

¹ CWP-8922-2017 (O&M) dt.13.09.2018

² CWP-2963-2007 dt.29.07.2015

³ AIR 1986 SC 1571

regularly selected and appointed on substantive posts should get wages less than living wages which are provided by way of allowances, and that it is unjust, unfair and unreasonable and violative of Article 14 of the Constitution of India; that it amounts to practice of forced labour; and where the State has offered unfair terms of employment, and the candidate accepts it taking up the job without demur, he cannot be held to have accepted the employment on such terms, which are unfair and unconstitutional.

This Court thus quashed the notification dt.15.01.2015, the clarificatory letter dt.15.01.2015 as well as Clauses in appointment letters issued to the petitioners that they will get only fixed emoluments without any allowances and increments during the period of probation and that the said period will not be counted towards the period of work in the pay scale; and directed the State to grant to the petitioners therein the regular pay scale along with all other emoluments like increment etc. *from the date of their initial appointment* with the further prayer to count the period spent on probation as regular service for the purpose of determination of total length of service.

The decision of Division Bench of this Court in Dr.Vishvdeep Singh and others Vs. State of Punjab and others⁴

The same Bench in another case of *Dr.Vishvdeep Singh (4 Supra)* followed its decision in *Gurwinder Singh and others* (1 Supra) and quashed the notification dt.15.01.2015 insofar as it substituted Rule 4.1 of PCS Rules and provided for payment of only fixed monthly emoluments in terms of Rule 2.20-A of PCS Rules and also provided that period spent on probation by a government employee shall not be treated to be the time spent on such post.

⁴ CWP-6391-2016 and batch dt.26.10.2018

It however directed that all such employees shall be entitled to same salary as paid to regular employees *with effect from the date of passing of its judgment* (and not from the date of their initial appointment as held by it in *Gurwinder Singh and others* (1 Supra)).

It also extended the benefit to petitioners therein, who were working as Doctors in various departments of State Government against existing vacancies, including those Doctors who had not approached the Court and are working against the existing vacancies, and declared that they would also be entitled to benefit of the said judgment.

In this case, the Division Bench relied on the decisions in *Secretary, State of Karnataka and others Vs. Uma Devi*⁵ and *State of Punjab Vs. Jagjit Singh and others*⁶ etc. to hold that persons discharging identical duties cannot be treated differently in the matter of their pay and that the principle of equal pay and equal work, which is enshrined in Article 39 of the Constitution of India, would apply.

Proceedings in the Supreme Court against the said decisions

It is not in dispute that SLP No.4762 of 2020 was filed by the State of Punjab in the Supreme Court of India against the order in *Gurwinder Singh and others* (1 Supra) and SLP No.11476 of 2020 was filed by it against the order in *Dr. Vishavdeep Singh and others* (4 Supra), and that only notice was issued in the SLPs and contempt proceedings only were stayed.

There is no stay granted by the Supreme Court of the judgments rendered in both cases.

⁵ 2006 (4) SCC 1 (Constitution Bench)

⁶ 2017 (1) SCC 148

Notification dt.22.12.2015

This notification was issued to further amend the Punjab Civil Services Rules, Volume I, Part I, and the Rules amended were called Punjab Civil Services (Fifth Amendment) Rules, Volume I, Part I, 2015 which was to come into effect from 20.03.2015. Under this notification:

(a) "Rule 2.20-A was omitted.

(b) In Rule 4.1, for Sub Rule (1), new Sub Rules were substituted as under:

"(1) Subject to the rules contained in this Chapter, a competent authority may fix the pay of a Government employee, but his pay shall not be so increased as to exceed the pay sanctioned for his post without the sanction of the authority competent to create a post in the same cadre on a rate of pay equal to his pay when increased.

Provided that the Government employee [except a member of service of the Punjab Civil Services (Judicial Branch), specialist doctors and the employees covered under Clause (a) of Rule 4.4, shall be entitled to receive the emoluments, during the period of his probation.

Provided further that when the services of a Government employee, who was receiving fixed monthly emoluments during the period of probation are confirmed, the period spent on probation by him, shall not be treated to be the time spent on the time scale applicable to his post.

Explanation – The expression "fixed monthly emoluments" means the amount drawn monthly by a Government employee equal to the minimum of the pay band of the service or post to which he is appointed and shall not include grade pay, special pay, annual increment or any other allowance, except travelling allowance drawn with reference to the grade pay of the relevant service or post. It shall also not include any other emoluments which may be specifically classed as part of pay by the competent authority, as provided in Rule 2.44(b).

(1A) The provisions of sub-rule(1), shall have effect notwithstanding anything inconsistent therewith contained in these rules or other rules for the time being in force."

Thus, the definition of the expression 'fixed monthly emoluments' contained in 2.20-A was introduced by way of explanation in Sub Rule (1) and it was provided that Government employees except a member of the service of the Punjab Civil Service (Judicial Branch), Specialist Doctors and employees covered under Clause (a) of Rule 4.4 (i.e. Permanent Employees who had lien in the permanent post and who are appointed substantively to another post on a time scale of pay) would be entitled to receive fixed monthly emoluments as mentioned in the explanation during the period of their probation; and when his services are confirmed, the period spent on probation by him would not be treated as time spent on the time scale application to his post.

Thus, what was contained in the notification dt.15.01.2015 is introduced in a different form again in the notification dt.22.12.2015.

Contentions of parties

Petitioners' counsel contend that for the same reasons that the notification dt.15.01.2015 was quashed, even the notification dt.22.12.2015 ought to be quashed.

Counsel for the State, however contended that:

- (a) since the SLPs filed in the Supreme Court challenging the judgments of this Court in *Gurwinder Singh and others* (1 Supra) and *Dr. Vishavdeep Singh and others* (4 Supra) are pending in the Supreme Court since 2020,
- (b) the decision of the Rajasthan High Court in the case of *Gopal Kumawat* (2 Supra) had been challenged in the Supreme Court in SLP No.25565 of 2015, and the same is also pending in the Supreme Court,

This Court should refrain from pronouncing on the validity of the notification dt.22.12.2015.

Consideration by the Court

We do not agree with the said submissions of Counsel for the State.

In our opinion, the ratio of the above 2 decisions in *Gurwinder Singh and others* (1 Supra) and *Dr. Vishavdeep Singh and others* (4 Supra) equally applies to the consideration of the validity of the notification dt.22.12.2015 since what was contained in the notification dt.15.01.2015 was introduced in a different form in the notification dt.22.12.2015; there is no material change therein except that in addition to members of the Punjab Civil Service (Judicial Branch) and Permanent Employees who had lien in the permanent post and who are appointed substantively to another post on a time scale of pay, Specialist Doctors were also granted the exemption from application of the Rule (which directed payment of fixed monthly emoluments during the period of probation and for not counting of period spent on probation as time spent on the time scale applicable to their post).

In fact, the contention that there is an SLP pending against the judgment in *Gopal Kumawat's* case (2 Supra) had been raised at the time when *Gurwinder Singh and others* (1 Supra) was being decided, and this Court in its judgment in *Gurwinder Singh and others* (1 Supra) observed at Para 9 that it was not inclined to adjourn the said case *sine die* merely because SLP had been filed against the judgment of the Rajasthan High Court in *Gopal Kumawat's* case (2 Supra).

In *Shree Chamundi Mopeds Ltd. v. Church of South India Trust Assn*⁷, the Supreme Court had held:

“While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence.”

(emphasis supplied)

Another Division Bench of this Court in *Chief Engineer, UT, Chandigarh Vs. Ram Sarup Walia and others*⁸, held that even if a stay is granted of a judgment by the Supreme Court in an appeal preferred against it, and even if the appeal is admitted, the stay order of the Supreme Court does not have the effect of rendering the said judgment *non est* till the disposal of the Appeal.

Therefore, we reject the plea of the counsel for the State that these cases ought not to be decided till the SLPs preferred against the judgments of this Court in *Gurwinder Singh and others* (1 Supra) and *Dr. Vishavdeep Singh and others* (4 Supra), are decided by the Supreme Court *or* till the SLP filed in the Supreme Court against the judgment of the Rajasthan High Court in *Gopal Kumawat's* case (2 Supra), is decided.

But there is another point which is required to be considered by us.

While in *Gurwinder Singh and others* (1 Supra), this Court had granted relief to the petitioners by granting them regular pay scale along

⁷ (1992) 3 SCC 1, at page 9

⁸ 2012(3) S.C.T. 157

with all other emoluments like increment etc. *from the date of their initial appointment* with further direction to count the period spent on probation as regular service for the purpose of determination of total length of service under the Service Rules, in *Dr. Vishavdeep Singh and others* (4 Supra), though notification dt.15.01.2015 was quashed, but in clause (iii) in the last page, the same Bench directed however that all such employees shall be entitled to the same salary as paid to regular employees with effect from *the date of passing of the said judgment* i.e. only from 26.10.2018 when the said case was decided.

The petitioners contend that they are entitled to relief as directed in *Gurwinder Singh and others* (1 Supra) and not as directed in *Dr. Vishavdeep Singh and others* (4 Supra).

They contend that normally when a statute or a rule or a notification is quashed, it is as if it was never enacted, that it was *void ab initio* and they should get the benefit from their initial date of appointment and not from any later date.

They also contend that no reason is mentioned in the judgment in *Dr. Vishavdeep Singh and others* (4 Supra) as to why the said benefit is granted only from the date of the judgment passed therein and not from the date of initial appointment.

According to them, a High Court does not have power or jurisdiction to give only prospective operation to its judgments and such power of jurisdiction is vested only exclusively with the Supreme Court of

India as held in *Golakh Nath vs. State of Punjab*⁹ and *State of Manipur and others vs. Suraj Kumar Okram and others*¹⁰.

The counsel for the State contended that though the above legal position is not in dispute, it cannot be denied that High Courts undoubtedly have power to mould relief and restrict the grant of relief in exercise of their equity jurisdiction as held in *P.V. George Vs. State of Kerala*¹¹.

There is in our opinion no dispute that this Court had quashed the notification dt.15.01.2015 in *Dr. Vishavdeep Singh and others* (4 Supra), but such quashing was rightly not done prospectively as in case of *Gurwinder Singh and others* (1 supra).

But there is no reason assigned in the said judgment in *Dr. Vishavdeep Singh and others* (4 Supra) as to why the Court in that case was granting relief to the parties only from the date of its judgment and not from the date of their initial appointment.

In the absence of any reasons assigned by this Court in *Dr. Vishavdeep Singh and others* (4 Supra) as to why the Court was granting relief to the parties only from the date of its judgment and not from the date of their initial appointment, the said portion of the judgment therein cannot operate as a *ratio decidendi* and bind us.

Also, normally the effect of declaration of a statute or a rule or a notification by a Court on the ground that it infringes a fundamental right such as Article 14 or 16 like in the instant cases, is that it is null and void.

In *Behram Khurshid Pesikaka vs. State of Bombay*¹², a Seven Judge Bench of the Supreme Court held that if any law was made after

⁹ AIR 1967 SC 1643

¹⁰ 2022 (2) Scale 674

¹¹ 2007 (3) SCC 557

¹² 1955 AIR (SC) 123

26.01.1950 which was repugnant to the Constitution of India, it would be null and void. It held that there is no distinction between a declaration of unconstitutionality brought about by lack of legislative power from a declaration of unconstitutionality brought about by reason of abridgement of Fundamental Rights; that both these declarations of unconstitutionality go to the root of the power itself and there is no real distinction between them; and when the law making power of the State is restricted by a written fundamental law, then any law enacted and opposed to the fundamental law is in excess of the legislative authority and is thus a nullity. Mahajan CJ, for the majority held:

“10. The meaning to be given to the expression “void” in Article 13(1) is no longer res integra. It stands concluded by the majority decision in Kesava Madhava Menon v. State of Bombay¹³. The minority view there was that the word “void” had the same meaning as “repeal” and therefore a statute which came into clash with fundamental rights stood obliterated from the statute-book altogether, and that such a statute was void ab initio. The majority however held that the word “void” in Article 13(1), so far as existing laws were concerned, could not be held to obliterate them from the statute-book, and could not make such laws void altogether, because in its opinion, Article 13 had not been given any retrospective effect. The majority however held that after the coming into force of the Constitution the effect of Article 13(1) on such repugnant laws was that it nullified them, and made them ineffectual and nugatory and devoid of any legal force or binding effect. It was further pointed out in one of the judgments representing the majority view, that the American rule that if a statute is repugnant to the Constitution the statute is void from its birth, has no application to cases concerning obligations incurred or rights accrued in accordance with an existing law that was constitutional in its inception, but that if any law was made after 26th January, 1950, which was repugnant to the Constitution, then the same rule shall have to be followed in India as followed in America. The result therefore of this pronouncement is that the part of the section of an existing law which is unconstitutional is not law, and is null and void. For determining the rights and obligations of citizens the part declared void

¹³ AIR 1951 SC 128

should be notionally taken to be obliterated from the section for all intents and purposes, though it may remain written on the statute-book and be a good law when a question arises for determination of rights and obligations incurred prior to 26th January, 1950 and also for the determination of rights of persons who have not been given fundamental rights by the Constitution. Thus, in this situation, there is no scope for introducing terms like “relatively void” coined by American Judges in construing a Constitution which is not drawn up in similar language and the implications of which are not quite familiar in this country.

11. We are also not able to endorse the opinion expressed by our learned Brother, Venkatarama Ayyar that a declaration of unconstitutionality brought about by lack of legislative power stands on a different footing from a declaration of unconstitutionality brought about by reason of abridgement of fundamental rights. We think that it is not a correct proposition that constitutional provisions in Part III of our Constitution merely operate as a check on the exercise of legislative power. It is axiomatic that when the law-making power of a State is restricted by a written fundamental law, then any law enacted and opposed to the fundamental law is in excess of the legislative authority and is thus a nullity. Both these declarations of unconstitutionality go to the root of the power itself and there is no real distinction between them. They represent but two aspects of want of legislative power. The legislative power of Parliament and the State Legislatures as conferred by Articles 245 and 246 of the Constitution stands curtailed by the fundamental rights chapter of Constitution. A mere reference to the provisions of Article 13(2) and Articles 245 and 246 is sufficient to indicate that there is no competency in Parliament or a State Legislature to make a law which comes into clash with Part III of the Constitution after the coming into force of the Constitution. Article 13(2) is in these terms:

“The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.”

This is a clear and unequivocal mandate of the fundamental law prohibiting the State from making any laws which come into conflict with Part III of the Constitution. The authority thus conferred by Articles 245 and 246 to make laws subjectwise in the different legislatures is qualified by the declaration made in Article 13(2). That power can only be exercised subject to the prohibition contained in Article 13(2). On the construction of Article 13(2) there was no divergence of opinion between the majority and the minority in

*Kesava Madhava Menon v. State of Bombay*¹³. It was only on the construction of Article 13(1) that the difference arose because it was felt that that article could not retrospectively invalidate laws which when made were constitutional according to the Constitution then in force.”

This principle was recently reiterated in the case of *Suraj Kumar Okram* (10 Supra) in the context of a statute which is adjudged to be unconstitutional. It was held that in such a case, it is as if it had never been. Rights cannot be built up under it; contracts which depend upon it for their consideration are *void*; it constitutes a protection to no one who has acted under it and no one can be punished for having refused obedience to it before the decision was made. It was held that it was as inoperative as though it had never been passed.

Therefore, in our opinion, once the notification dt.15.01.2015 was quashed in *Gurwinder Singh and others* (1 Supra) and also in *Dr. Vishavdeep Singh and others* (4 Supra) as being violative of Article 14 of the Constitution of India, it is as if it had never been made.

As a consequence, the petitioners would be entitled to the benefits flowing from the said judgments from the date of their initial appointment itself and not from any later date after completion of period of probation.

Though counsel for the State sought to contend that the notifications dt.15.01.2015 and 22.12.2015 had been issued on the ground of certain financial difficulties of the State, and so the benefit of the quashing of the said notification and similar notifications ought to be postponed and granted from a date after the date of initial appointment, we cannot agree with such submission because such a ground was deemed to have been

rejected in the decisions rendered by this Court in *Gurwinder Singh and others* (1 Supra) and also in *Dr. Vishavdeep Singh and others* (4 Supra).

Therefore, the same reason cannot be accepted for postponing the benefit of the quashing of the notification dt.15.01.2015 and the other similar notifications because once it is rejected for one purpose, it is deemed to be rejected for other purposes as well.

In *Haryana State Minor Irrigation Tubewells Corporation v. G.S. Uppal*¹⁴ a Division Bench of this High Court held that plea of financial constraints cannot be raised by the State with regard to only some categories of its employees and principle of “equal pay for equal work” has to be applied by it without discrimination amongst them. It held:

“ 20.... Pleadings of the parties extracted above, would thus, manifest that it is only the category of the petitioners, which has been singled out, whereas all other employees, even of the appellant Corporation, have been given increase in their pay scales, as commensurate to their counterparts, i.e., holding the same posts in the Government Departments. Not only that, the said increase has been given to the posts held by other Engineers, inasmuch as, even those, who are holding engineering posts above the rank of the petitioners, have also been given a similar pay hike. It is only three categories of the petitioners, which have been left out. Is there any justification for the same, is, thus, the only question to be determined? We find nothing at all mentioned in the written statement or that might have been urged during the course of arguments, which may justify increase in the pay scales of all other categories of the employees of the Corporation including those, who are holding engineering posts, and not the petitioners. Decision of the Government in, thus, rejecting the proposal of the Board of Directors smacks of individual discrimination and thus straightaway comes within the vice of Article 14 of the Constitution of India. All that could be said in the defence is based upon Article 135 of the Articles of Association, which reads thus:—

“135. Notwithstanding anything contained in any of the Articles, the Government may, from time to time, issue such directives as they may consider necessary in matter of board policy and in like manner may very

¹⁴ 2001 SCC OnLine P&H 890 : ILR (2002) 1 P&H 253 : (2002) 2 SLR 256, at page 253

and annual and such directive. The company shall give immediate effect to directives so issued.”

21. First of all, giving a pay scale to its employees by virtue of powers so conferred by Article 81(v) as also 5.1 of Service Bye-laws does not appear to be a policy decision that might have been taken by the Board and even if the same be so, it cannot possibly be sustained, as the petitioners alone have been singled out, whereas the same very decision of the Board with regard to all other employees has since been accepted or concurred with the Government.

22. Insofar as, pleadings pertaining to the financial position of the appellant Corporation in the writ petition and one contained in Civil Misc. bearing No. 3547 of 2001 filed during the course of arguments are concerned, suffice it to say that it is not the case of the appellant that it is not financially viable. It may be true that at present some banks might have filed various applications in the Debt Recovery Tribunal for recovery of Rs. 96 crores against the appellant, as is the pleading in the Misc. Application aforesaid but it is the case of the Corporation itself that it shall not be able to pay the said debts without financial assistance of the State Government. If the State is to financially help the Corporation, it can do so in paying the wages to the employees. That apart, the Corporation cannot plead financial loss only with regard to a limited categories of employees. It cannot be said that it is financially sound insofar as other employees are concerned but finds financial constraints only insofar as the petitioners are concerned.”
(emphasis supplied)

Therefore, all the Writ Petitions are allowed and the notification dt.22.12.2015 is also quashed and the benefit thereof shall accrue to the petitioners who have challenged it from their date of initial appointment as was done in the case of *Gurwinder Singh and others* (1 Supra).

The question next to be considered is *whether the benefit of the quashing of these notifications should be confined only to the Writ Petitioners and not extended to other Government employees or employees working in aided posts, who had also been given appointment on conditions similar to those which are quashed in these Writ Petitions.*

Notification No. GSR.56/Const./ Art.309/ AMD.(18)/2016 dt.05.09.2016

We may also point out that a notification dt.05.09.2016 was issued by the Government of Punjab called Punjab Civil Services (General and Common Conditions of Service) (Second Amendment) Rules, 2016 through which the period of probation was increased from 2 years to 3 years by making a substitution for the word 'two' with the word 'three' in Rule 7 Sub Rule (1).

Though, this notification is challenged in some of the cases, there is no pleading as to why it should be quashed. Therefore, in this batch of cases, we are not inclined to go into the validity of the said notification in the absence of proper pleading by the petitioners and leave it open for consideration in an appropriate case where there is adequate pleading and the State has had an opportunity to rebut it.

Accordingly, the Writ Petitions are allowed as under:

- (a) Notification No.7/204/2012-4FP1/60 dt.15.01.2015 having already been quashed in *Gurwinder Singh and others* (1 supra) and *Dr. Vishavdeep Singh and others* (4 Supra), there is no need to quash it again;
- (b) Clarification No.7/204/2012-4FP.1/166 dt.15.01.2015 and notification GSR.3/Const/Article 309/AMD.(5)/2015 dt.22.12.2015 to the extent they held that during period of probation or if increase in such period of probation, only fixed emoluments shall be paid to the employee, which shall be equal to the minimum of pay band of the service or post to which he is appointed and shall not include Grade Pay, Special Pay, Annual Increment or any other allowance except Travelling

Allowance **AND** further directing that the period of probation shall not be treated to be the time spent on the time scale applicable to his post, are quashed;

- (c) Any conditions included in appointment letters issued to petitioners on the basis of the above notifications, are also quashed;
- (d) The respondents are directed to grant to the petitioners the regular pay scale along with all other emoluments, allowances etc. from the date of their initial appointment and pay the arrears within three months from today;
- (e) The respondents are directed to count the period spent on probation as regular services for the purpose of determination of the total length of service under the Service Rules.
- (f) The validity of the notification No. GSR.56/Const./Art.309/AMD.(18)/2016 dt.05.09.2016 issued by the State of Punjab is left open for consideration in an appropriate case.

Pending application(s), if any, shall stand disposed of.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

16.02.2023

vivek

- | | |
|-------------------------------|------------|
| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | Yes |



SUPREME COURT OF INDIA (/)

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Diary Number	Case Number	Party Name	AOR	Court / Tribunal	Free Text
			9100		captcha*
Diary No.		Year			
11476		2020		Submit	
Diary No.- 11476 - 2020					
THE STATE OF PUNJAB vs. DR. VISHAVDEEP SINGH					
Case Details					
Diary No.	11476/2020 Filed on 21-05-2020 02:23 PM [SECTION: IV-B]				PENDING
Case No.	SLP(C) No.(Verified On 21-07-2020)				
Present/Last Listed On	06-12-2022 [HON'BLE MR. JUSTICE M.R. SHAH and HON'BLE MS. JUSTICE HIMA KOHLI]				
Status/Stage	Pending - (Motion Hearing [DISPOSAL/FINAL DISPOSAL AT ADMISSION STAGE - CIVIL CASES]) List On (Date) (10-01-2023), Not taken up/ Not Today-Ord dt:06-12-2022				
Tentatively case may be listed on (likely to be listed on)	28-03-2023 (Computer generated)				
Category	0610-Service Matters : Pay scales				
Act					
Petitioner(s)	1 THE STATE OF PUNJAB PRINCIPAL SECRETARY MAIN CIVIL SECRETARIAT, PUNJAB AT CHANDIGARH ,CHANDIGARH , CHANDIGARH 2 PRINCIPAL SECRETARY Principal Secretary MAIN CIVIL SECRETARIAT, PUNJAB AT CHANDIGARH , , PUNJAB 3 DIRECTOR Director PARIVAR KALYAN BHAWAN, SECTOR 34A, CHANDIGARH ,CHANDIGARH , CHANDIGARH				



SUPREME COURT OF INDIA (/)

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Diary Number	Case Number	Party Name	AOR	Court / Tribunal	Free Text
	7500				
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Diary No.		Year			
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Diary No.- 4762 - 2020					
CHIEF ENGINEER/HRD PUNJAB STATE POWER CORPORATION LTD. vs. GURWINDER SINGH					
Case Details					
Diary No.	4762/2020 Filed on 05-02-2020 02:25 PM [SECTION: IV-B]				PENDING
Case No.	SLP(C) No.(Verified On 18-03-2020)				
Present/Last Listed On	06-12-2022 [HON'BLE MR. JUSTICE M.R. SHAH and HON'BLE MS. JUSTICE HIMA KOHLI]				
Status/Stage	Pending - (Motion Hearing [DISPOSAL/FINAL DISPOSAL AT ADMISSION STAGE - CIVIL CASES]) List On (Date) (10-01-2023), Not taken up/ Not Today-Ord dt:06-12-2022				
Tentatively case may be listed on (likely to be listed on)	28-03-2023 (Computer generated)				
Category	0620-Service Matters : Probation & Confirmation				
Act					
Petitioner(s)	1 CHIEF ENGINEER/HRD PUNJAB STATE POWER CORPORATION LTD. CHIEF ENGINEER/HRD PUNJAB STATE POWER CORPORATION LTD. PSEB HEAD OFFICE, THE MALL PATIALA , , PUNJAB				



SUPREME COURT OF INDIA (/)

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Diary Number	Case Number	Party Name	AOR	Court / Tribunal	Free Text
			9381		captcha*
Diary No.		Year			
33830		2022		Submit	
Diary No.- 33830 - 2022					
DR. VISHAVDEEP SINGH vs. STATE OF PUNJAB					
Case Details					
Diary No.	33830/2022 Filed on 19-10-2022 03:46 PM [SECTION: IV-B]				PENDING
Case No.	SLP(C) No.(Verified On 25-11-2022)				
Present/Last Listed On	06-12-2022 [HON'BLE MR. JUSTICE M.R. SHAH and HON'BLE MS. JUSTICE HIMA KOHLI]				
Status/Stage	Pending - (Motion Hearing [AFTER NOTICE (FOR ADMISSION) - CIVIL CASES]) List On (Date) (10-01-2023), Not taken up/ Not Today-Ord dt:06-12-2022				
Tentatively case may be listed on (likely to be listed on)	28-03-2023 (Computer generated)				
Category	0607-Service Matters : Condition of service				
Act					
Petitioner(s)	1 DR. VISHAVDEEP SINGH S/D/W/Thru:- PARDEEP SINGH DOCTOR PRESENTLY POSTED AS MEDICAL OFFICER CIVIL HOSPITAL FARIDKOT, DISTRICT FARIDKOT, PUNJAB ,FARIDKOT , PUNJAB				

ITEM NO.32

COURT NO.5

SECTION IV-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 33830/2022

(Arising out of impugned final judgment and order dated 26-10-2018 in CWP No. 6391/2016 08-11-2019 in RACW No. 388/2018 passed by the High Court Of Punjab & Haryana At Chandigarh)

DR. VISHAVDEEP SINGH & ORS.

Petitioner(s)

VERSUS

STATE OF PUNJAB & ORS.

Respondent(s)

(IA No.179676/2022-CONDONATION OF DELAY IN FILING and IA No.179679/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.179680/2022-EXEMPTION FROM FILING O.T. and IA No.179677/2022-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 02-12-2022 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE M.R. SHAH
HON'BLE MR. JUSTICE C.T. RAVIKUMAR

For Petitioner(s) Ms. Chitrangda Rastravara, Advocate
Mr. Manvendra Singh Rathore, Advocate
Mr. Dashrath Singh, Advocate
Mr. Abhijeet Singh, Advocate
Mr. Aishwary Mishra, Advocate
Mr. Aditya Pratap Singh Chauhan, Advocate
Mr. Gp. Capt. Karan Singh Bhati, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Issue notice on the Special Leave Petitions as well as on the application for condonation of delay.

Tag with SLP (C) D. No. 11476/2020.

 NATARAJAN)
REGISTRAR-cum-PS

(NISHA TRIPATHI)
ASSISTANT REGISTRAR