

(2021) 11 TEL CK 0027

In the Telangana High Court

Case No : Contempt Appeal Nos. 13, 15 Of 2020, Writ Appeal No. 129 Of 2020

A Satyanarayana Reddy

APPELLANT

Vs

P.Venkata Ramana And 117 Others

RESPONDENT

Date of Decision : 08-11-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 11 TEL CK 0027

Hon'ble Judges : Satish Chandra Sharma, CJ;A. Rajasheker Reddy, J

Bench : Division Bench

Final Decision : Disposed Of/Partly Allowed

Judgement

Regard being had to the controversy involved in the aforesaid cases, they were heard together and are being decided by a common order.

The facts of W.A.No.129 of 2020 are reproduced as under:

The present W.A.No.129 of 2020 is arising out of order dated 24.01.2020 passed in W.P.No.38763 of 2018 by the learned Single Judge.

The facts of the case reveal that the writ petitioners, who are 116 in number, are working as Post Graduate Teachers, Trained Graduate Teachers, Physical Education Teachers and as Staff Nurses in the residential schools run by Telangana State Residential Educational Institutions Society came up before the learned Single Judge claiming regular pay scale and increments. The learned Single Judge has initially passed an interim order on 30.10.2018 directing the respondents/State therein to grant pay to the writ petitioners on par with the minimum of pay scales of regularly engaged Teachers in Residential Schools as well as the periodical increments as revised from time to time. Thereafter, as the interim order dated 30.10.2018 was complied with, they filed contempt case i.e., C.C.No.642 of 2019 and by a common order dated 24.01.2020 passed in the contempt case as well as the writ petition, the learned Single Judge has allowed the writ petition. The learned Single Judge has also imposed punishment upon

respondent Nos.1, 3 and 4 in the main writ petition to suffer two months simple imprisonment along with fine of Rs.2,000/- each.

The present appeal has been filed by the State Government and its officers, who have been sentenced and fined by the learned Single Judge.

This Court has carefully gone through the order passed by the learned Single Judge and the order passed in paragraphs 20 to 26 reads as under:

"20. A Division Bench of this Court in The Greater Visakhapatnam Municipal Corporation, Visakhapatnam, Rep. by its Commissioner vs. K. Appa Rao and others (order dt. 07.09.2011 in W.P.No.5934, 6622, 8611, 9067 & 9113 of 2008 (D.B.)) has considered the question whether persons appointed on daily wages in Gajuwaka Municipality are entitled to minimum time-scale as well as periodical increments. The Division Bench followed the decision of the Supreme Court in Dharwad District PWD Literate Daily Wages Employees' Assn. Vs. State of Karnataka ((1990) 2 SCC 396) and the direction issued in the said case by the Supreme Court that casual / daily rated employees appointed on or before 01.07.1984 shall be treated as monthly-rated establishment employees at the fixed pay of Rs.780 per month without any allowances w.e.f. 01.01.1990 and that they would also be entitled to annual increment of Rs.15 till their services are regularized. The Court held that principle of 'equal pay for equal work' is attracted and the State is obligated to make to casual employees the same payment as regular employees; that employees of municipalities and municipal corporations were being given benefit of revised pay scales and they cannot be deprived of annual grade increments when they are discharging similar work and functions as any regular employees.

21. The Division Bench in P. Khadar Basha (2 supra) also relied upon the definition of the term 'time-scale of pay' in ruling 31(a) of Rule 9 of the A.P. Fundamental Rules to hold that the employees of the municipalities appointed as 'NMR / daily wage workers' would be entitled to minimum time-scale and also periodical increments. It held:

"time-scale of pay" means pay which subject to any condition prescribed in these rules, rises by periodical increments from a minimum to maximum. It indicates the class of pay hitherto known as progressive."

9. The above-extracted definition of "time scale of pay" leaves us in no doubt that the scale of pay has to change with the change of times by addition of periodical increments. Otherwise the expression "time scale" would have no meaning at all.

10. In the light of the above discussion, we are of the opinion that as the petitioners have been extended the minimum time scale, they are entitled to addition of increments from time to time in the minimum time scale without being entitled to all other allowances which a regular employee is entitled to."

22. The respondents are only referring to Jagjit Singh (1 supra) to say that in the

said decision the Supreme Court did not direct payments of annual increments, but the said decision is not the first time decision on the point. There are decisions such as the one in Dharwad District PWD Literate Daily Wages Employees' Assn. (6 supra), which have held that periodical increments are also payable along with minimum of time-scale to casual / NMR / contractual employees. I follow the same as well as the Division bench decisions in K. Appa Rao and others (5 Supra) and P.Khadar Basha (2 supra) which is binding on me.

23. Therefore, I see no reason to vacate the interim order dt.30.10.2018 passed in I.A.No.1 of 2018 in WP.No.38763 of 2018 and I.A.Nos.1 and 2 of 2019 are dismissed.

24. Accordingly, the order dt.30.10.2018 passed in I.A.No.1 of 2018 in WP.No.38763 of 2018 is made absolute and the said Writ Petition is also allowed and the respondents are granted four (04) weeks time from to-day to pay to the petitioners not only the minimum time-scale but also periodical increments, apart from arrears thereof from their respective dates of appointment. No costs.

25. In view of the above reasoning, the Contempt Case is allowed and the respondents are granted four (04) weeks time from to-day to pay to the petitioners not only the minimum time-scale but also periodical increments, apart from arrears thereof from their respective dates of appointment. In default of such payment, the respondent nos.1,3 and 4 shall suffer simple imprisonment for two (02) months and shall also pay fine of Rs.2,000/- each.

26. As a sequel, miscellaneous petitions pending if any in the Contempt Case and in the Writ Petition case shall stand closed."

The learned Single Judge after placing reliance upon the judgments delivered in the case of State of Punjab vs. Jagit Singh (2017) 1 SCC 148, Dharwad District PWD Literate Daily Wages Employees' Assn. vs. State of Karnataka (1990) 2 SCC 396, The Greater Visakhapatnam Municipal Corporation, Visakhapatnam, rep., by its Commissioner vs. K. Appa Rao and others Order dt.07.09.2011 in WP.No.5934, 6622, 8611, 9067 & 9113 of 2008 (D.B.) and P. Khadar Basha and others vs. State of Andhra Pradesh and others 2017 (6) ALD 638 (D.B.), has allowed the writ petition.

Learned counsel for the State Government has vehemently argued before this Court that in the light of the judgment delivered in the case of Jagit Singh (1 supra), the writ petitioners, who are contractual employees, are entitled for minimum of the pay scale only.

The undisputed facts of the case reveal that the respondents/writ petitioners, who were appointed on contractual basis in the years 2002, 2003, 2005 and 2010, were discontinued in the year 2014 and a writ petition i.e., W.P.No.11379 of 2014 was preferred by them and an interim order was passed staying their discontinuance.

Learned counsel for the respondents/writ petitioners has informed this Court that

the aforesaid writ petition has been withdrawn in the year 2019. Another important aspect of the case is that a second writ petition was also preferred i.e., W.P.No.38758 of 2018 claiming regularisation and the same was disposed of by order dated 31.01.2019 directing the State to consider the cases for regularization. The case of the respondents/employees was considered and rejected and thereafter a third writ petition has been preferred i.e., W.P.No.38763 of 2018 claiming regular pay scales along with increments and the order passed by the learned Single Judge is under challenge. The learned Single Judge has allowed the writ petition keeping in view the judgment delivered in the case of Dharwad District PWD Literate Daily Wages Employees' Assn (2 supra) and K. Appa Rao (3 supra).

This Court has carefully gone through the order passed by the Hon'ble Supreme Court in Jagit Singh (1 supra). Paragraphs 60 to 63 of the aforesaid judgment read as under:

"60. 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, ad-hoc 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 hereinabove. 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.

61. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding, that all the concerned temporary employees, in the present bunch of cases, 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.

62. Disposed of in the above terms.

63. It would be unfair for us, if we do not express our gratitude for the assistance rendered to us by Mr. Rakesh Khanna, Additional Advocate General, Punjab. He researched for us, on our asking, all the judgments on the issue of pay parity. He presented them to us, irrespective of whether the conclusions recorded therein, would or would not favour the cause supported by him. He also assisted us, on different parameters and outlines, suggested by us, during the course of hearing."

The aforesaid judgment make it very clear that the employees in the aforesaid case were granted only minimum of the pay scales (at the lowest grade, in the regular pay-scale), extended to regular employees, holding the same post. Meaning thereby, only minimum of the pay scales can be granted as per the orders passed by the Hon'ble Supreme Court in the case of Jagit Singh (1 supra) and the Supreme Court has not granted increments to such employees.

This Court has carefully gone through the judgment in the case of P. Khadar Basha (4 supra), which was delivered on 10.08.2017. The Division Bench of this Court in the case of P. Khadar Basha (4 supra) has not considered the judgment delivered in the case of the Jagit Singh (1 supra). Otherwise also, the employees therein were the employees of Municipality and not of Education Department. In the case of P. Khadar Basha (4 supra) some contractual employees engaged on daily basis were granted regular pay scales with increments leaving behind a large number of employees. In those circumstances, the judgments were delivered by the Division Bench.

In the considered opinion of this Court, the judgment does not help the respondent/employees in any manner keeping in view the judgment delivered in the case of Jagit Singh (1 supra). Recently, the Supreme Court in case of Union of India and others vs. Ilmo Devi and another [Civil Appeal Nos.5689-5690 of 2021 dt.07.10.2021] has again gone into the question of regularisation of employees and grant of regular pay scales. Paragraphs 28 to 32 of the aforesaid judgment read as under:

28. Thus, as per the law laid down by this Court in the aforesaid decisions part-time employees are not entitled to seek regularization as they are not working against any sanctioned post and there cannot be any permanent continuance of part-time temporary employees as held. Part-time temporary employees in a Government run institution cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work.

29. Applying the law laid down by this court in the aforesaid decisions, the directions issued by the High Court in the impugned judgment and order, more particularly, directions in paragraphs 22 and 23 are unsustainable and beyond the power of the judicial review of the High Court in exercise of the power under Article 226 of the Constitution. Even otherwise, it is required to be noted that in the present case, the Union of India/Department subsequently came out with a regularization policy dated 30.06.2014, which is absolutely in consonance with the law laid down by this Court in the case of Umadevi (supra), which does not apply to the part-time workers who do not work on the sanctioned post. As per the settled preposition of law, the regularization can be only as per the regularization policy declared by the State/Government and nobody can claim the regularization as a matter of right dehors the regularization policy. Therefore, in absence of any sanctioned post and considering the fact that the respondents were serving as a contingent paid part-time Safai Karamcharies, even otherwise, they were not entitled for the benefit of regularization under the regularization policy dated 30.06.2014.

30. Though, we are of the opinion that even the direction contained in paragraph 23 for granting minimum basic pay of Group 'D' posts from a particular date to those, who have completed 20 years of part-time daily wage service also is unsustainable as the part-time wagers, who are working for four to five hours a day and cannot claim the parity with other Group 'D' posts. However, in view of the order passed by this Court dated 22.07.2016 while issuing notice in the present appeals, we are not quashing and setting aside the directions contained in paragraph 23 in the impugned judgment and order so far as the respondents' employees are concerned.

31. In view of the above and for the reasons stated above, both the appeals succeed. The impugned judgment and order passed by the High Court and, more particularly, the directions contained in paragraphs 22 and 23 in the impugned judgment and order are hereby quashed and set aside. However, it is observed that quashing and setting aside the directions issued in terms of paragraph 23 in the impugned judgment and order shall not affect the case of the respondents and they shall be entitled to the reliefs as per paragraph 23 of the impugned judgment and order passed by the High Court.

32. With these observations, both the appeals are allowed and in the facts and circumstances of the case, there shall be no order as to costs."

The aforesaid judgment was delivered in respect of part-time employees. It has been held that part-time temporary employees in a Government run institution cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work.

In the considered opinion of this Court, keeping in view the aforesaid judgment as well as the judgment delivered in the case of Jagit Singh (1 supra), the question of granting increments to the respondent/employees does not arise.

Resultantly, the writ appeal stands partly allowed and C.A.Nos.13 and 15 of 2020 are closed.

It is made clear that the respondents/employees are entitled to minimum of the pay scales as held by the Supreme Court in the case of Jagit Singh (1 supra). The issue of regularisation is left open. The employees shall certainly free to claim regularisation by seeking recourse to other proceedings in accordance with law. At this stage, learned counsel for the State Government has informed this Court that minimum of the pay scales has already been granted to the respondent/employees and therefore, no further compliance is required to be done in the matter. The order passed in the contempt case as well as the writ petition stand set aside.

Miscellaneous petitions, if any, pending in these writ petitions shall stand closed. There shall be no order as to costs.