

(2021) 09 GAU CK 0064

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 6961 Of 2018

Bhupendra Sinha And 7 Ors.

APPELLANT

Vs

State Of Assam And 6 Ors

RESPONDENT

Date of Decision : 21-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Minimum Wages Act, 1948 — Section 2(h)

Citation : (2021) 09 GAU CK 0064

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : S P Sharma

Final Decision : Dismissed

Judgement

1. Heard Shri S.P. Sharma, learned counsel for the petitioners. Also heard Shri P. Nayak, learned Standing Counsel, Judicial and Finance Department, Ms. M.D. Borah, learned State Counsel, Shri S.S. Roy, learned counsel for the respondent No.5, Shri H.K. Das, learned Standing Counsel, High Court and Shri A. Hassan, learned Standing Counsel, AG, Assam.

2. The writ jurisdiction of this Court conferred by Article 226 of the Constitution of India is sought to be invoked by the petitioners, who have joined together in this petition challenging the inaction of the authorities on the issue of payment of admissible allowances to the petitioners which has been projected as Basic Pay i.e. Pay Band plus Grade Pay as they have been made to stagnant without any cadre advancement.

3. It is the case of the petitioners that all the petitioners were appointed pursuant to their selection in different capacities of Grade-III & Grade-IV and were posted in various Fast Track Courts. The grievance of the petitioners relates to denial of various allowances to their Basic Pay. The petitioners are also aggrieved by rejection of their prayer to bring their services under the Pension

Scheme.

4. It is the case of the petitioners that pursuant to their selection, they were appointed in different capacities such as Stenographers, Bench Assistances, Peon, Driver etc. but were however paid fixed salaries. Accordingly, few of the present petitioners and some others had instituted a writ petition before this Court which was registered as WP(C) No. 5153/2010 in which they had prayed for regularization of their services. The said writ petition was however dismissed by this Court vide an order dated 20.12.2012 against which, the petitioners had approached the Hon'ble Supreme Court by filing SLP No. 12560/2013. It appears that the Hon'ble Supreme Court noticed that the point relating to fixation of pay scale equivalent to the pay scale given to the regular employee, which was submitted to be not considered by the High Court was not even raised. Accordingly, vide the order dated 12.04.2013, the SLP was dismissed with liberty to approach the High Court by way of a review petition.

5. Consequently, a review petition was filed before this Court which was numbered as Review. Pet. No. 82/2013. The same was disposed of vide an order dated 23.01.2017 in terms of the offer of settlement from the State Government that the service of the petitioners would not be dispensed with till attaining the age of superannuation (but for disciplinary action) and would be paid minimum wages of the regular pay scales from March, 2007 onwards. This Court had also noticed that during the pendency of the review petition, except eight petitioners, the services of the others were regularized on their selection and appointment against sanctioned post. Additionally, on the prayer made on behalf of the petitioners, liberty was given to make a representation to the State Government for extending the benefit of pension and also for counting of their past services for computing the pensionary dues and also for grant of medical benefit during the period they are in service.

6. Accordingly, it is the case of the petitioners that they had submitted the representation dated 05.08.2017. In the meantime, the Registrar General of this Court had issued communication dated 09.02.2018 to the Judicial Department was submission of service particulars in connection with Review Petition No.82/2013.

7. Subsequently, the Judicial Department, Government of Assam had passed a Speaking Order dated 11.05.2018 on the representation dated 30.05.2017. It appears that this representation had not been annexed to the writ petition and only the representation dated 05.08.2017 has been annexed. Nevertheless, it has been conveyed that after consultation with the Pension and Public Grievances Department and the Finance Department, the claim of the petitioners for giving them the benefit of the Assam Services (Pension) Rules, 1969 could not be conceded to. However, it has also been conveyed that pursuant to the direction of this Court in another case, a duly constituted committee was examining the issue of granting Health and accidental and that Insurance Scheme and would place the matter before the Cabinet. Accordingly, the names of the petitioners

were also submitted to the said Committee for appropriate recommendation.

8. Shri S.P. Sharma, learned Counsel for the petitioners has submitted that the pay received by the petitioners is only the Basic Pay i.e. Pay Band plus Grade Pay which comes to Rs.19,600/- for a Grade-III post and for a Grade-IV post it comes to Rs.15,900/-. However, the other allowances which include Dearness Allowances (DA), House Rent Allowances (HRA), and Medical Allowances (MA) etc. have not been paid to the petitioners. It is submitted that the petitioners are entitled to the other allowances as Wage would mean Basic Pay plus other Allowances. It is submitted that the duties and responsibilities discharged by the petitioners are at par with their counter parts and therefore there cannot be any disparity in the matter of Wages.

9. To substantiate the aforesaid submission, the learned counsel has referred the Minimum Wages Act, 1948 more specifically, the definition of "Wages" embodied in Section 2(h). It is submitted that Wages has been unambiguously defined to include House Rent and other Allowances.

10. Shri Sharma further submits that the petitioners are also entitled to pension as they fulfilled all the requirement for such benefits as per the Pension Rules of 1969. It is accordingly submitted that the petitioners be provided the Allowances with their Basic Pay and to bring their services under the Pension Scheme.

11. In support of his submission, the learned counsel for the petitioners has relied upon the case of the State of Punjab & Ors. Vs. Jagjit Singh & Ors. which is reported in (2017) 1 SCC 148. The Hon'ble Supreme Court in the said case was dealing with the issue of the entitlement of temporary employees and it was held that they would be entitled to draw Wages at the minimum of the pay scale (at the lowest grade), in the regular pay scale which are extended to regular employees holding the same post.

12. Per contra, Shri P. Nayak, learned Standing Counsel, Judicial and Finance Department submits that the writ petition structured on the basis of surmises and conjectures by which an issue which was already set to rest finally by earlier orders of this Court including the Hon'ble Supreme Court has been sought to be reopened. It is submitted that the present attempt is nothing but an afterthought which is not permissible under the law and in the guise of filing this writ petition, settled issues have been attempted to be unsettled.

13. The learned Standing Counsel has submitted that the second round of litigation in this Court in the form of filing of review was possible only on the liberty granted by the Hon'ble Supreme Court on a concession made by the learned counsel for the petitioners on a specific issue namely, fixation of pay scale equivalent to the pay scale given to the regular employees. The said issue being taken up and the order dated 23.01.2017 passed in Review Pet. No. 82/2013 being confined to the said issue and based on concession and amicable settlement on two points, the same was disposed of. The two points included the issue of payment of Wages minimum of the regular pay scale. As regards the

third issue namely, "benefit of pension" where a consensus could not be arrived at, liberty was granted to the petitioners to approach the authorities by filing a representation which was accordingly disposed of vide the Speaking Order dated 11.05.2018. Therefore, the present issue raised with regard to payment of Wages was an issue already decided by amicable settlement and hence, is not liable to be raised again. The Standing Counsel further submits that the Allowances which the petitioners are claiming are entitled by regular Government employees and admittedly the petitioners are not regular Government employees.

14. As regards the submission on the applicability of the Minimum Wages Act, 1948, Shri Nayak, the learned Standing Counsel submits that the Act is applicable only to the employees in any of the Scheduled employment and the petitioners do not fall within any category of the employment enumerated in the Schedule.

15. As regards the case law referred by the petitioners, the learned Standing Counsel has submitted that as a matter of fact, the case of Jagjit Singh (Supra) would rather come to the aid of the Department.

16. Shri H.K. Das, learned Standing Counsel for the Gauhati High Court submits that the background of the case should not be lost sight of inasmuch as, the first writ petition filed by the writ petitioners, WP(C) No. 5153/2010 was dismissed and no relief was granted. It is further argued that in the subsequent order of the Hon'ble Division Bench, the directions were given only upon an amicable settlement between the parties and a reading of the order dated 23.01.2017 passed in Review. Pet. No. 82/2013 indicates that the same has been passed on consensus. It becomes clear that the petitioners are estopped from making further claim. Ms. M.D. Borah, learned State Counsel, Shri S.S. Roy, learned counsel for the respondent No.5 and Shri A. Hassan, learned counsel for the respondent No.6 endorse the submissions of Shri Nayak and Shri Das.

17. The rival contentions of the learned counsel for the parties have been duly considered and the materials before this Court have been carefully examined.

18. It appears that the present claim is an offshoot of the initial writ petition, WP(C) No. 5153/2010 wherein the point was never raised, a fact which has not only been conceded but also recorded by the Hon'ble Supreme Court in its order dated 12.04.2013 in SLP No. 12560/2013. Thus, but for the liberty granted by the Hon'ble Supreme Court to raise the issue of pay scale equivalent to regular employees, the issue was already a settled one. The question which arises for determination is that whether taking the advantage liberty granted to raise a particular issue, the same can be extended. This Court in categorical terms had recorded the terms of the amicable settlement which includes payment of minimum Wages of the regular pay scale which appears to have been done. However, it appears that the petitioners are now trying to get an unauthorized benefit of the observation made by the Hon'ble Division Bench in the order dated 23.01.2017 passed in Review. Pet. No. 82/2013. The learned counsel in support

of his claim had tried to rely upon the Minimum Wages Act, 1948. However, as pointed out by the learned Standing counsel, the said Act is applicable to persons who are in Scheduled employment and admittedly does not cover the present petitioners. Therefore, it appears that the claim of the petitioners is simply an after-thought by which an attempt has been made to reopen an issue which has been settled long back.

19. The case of Jagjit Singh (Supra) cannot have a universal application in this case as the case in hand has a chequered history wherein the writ petition was dismissed at the first instance and the matter was reopened only upon an observation made by the Hon'ble Supreme Court, further the subsequent order passed by the Division Bench dated 23.01.2017 is upon a concession made.

20. Though, the powers conferred by Article 226 of the Constitution of India is an unlimited one, it is a settled law that such powers are to be exercised with self imposed restrictions. The scrutiny by a writ Court is confined to the decision making process and not to a decision. The parameters which a writ Court to look for, though no exhaustive, would include whether the relevant factors have been taken into consideration or as to whether irrelevant and extraneous materials have been taken into consideration or whether the decision arrived at has been done in a mechanical manner without any application of mind or whether there has been gross violation of principles of natural justice before arriving at the decision or whether the decision arrived at is so unreasonable and arbitrary which does not appeal to a reasonable mind. In the instant case, the impugned order dated 11.05.2018 passed by the Judicial Department appears to have taken all the relevant factors into consideration which in the opinion of this Court does not call for any interference. It is further settled that if the decision arrived at which are based on a materials is a plausible decision, the mere fact that another decision was possible to be arrived at would not authorized a writ Court to substitute such findings.

21. Under the aforesaid facts and circumstances, this Court is of the view that no case for interference by this Court in exercise of its extra ordinary jurisdiction has been made out.

22. Accordingly, this writ petition stands dismissed.