

(2016) 05 P&H CK 0297
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 15384 of 2011

Davinder and others

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 19-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 151 FLR 44 : (2017) LabLR 111 : (2016) 3 LLJ 220

Hon'ble Judges : Ritu Bahri, J.

Bench : Single Bench

Advocate : Mr. R.S. Budhwar, Advocate, for the Appellant; Mr. R.S. Kundu, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ritu Bahri, J.—The petitioners are seeking quashing of the letter dated 14.07.2011 (Annexure P-6), vide which their pay has been calculated @ Rs. 1000/- per month w.e.f. 01.08.2010 to 31.03.2011 and Rs. 2000/- per month w.e.f. 01.04.2011 and letter dated 17.03.2011 (Annexure P-7), vide which, their minimum wages have been fixed at Rs. 2000/- per month.

2. The petitioners have been engaged by different Gram Panchayats as Pump Operators. The Sub Divisional Engineer, Public Health Engineering, Sub Division No. 1, Karnal issued a letter dated 04.11.2009 (Annexure P-3) to different Panchayats stating therein that powers regarding drinking water supply schemes were to be handed over to the Panchayati Raj Institutions. Pursuant to the said letter, the petitioners were appointed by different Gram Panchayats as Pump Operators. They were duly qualified as per the guidelines issued on 09.07.2009 (Annexure P-1), which are as under:-

"(i) PHED would pay monthly amount of Rs. 7000/- to Gram Panchayat for single village single tubewell scheme and Rs. 10,000/- for single village two tubewells scheme. This amount would includes payment of salary of staff, maintenance of

tubewell as well as maintenance of the distribution system.

(ii) The operator to be engaged would preferably be ITI qualified and preference should be given to the Trades as per qualifications of PHED Rules. In case ITI qualified operator is not available, the candidate should at least have 10+2 qualification with Science stream. The operator to be engaged should preferably belong to the same village and in case suitable candidate is not available, the same may be engaged from an adjoining (nearby) village."

3. As per Annexure P-1, Rs. 7,000/- per month is to be given to a village with one tubewell and Rs. 10,000/- per month to village with two tubewells. Later on, State of Haryana took a decision and declared Karnal City area as Municipal Corporation. About 15 villages were proposed to be included in the Municipal Corporation, Karnal. The petitioners were paid their salaries/wages from 16.12.2009 to 30.09.2010 by the Municipal Corporation, Karnal and thereafter, their salaries were drawn from the Public Health Department. However, for the last about one year, neither the Municipal Corporation, Karnal nor the Public Health Department paid the monthly salaries of the petitioners. The petitioners served a legal notice dated 27.05.2011 (Annexure P-5) upon the respondents calling them to make payment of arrears of their salaries, whereupon, they sent a reply dated 14.07.2011 (Annexure P-6) stating that due to formation of Municipal Corporation, Karnal w.e.f. 17.03.2010, there are some difficulties in making payment to the petitioners.

4. Upon notice, a short reply on behalf of Municipal Corporation, Karnal has been filed, wherein while referring to the decision dated 09.07.2009 (Annexure P-1), it is stated that payment of wages has to be made by respondent Nos. 1 to 3.

5. A separate affidavit has been filed by the Superintending Engineer, Public Health, Karnal, whereby he has stated that a decision was taken on 09.07.2009 (Annexure R-1) to transfer water supply schemes to the Panchayati Raj Institutions. The Municipal Corporation, Karnal, vide letter dated 14.05.2010 (Annexure R-2) made a request for deposit of the payment for disbursement of the salary to such Tubewell Operators and thereafter, the salary was disbursed by the Municipal Corporation, Karnal. Wages of Part Time Pump Attendants were revised vide memo dated 17.03.2011 (Annexure R-3). It has been specifically stated that the petitioners are entitled to the salary at the rate of Rs.2000/- per month. In compliance of the order dated 11.10.2012 passed by this Court, a sum of Rs. 2,35,000/- towards salary has been deposited with the Municipal Corporation, Karnal by the Sub Divisional Engineer, Public Health Engineering, Sub Division, Indri vide letter dated 31.10.2012. It has been further stated that the Executive Officer, Municipal Corporation, Karnal, had called the petitioners to receive their cheques of salary, but the petitioners refused to accept the same for the reasons best known to them.

6. In a separate affidavit dated 17.01.2013 filed by Superintending Engineer, Public Health Engineering Circle, Karnal, it has been clarified that as per letter

dated 11.05.2010 (Annexure R-7), minimum wages of Part Time Pump Operators in District Karnal for the year 2010-2011 was Rs. 2237/-. Thereafter, another affidavit was filed by the Superintending Engineer-respondent No.3 clarifying that on the recommendations of 5th Pay Commission, the Government has decided to frame a policy to engage/outsources service/activities of Government departments on wages fixed by D.C. under the Minimum Wages Act. Part time Pump Attendant/Operators are required to operate the pumping machine installed at various installations and their duties are only to switch on and switch off the tubewells in the morning and evening sessions for the supply of water in the villages concerned. They are required to work for short periods in a day for 3-4 hours.

7. It has been further stated in the affidavit that the full time Pump Attendant/Operators need to work for whole day i.e. for 8 hours as per the instructions of the Government. The post of Pump Attendant falls within the scheduled employment of "local authority" for fixing minimum rates of wages and this post falls in the category of Semi-Skilled and now categorized as Semi Skilled "A". Minimum rates of wages for pump attendants are Rs. 5342.15/- and the average working hours under Labour Law are 8 hours. Wages for part time workers, who work for about 4 hours, came out to Rs. 2671.07/-. The Principal Secretary to Government of Haryana, vide letter/notification dated 29.08.2014 (Annexure R-11) has further revised the minimum wages to the persons appointed against Semi Skilled category from Rs. 2672/- per month to Rs. 4050/- per month w.e.f. 02.06.2014.

8. During the pendency of this petition, the petitioners have accepted payment of their salaries as per the revision of minimum wages made by the respondents.

9. The only question for consideration in this petition would be, "whether the petitioners are entitled to be treated as Full Time Water Pump Operators or not."

10. The argument of learned counsel for the petitioners that the petitioners should be treated as Full Time Water Pump Operators is liable to be rejected, as respondent No.3 has already clarified in his affidavit dated 23.07.2015 that as per the outsourcing policy (Annexure R-9), the Government has decided to meet the emergent requirement of staff and has allowed the department to engage/outsources service/activities on contract basis.

11. The petitioners have been engaged on part time basis pursuant to the decision taken on 09.07.2009 (Annexure P-1) for a particular scheme. The Full Time Pump Attendant/Operators are to be engaged through contractors for operation and maintenance schemes by the Public Health Engineering Department. Since the petitioners have not been engaged for the maintenance of the scheme and they have accepted their appointments pursuant to the decision taken on 09.07.2009 (Annexure P-1), their payments as part time Pump Operators have been rightly made as per minimum wages fixed for part time employees by the respondents from time to time. The respondents were facing

some difficulties in releasing the salary of the petitioners on account of the fact that State of Haryana had declared Karnal City as a Municipal Corporation. Now, during the pendency of this petition, salaries have been disbursed to the petitioners and in future respondent No. 3 will disburse their salaries in time.

12. In view of the above, no ground is made out to quash the impugned letter (Annexure P-6).

13. Dismissed.