
(2016) 01 P&H CK 0305
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 20890 of 2008

Diwan Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 06-01-2016

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2016) 1 PLR 827

Hon'ble Judges : Deepak Sibal, J.

Bench : Single Bench

Advocate : Jai Bhagwan Sharma, for the Appellant; Harish Rathee, Senior D.A.G., for the Respondent

Final Decision : Allowed

Judgement

Deepak Sibal, J.—1. It is the admitted position that the petitioner, vide order dated 12.02.1998, passed by the Superintendent of Police, Bhiwani, was appointed as a whole-time Mali (Contingent Paid). It is further not disputed that he continued to work as such for about a decade i.e. till March 2007. However, with effect from 01.03.2007, initially the respondents withheld his salary and then after about a year thereafter, though his salary was released but only after treating the petitioner as a part-time Mali, which was much lower than the emoluments of a whole-time Mali (Contingent Paid). The fact that the petitioner is serving the respondents till date is also not controverted.

2. The petitioner has filed the present petition seeking issuance of direction to the respondents to release to him the wages payable to a wholetime Mali (Contingent Paid).

3. It is not disputed that the petitioner had been appointed on whole-time basis (Contingent Paid). No notice was ever issued to him before his appointment was converted to part-time basis. In fact, a perusal of the record shows that even no order was passed for conversion of the status of appointment of the petitioner.

As the conversion of the status of appointment of the petitioner involved civil consequences, principles of natural justice were required to be followed before such conversion which admittedly were not. Thus, the action of the respondents to convert his appointment from whole-time (Contingent Paid) basis to part-time basis was illegal.

4. It is the case of the respondents that the appointment of the petitioner in the year 1998 was against the rules as the creation of posts were banned. No Rules have been shown. Even otherwise, the petitioner was appointed and paid out of contingency funds and was allowed to continue as whole-time Mali (Contingent Paid) year after year for about ten years.

5. Irrespective of the above, through the present petition, the petitioner claims wages being paid to whole-time Malis (Contingent Paid), which illustratively for the year 2007-08, were Rs. 3560/- per month, as apposite to the paltry amount of Rs. 1506/- per month paid to him as part time Mali. For the year 2008-09, the wages being paid to the petitioner as part-time Mali were Rs. 1788/- per month, as compared to the claimed wages of Rs. 3588/- being paid to whole-time Malis (Contingent Paid). The aforementioned amounts have been marginally increased over the years.

6. Article 21 of the Constitution of India gives a fundamental right to persons like the petitioner to live with dignity. On being paid a paltry amount of Rs. 1506/- for 2007-08 and Rs. 1788/- for 2008-09 with marginal annual increases thereafter, what to talk of living with dignity, I fail to understand how he and his family has survived over the years.

7. In view of the above, I find the prayer made by the petitioner to claim Rs. 3560/- per month for the year 2007-08, Rs. 3588/- per month for the year 2008-09 with marginal increases thereafter to be reasonable and in line with his fundamental right, as enshrined under Article 21 of the Constitution of India. The view expressed by me finds support from a decision of this Court in C.W.P. No. 1133 of 2010 - Ram Harsh and others v. The State of Haryana and others, decided on 19.05.2011, wherein it has been held as under:-

"Article 21 of the Constitution envisages the right of every citizen to live with human dignity. Such dignity can only be nurtured, safeguarded and enhanced if the wages admissible to an employee are commensurate with the employment in which a person is placed and the aspirations which flow therefrom. Chapter IV of the Constitution equally casts an obligation upon the State to secure a living wage and conditions of work which ensure a decent standard of life.

A decent wage structure therefore, is not only a prelude to a life of dignity, but is also complementary to a life with human dignity as guaranteed under Article 21 of the Constitution.

It is to be noticed with concern that the petitioners have been working since 1980 onwards and yet their nomenclature shows that they are part-time

employees. Their assertion that they have been working for such a long period at a rate which can be said to be abysmally low, and that they deserve more, is justified. The petitioners assert that they are made to work throughout the day, while this fact is denied by the respondents who say that the petitioners work only for two hours a day. The respondents have not placed any material on record which would justify their stand. The fact that the petitioners have been working since 1980 onwards, does not inspire confidence due to the plea raised by the respondents that the petitioners are contingent employees.

I am thus, of the opinion that the petitioners have been greatly prejudiced on account of the amount which is being paid to them as wages. But considering the fact that the petitioners are contingent employees and also further considering the fact that the minimum wages admissible to an employee who perform the similar duties is Rs. 5400/-, I am of the opinion that this petition deserves to be accepted and the petitioners deserve to get salary at the rate of Rs. 5400/- per month, which is more or less, comparable with Annexures P-3 and in consonance with the minimum wage prescribed."

8. It is the admitted position that no appeal was filed by the State against the aforesaid judgment in Ram Harsh's case (supra).

9. No law to the contrary was cited on behalf of the State of Haryana.

10. In view of the aforesaid facts and the position of law, the writ petition is allowed and the petitioner is held entitled to the grant of wages payable to whole-time Malis (Contingent Paid) working in the Police Department. The same be paid to him with effect from 01.03.2007 till the time he has served the respondents and the needful be done within three months of the date of receipt of a certified copy of this order. In the facts of the case, the petitioner is held entitled to costs of Rs. 10,000/-.