
(2002) 08 AHC CK 0146
In the Allahabad High Court
Case No : C.M.W.P. No. 37138 of 1993

Gyan Prakash Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-08-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 23, 38

Citation : (2002) 4 AWC 2957 : (2002) 3 UPLBEC 2652

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Ashok Khare, for the Appellant;

Final Decision : Disposed Of

Judgement

Rakesh Tiwari, J.—Heard learned counsel for the parties and perused the record.

2. By means of this writ application the petitioner has claimed relief of fixation of his salary in the pay scale of Rs. 1,400-2,300 i.e., the salary payable to the post of Instructor, arrears of salary and emoluments from aforesaid date after taking into account the full length service.

3. The brief facts of the case are that the respondent No. 2, U. P. Anusuchit Jati Vitta Evam Vikas Nigam is a Government company incorporated under the provisions of the Companies Act,

4. The petitioner holds a diploma in engineering from Indian Institute of Handloom Technology. In the year 1988, respondent No. 2 invited applications for making appointment on the post of Instructors in Typing, Handloom and Carpentry trades in the training centres established by it. In pursuance thereto, the petitioner applied for the said post, was selected and appointed in the company vide Annexure-3. His appointment was purely temporary on a fixed salary of Rs. 800 per month. Subsequently, the petitioner's fixed salary from Rs. 800 per month was increased to Rs. 1,400 per month w.e.f. 25.1.1991.

5. It is alleged by the petitioner that Equalization Committee had recommended and sanctioned the pay scale of Rs. 1,400-2,300 for the post of Instructors in all the training centres and financial sanction was also accorded by the State Government for the post. In pursuance thereof, Instructors are being paid salary in aforesaid pay scale of Rs. 1,400-2,300 and are getting approximate Rs. 3,000 per month except the petitioner who is being paid fixed wages. He claims fitment in the revised pay scale of Rs. 1,400-2,300 on principles of equal pay for equal work and difference in pay from his initial date of appointment to be calculated on the basis of entire length of his service.

6. The State Government by G.O. dated 11.11.1986 had decided to pay regular pay scale to such Instructors and Chowkidars who were working on fixed pay scale subject to fulfilment of essential qualification. The qualification prescribed for Instructors is Intermediate and I.T.I. Trade diploma of one year. There were two training centres in U. P. one at Nainital and the other at Saharanpur in Carpentry. By order dated 28.10.1986, the State Government had sanctioned a scheme for the benefit of the Scheduled Caste persons. According to the scheme, those persons were required to open training centres in Typing, Shorthand, Handloom and Carpentry initially at twelve places. By a subsequent order dated 29.3.1986, the State Government had sanctioned for opening of nine more training centres. From the averments made in the short counter-affidavit, it appears that the Board of Directors of the Company also had passed a resolution dated 30.12.1995, recommending the pay scale of Rs. 1,400-2,300 for Instructors in all the training centres.

7. It is admitted by both the sides that such a recommendation has been sent to the State Government but no decision has been taken as yet for giving the aforesaid pay scale of Rs. 1,400-2,300 to all the Instructors in the training institutes. The standing counsel submits that the work of Instructor in Typing and Handloom centres is quite different than the work of Instructor in Carpentry trade and requires different kind of skill and aptitude and qualification. He emphasized that the Corporation is paying salaries as per the norms set up by the Government and the Corporation cannot pay any higher pay scale to its employees other than fixed by the State Government. He further contends that there is no illegality in payment of the salary to the petitioner as he had been offered appointment on a fixed salary, which he had accepted in the open eyes. These arguments of the learned counsel for the State are unsustainable for the reasons given hereinafter.

8. The norms have already been set by the State Government vide G.O. dated 11.11.1986, providing for payment of regular salary to ALL INSTRUCTORS working on fixed pay. The petitioner could not have been given employment on fixed salary of Rs. 800 per month, debars the G.O. aforesaid and such payment on fixed wages was illegal in itself. Every employee working in any service, employment or job requires a bare minimum amount of salary to enable him to meet his basic requirements of life. Payment of fixed salary much below the

minimum wages fixed by the Government is illegal, unfair and amounts to "Begar" and is in violation of Article 23 of the Constitution of India. The appointment on a fixed wage less than the minimum pay scale fixed for the post being unconstitutional cannot be sustained.

9. The Government is to act as a Model employer and cannot be provided with a legal cover by the Court to enable it to appoint persons on fixed salaries much below the regular pay scale. This would be a bad precedent in the country. If this is permitted, it would be in gross violation of principle of equal pay for "equal work". Article 23 read with the Directives in Articles 39(c). 41 and 42 protect a civil right against exploitation by taking Begar and forced labour, i.e., which compels a person to accept employment for remunerations which is less than the statutory minimum wages.

10. In *People's Union v. Union of India*, AIR 1982 SC 1473, it has been held that :

"the Constitution makers, when they set out to frame the Constitution found that the practice of "forced labour" constituted an ugly and shameful feature of our national life which cried for urgent attention and with a view to obliterating and wiping out of existence this revolting practice which was a relic of a feudal exploitative society totally incompatible with the new egalitarian socio-economic order which "we the people of India" were determined to build, they enacted Article 23 in the Chapter on Fundamental Rights. This Article, said the Court, is intended to eradicate the pernicious practice of "forced labour" and to wipe it out altogether from the national scene and it is therefore not limited in its application against the State but it is also enforceable against any other person indulging in such practice. It is designed to protect the individual not only against the State but also against other private citizens. The Court observed that the expression "other similar forms of forced labour" in Article 23 is of the widest amplitude and on its true interpretation it covers every possible form of forced labour, begar or otherwise, and it makes no difference whether the person forced to give his labour or service to another is remunerated or not. Even if remuneration is paid, labour supplied by a person would be hit by this Article if it is forced labour, that is, labour supplied not willingly but as a result of force or compulsion and the same would be the position even if forced labour supplied by a person has its origin in a contract of service. The Court then considered whether there would be any breach of Article 23 when a person provides labour or service to the State or to any other person and is paid less than the minimum wage for it."

11. The Court has further held that :

"It is obvious that ordinarily no one would willingly supply labour or service to another for less than the minimum wage, when he knows that under the law he is entitled to get minimum for the labour or service provided by him.....Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may

properly be regarded as "force" and if labour or service is compelled as a result of such force, it would be "forced labour". Where a person is suffering from hunger or starvation, when he has no resources at all to fight disease or to feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered to him is less than the minimum wage. He would be in no position to bargain with the employer, he would have to accept what is offered to him. And in doing so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or service provided by him would be clearly "forced labour". There is no reason why the word "forced" should be read in a narrow and restricted manner so as to be confined only to physical or legal "force" particularly when the national charter, its fundamental document has promised to build a new socialist republic where there will be socio-economic justice for all and everyone shall have the right to work, to education and to adequate means of livelihood..... We are therefore, of the view that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Article 23. Such a person would be entitled to come to the Court for enforcement of his fundamental right under Article 23 by asking the Court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be "forced labour" and the breach of Article 23 is remedied."

12. In *Sanju Roy v. State of Rajasthan*, AIR 1983 SC 328, it has been held that :

"I must, therefore hold consistently with this decision that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the meaning of the words "forced labour" and attracts the condemnation of Article 23. Every person who provides labour or service to another is entitled at the least to the minimum wage and if anything less than the minimum wage is paid to him he can complain of violation of his fundamental right under Article 23 and ask the Court to direct payment of the minimum wage to him so that the breach of Article 23 may be abated."

13. Under Sub-clauses (a) and (b) of Article 39, men and women doing the same work or work of similar nature are entitled to get equal pay. It goes without saying that the Court should take a broad view in the matter of determining of similar work. Under Article 41 right to work though not a justifiable right has been made meaningful by the decision of the Apex Court in *Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others*,

14. In *Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others*, it has been pointed out that :

"India is a socialist republic. It implies the existence of certain important obligations, which the State has to discharge. The right to work, the right to free choice of employment, the right to just and favourable conditions of work, the right to protection against unemployment, the right of everyone who works to just and favourable remuneration ensuring a decent living for himself and his family, the right of everyone without discrimination of any kind to equal pay for equal work, the right to rest, leisure, reasonable limitation on working hours and periodic holidays with pay, the right to form trade unions and the right to join trade unions of one's choice and the right to security of work are some of the rights which have to be ensured by appropriate legislative and executive measures. It is true that all these rights can not be extended simultaneously. But they do indicate the socialist goal. The degree of achievement in this direction depends upon the economic resources, willingness of the people to produce and more than all the existence of industrial peace throughout the country. Of those rights the question of security of work is of utmost importance. If a person does not have the feeling that he belongs to an organization engaged in production he will not put forward his best effort to produce more. That sense of belonging arises only when he feels that he will not be turned out of employment the next day at the whim of the management. It is for this reason it is being repeatedly observed by those who are in charge of economic affairs of the countries in different parts of the world that as far as possible security of work should be assured to the employees so that they may contribute to the maximization of production."

15. In Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others, it has been held that :

"There are certain other provisions which enjoin on the State certain duties, e.g., securing to all workers work, a living wage, just and humane conditions of work, a decent standard of life, participation in management, etc. which are aimed at improving the lot of working classes. Thus, the preamble promises socio-economic justice, the fundamental rights confer certain justiciable socio-economic rights and the Directive Principles fix the socio-economic goals, which the State must strive to attain. These three together constitute the core and conscience of the Constitution.

India is a developing country. It has a vast surplus labour market. Large scale unemployment offers a matching opportunity to the employer to exploit the needy. Under such market conditions the employer can dictate his terms of employment taking advantage of the absence of the bargaining power in the other. The unorganized job seeker is left with no option but to accept employment on take-it-or-leave-it terms offered by the employer. Such terms of employment offer no job security and the employee is left to the mercy of the employer. Employers have betrayed an increasing tendency to employ temporary hands even on regular and permanent job with a view to circumventing the protection offered to the working classes under the benevolent legislations

enacted from time to time....."

16. In *Dhirendra Chamoli and Another Vs. State of U.P.*, it has been held that :

"It is peculiar on the part of the Central Government to urge that these persons took up employment with the Nehru Yuvak Kendras knowing fully well that they will be paid only daily wages and therefore they cannot claim more. This argument lies ill in the mouth of the Central Government for it is an all too familiar argument with the exploiting class and a welfare State committed to a socialist pattern of society cannot be permitted to advance such an argument. It must be remembered that in this country where there is so much unemployment, the choice for the majority of people is to starve or to take employment on whatever exploitative terms are offered by the employer. The fact that these employees accepted employment with full knowledge that they will be paid only daily wages and they will not get the " same salary and conditions of service as other class IV employees, cannot provide an escape to the Central Government to avoid the mandate of equality enshrined in Article 14 of the Constitution. This Article declares that there shall be equality before law and equal protection of the law and implicit in it is the further principle that there must be equal pay for work of equal value."

17. The Apex Court in the aforesaid decisions has held that job security is to be read in the light of philosophy of socio-economic justice. The Court has further held that read with Articles 14 16 and 38(2), it would be discriminatory to pay even the casual labourers less than the minimum wages payable to a regular employee doing the same kind of work. These principles enshrined in the Constitution as well embodied in several labour welfare legislations and are intended to achieve object of doing social justice as well and obviate chance of exploitation by the employer. The petitioner being a regularly selected Instructor on permanent post doing similar work as Instructors in other trades is entitled to same scale.

18. Rule of beneficial construction is not res integra. Wage or salary is no longer a contract between the employer and employee. The employee is entitled to at least the minimum pay scale as it fulfils in part at least the obligation of the State under the Directive Principles of State Policy. Taking same work as other Instructors and payment of fixed wages less than the minimum pay scale is forced labour and is violative of Article 23 of the Constitution of India. In *Sanjit Roy v. State of Rajasthan*, AIR 1983 SC 328, the Apex Court held that :

"Article 23 mandates that no person shall be required or permitted to provide labour or service to another on payment of anything less than the minimum wage and if the Exemption Act, by excluding the applicability of the Minimum Wages Act, 1948, provides that minimum wage may not be paid to a workman employed in any famine relief work, it would be clearly violative of Article 23. It cannot be contended that when the State undertakes famine relief work with a view to providing help to persons affected by drought and scarcity conditions, it

would be difficult for the State to comply with the labour laws, because if the State were required to observe the labour laws, the potential of the State to provide employment to the affected persons would be crippled and the State would not be able to render help to the maximum number of affected persons..... When the state undertakes famine relief work, it is no doubt true that it does so in order to provide relief to persons affected by drought and scarcity conditions but, nonetheless, it is work which enures for the benefit of the State representing the society and if labour or service is provided by the affected persons for carrying out such work, there is no reason why the State would pay anything less than the minimum wage to the affected persons. It is not as if a dole or bounty is given by the State to the affected persons in order to provide relief to them against drought and scarcity conditions....."

19. It further held that :

"The State cannot be permitted to take advantage of the helpless condition of the affected persons and exact labour or service from them on payment of less than the minimum wage."

20. A person who agrees to be employed on fixed wages less than minimum wages is not in a position to bargain, as he requires a job to live and live with dignity. His position is no less than a famine-affected person. Even otherwise the State Government had decided to pay the Instructors regular pay scale vide G.O, dated 11.11.1986.

21. The Board of Directors had also passed a resolution dated 30.12.1995 recommending the pay scale of Rs. 1,400-2,300 for all the Instructors in the training centres of the State Government. The State can afford charity but not an employee, socially and economically weak employee who has to meet his two ends. There is no reason for the State Government to sit tight over the recommendation and it cannot be permitted by the Court to appoint Instructors on fixed pay scale after G.O, dated 11.11.1986. The Instructors of one training centre cannot be given pay scale of Rs. 1,400-2,300 while the Instructors working in other training centre under the same scheme are kept on fixed pay on the ground that the Instructors are working in different kind of trades and different skill and aptitude are required in training centres of typing, carpentry and handloom. The post of Instructors in all these training centres are equivalent and one cannot be treated at a lower footing than the other. The petitioner is also working as Instructor having essential qualification for the post. No differentiation can be made that the skill required is different. Discrimination is writ large on face of record.

22. I, therefore, hold that the petitioner providing labour or service to the respondents on fixed wages less than the minimum wage, the labour or service so provided by him clearly falls within the meaning of the words "forced labour" and attracts the condemnation of Article 23. Every person is entitled at the least

to the minimum wage and if anything less than the minimum wage is paid to him, he can complain of violation of his fundamental right under Article 23 and ask the Court to direct payment of the minimum wage to him so that the breach of Article 23 may be abated.

23. In view of the facts and law stated above, the State Government is hereby directed to take decision on the recommendation made by the Corporation for placing the petitioner in regular pay scale of Rs. 1,400-2,300. In case the State Government does not take any decision in the matter of fixation of pay scale of the petitioner at par with other Instructors of the training centre within a period of two months from the date of production of a certified copy of this order, the respondent No. 2 shall be at liberty to make fitment of the petitioner in the pay scale of Rs. 1,400-2,300 and pay him salary not less than what is being paid to other instructors along with him from the date of the recommendation by the Board of Directors. The petitioner is entitled to retrospective fixation or revision from the date it is due for revision.

24. With the aforesaid observations, the writ petition is disposed of finally.