
(2008) 05 RAJ CK 0001
In the Rajasthan High Court

Heera Lal and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 23-05-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (2009) 3 RLW 2145

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Judgement

Gopal Krishan Vyas, J.—This writ petition has been filed by the petitioners for granting regular pay scale of the post of Class IV employee from the date of initial appointment or at least from the date of reinstatement in pursuance of award dated 28/11/1998 and further prayed for regularization of their services on the post of Class IV employee.

2. According to facts of the case, petitioners were initially appointed as Class IV employee by the Principal, Government College, Banswara 9/7/87. The services of petitioners were terminated w.e.f. 31/10/1992 and against their termination, petitioners raised industrial dispute and after reference by the appropriate government in pursuance of failure report sent by conciliation officer, the matter was finally adjudicated by the Judge, Labour Court, Udaipur and an award dated 28/11/1998 was passed, whereby, retrenchment of petitioners was set aside and they were held entitled for reinstatement with continuity in service and back wages from the date of award. Against the award dated 28/11/98 passed by Labour Court, Udaipur, a writ petition was filed by the respondent employer under Article 226 and 227 of the Constitution of India which was registered as S.B.Civil Writ Petition No. 363/99, however, the said writ petition was dismissed by this Court holding that there was no error apparent in the award which called for any interference by the Court.

3. Against the judgment of learned Single Judge in above writ petition, respondents preferred special appeal u/s 18 of the Rajasthan High Court

Ordinance which was registered as D.B.Civil Special Appeal No. 82/2002 and said special appeal was also dismissed by the Division Bench on 8/4/2002.

4. Petitioners after their reinstatement on the post of Class IV employee filed representation for grant of regular pay scale of Class IV employee. As per petitioners, they are performing exactly similar work as is performed by the Class IV employees working in Education Department as well as in other Government Departments, therefore, denial of regular pay scale to the petitioners is violative of Article 14 read with 39D of the Constitution of India. As per petitioners, they are working on the post of Class IV employee from the date of reinstatement but till today respondents are not allowing them regular pay scale so also due to grant of continuity in service they are required to be treated in service since their initial appointment and thus in this manner they have completed about 20 years but still they are daily wagers and getting wages as such, therefore, action of respondents is totally illegal and in violation of Article 14 of the Constitution of India.

5. In this case by filing reply, respondents have denied the claim of petitioners on the basis that they were appointed on daily wages basis, therefore, they are not entitled for regularization and regular pay scale of the post of class IV employees.

6. I have considered the arguments advanced by learned Counsel for the parties. In my opinion, denial of regularization and regular pay scale to the petitioners after lapse of 20 years is illegal. In a recent judgment of Hon'ble Apex Court in case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, in which the Hon'ble Supreme Court has observed that efforts should be made for regularisation of those employees who are working from last 10-15 years and for the same State Government shall frame a scheme. It was held in para 53, 54 & 55 as under:

One aspect needs to be clarified. There may be cases of irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment? In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within a six months from this date. We also clarify that regularization, if any already made, but no sub judice, need not be reopened based on this

judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.

55. In cases relating to service in the commercial taxes department, the High Court has directed that those engaged on daily wages, be paid wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively appointed. The objection taken was to the direction for payment from the dates of engagement. We find that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called and were entitled to any other benefit. They had also been engaged in the teeth of directions not to do so. We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that are being paid to regular employees be paid to these daily wage employees with effect from the date of its judgment. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily wage earners, there would be no question of other allowances being paid to them. In view of our conclusion, that Courts are not expected to issue directions for making such persons permanent in service, we set aside that part of the direction of the High Court directing the Government to consider their cases for regularization. We also notice that the High Court has not adverted to the aspect as to whether it was regularization or it was giving permanency that was being directed by the High Court. In such a situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent. If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of selection. But when regular recruitment is undertaken, the respondents in C.A. No. 3595-3612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time. That would be the extent of the exercise of power by this Court under Article 142 of the Constitution to do justice to them.

7. In view of the above judgment, it is the duty of respondents to take proper action for granting regularization and regular pay scale to those employees who had completed more than 10-15 years of service. In this case after marathon of litigation upto Division Bench, the petitioners were reinstated in service and they were allowed continuity in service and still they are getting salary of daily wagers, which is in violation of Article 14 and 21 of the Constitution of India.

8. In view of the above discussion, this writ petition is allowed. Respondents are directed to consider the case of petitioners for regularization as per directives of Hon"ble Apex Court in Uma Devi's Case (supra) within a period of three months from the date of receipt of certified copy of this order, so also respondents are directed to pay minimum of the pay scale of the post of class IV employee from the date of filing writ petition which is 25/4/2005 and arrears shall be paid within three months from the date of submission of certified copy of this order.