
(2007) 09 AHC CK 0180
In the Allahabad High Court

Khursheed Alam, Naseem Ansari and Swatantra Kumar	APPELLANT
Vs	
State of U.P., The Director, Local Bodies U.P., Mukhya Nagar Adhikari, Administrator, Nagar Palika and Executive Officer, Nagar Palika	RESPONDENT

Date of Decision : 05-09-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2007) 115 FLR 1125

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

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

2. This petition has been filed by the petitioners for a direction to the respondent Nos. 3 and 4 to pay them the salary which is being paid to the other employees and to consider the case of the petitioners for regularization by deciding representation dated 23.5.2007 against the existing vacancies or the vacancies which may be created for which sanction may be obtained from the State Government.

3. The case of the petitioners is that they are continuously working as a Clerk in the office of Nagar Palika Parishad, Mugghal Scrai, District Chandauli on daily wages basis since 1991.

4. It is alleged that petitioner No. 1 filed Civil Misc. Writ Petition No. 32405 of 1993 which was disposed of vide order dated 19.1.2004 directing the petitioner No. 1 to make a representation within a period of two weeks along with a certified copy of the order. Nagar Palika may pass appropriate orders preferably within three months in accordance with law taking into consideration the Government Order dated 8th September, 1992. Petitioner No. 1 filed representation which was decided in his favour and he was allowed to work as

Clerk and since then he is continuously working.

5. It is further alleged that similarly petitioner Nos. 2 and who were employed as clerk on daily wage basis filed Civil Misc. Writ Petition No. 29263 of 1991 before this Court which was finally disposed of vide order dated 5.1.2005 directing respondent No. 1 to consider the case of petitioner Nos. 2 and 3 according to Government Order and pass a detailed and reasoned order expeditiously, preferably within a period of two months from the date of production of a certified copy of the order. They filed representation before the authority concerned which was decided in their favour and since then they are continuously working as Clerk.

6. The counsel for the petitioners submits that since the petitioners are discharging their duties continuously and regularly and are performing the work identically to the regular employees for the last several years, hence they are entitled to receive the same salary and conditions of service as the other employees regularly appointed against sanctioned posts are receiving and denial of this benefit would amount to violation of Article 14 of the Constitution of India.

7. The Standing counsel appearing for the respondents submits that a daily wage employee cannot claim parity regarding salary at par with a regular employee unless his services are regularized.

8. In *State of Punjab and Ors. v. Sardara Singh* (1998) 9 SCC 709, it has been held that High Court under Article 226 of the Constitution should not issue any direction for regularization of an employee and it is for the authorities to frame the scheme for regularization of daily wagers. State Govt. has also framed Group "D" Employees Service Rules, 2001 and the case of the petitioners is to be considered under the aforesaid Rules if he is eligible otherwise.

9. In so far as the payment of salary of the petitioners at par with a regular employee is concerned admittedly the petitioners are daily wagers and are not working against any post. The concept of minimum wages and minimum pay scale is different. When an employee is engaged on daily wages he is paid minimum daily wages, As per notifications of the Central Government or the State Government minimum wages whichever is applicable as Minimum Pay Scale is attached to the post and is applicable to the regular employees. The educational qualifications, methods of recruitment as well as responsibilities and liabilities of regular employees are different from daily wage employees. The regular employees are also liable to be transferred while daily wage employees cannot be transferred. The apex court in a catena of decisions has recently held that in the absence of proper material the High Court cannot grant parity in pay to daily wage workers or casual workers with regularly appointed workers merely on presumption of equality of nomenclature or work. Reference may be given of the decision rendered by the apex court in *State of Orissa and Others Vs. Balaram Sahu and Others*, etc. etc., in this regard. In a catena of decisions the apex court has directed that daily wagers be entitled to only minimum pay as

notified by the State Government for daily wagers and not the minimum pay scale. There has been a significant shift in law, as the doctrine of equal pay for equal work ; cannot be applied mechanically merely because the daily wagers are discharging similar duties as their counter part regular employees are discharging. The shift in law is evident from the following cases:

1. State of Orissa and Others Vs. Balaram Sahu and Others, etc. etc.,
2. State of Punjab v. Savender Kaur 2004 (1) FLR 592
3. State of Haryana v. Tilak Raj and Ors. 2003 AIR SCW 3332
4. Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others,
5. Harbans Lal and Others Vs. State of Himachal Pradesh and Others,
6. Ghaziabad Development Authority and others Vs. Sri Vikram Chaudhary and others,
7. State of U.P. and Others Vs. J.P. Chaurasia and Others,
8. State of Haryana v. Jasmer Singh (1996) 11 SCC 7

10. In State of Orissa and Others Vs. Balaram Sahu and Others, etc. etc., it has been held that in the absence of proper material High Court cannot grant parity in pay to daily wage workers with regularly appointed workers merely on presumption of equality of nomenclature or work. In State of Punjab and Others Vs. Savinderjit Kaur, it has been held that the doctrine of equal pay for equal work would not apply where , it has not been established that duties and functions of two categories of employees are at par. In State of Haryana and Anr. v. Tilak Raj and Ors. AIR 2003 S.C.W. 3382 : 2003 (4) A.W.C. 2597 (S.C.), it has been held that the claim by daily wagers in comparison with regular and permanent staff is not tenable since daily wagger holds no post and scale of pay is attached to a definite post. In Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others, the apex court explained the principle of "equal pay for equal work" by holding that differentiation in pay scales among Government servants holding the same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. In Harbans Lal and Others Vs. State of Himachal Pradesh and Others, , it is held that a mere nomenclature desi.mating a person as a carpenter or a craftsman was not enough to come to a conclusion that he was doing the work as another carpenter regular service. A comparison cannot be made with counterparts in other establishments with different managements or even in the establishments in different locations though owned by Me same management. The accuracy required and the dexterity that the job requires may differ from job to job. In Ghaziabad Development Authority and others Vs. Sri Vikram Chaudhary and others, it has been held that it must be left to be evaluated and determined by

an expert body. In *State of U.P. and Others Vs. J.P. Chaurasia and Others*, it is pointed out that the principle of "equal pay for equal WOK" has no mechanical application in every case of similar work. In the case of *State of Haryana and Others Vs. Jasmer Singh and Others*, it has been held that the daily wage employees cannot be treated as or- a par with persons in regular service holding similar posts.

11. A Division Bench of this Court in an Special Appeal No. (334) of 2004 arising out of the order and judgment in Writ Petition No. 37747 of 2002 quashed the order and judgment of the learned Single Judge in so far as it treated the daily wage employees of the Public Service Commission at par with the regularly appointed employees and held:

We do not agree with certain other directions given in the said judgment. For instance, the learned Single Judge after giving the direction that the petitioners should be considered for regularization has thereafter in the same sentence given a direction that the petitioners are also entitled to regular wages in the regular pay scale from 17.2.2001. Thus, we find that there is a contradiction in the same sentence of the learned Single Judge. In our opinion the learned Single Judge could not validly direct that the petitioners be regularized. He could only direct that the petitioners should be considered for regularization. Having directed that the petitioners should be considered for regularization, we fail to understand how he came in the same sentence say that the petitioners are entitled to regular pay scale. This direction for payment of regular wages and regular pay scale in the impugned judgment cannot be sustained and is hereby set aside

We are further of the opinion that direction Nos. 4 and 5 at the end of the judgment of the learned Single Judge also cannot be sustained. The learned Single Judge has directed in direction No. 4 in the impugned judgment that the petitioners whose services are not regularized shall be allowed to continue in minimum of the pay scale. This direction is clearly illegal as has been held by the Supreme Court and this Court in a series of decisions, which have been referred to in the Division Bench decision of this Court in *State of U.P. v. U.P. Madhyamik Shikshak Parishad* 2004 ALJ 232. That decision was followed in *State of U.P. V. Rajendra Prasad* 2004 (1) UPLBEC 60 etc. The aforesaid decisions have relied on several Supreme Court decisions, which have held that an employee who is not a regular employee cannot be given the minimum of the pay scale, i.e. the minimum of the pay scale can only be given to the employees who have been regularized. For the same reason the direction No. 5 contained in the impugned judgment of the learned Single Judge that the petitioners should be given minimum of pay scale is also illegal. In fact none of the petitioner can be given minimum of the pay scale, and only those who are subsequently regularized can be given the minimum of the pay scale as and when they are regularized. Those who are not regularized will not be given the minimum of pay scale at all in view of the aforesaid decisions.

For the reasons given above, this special appeal is partly allowed. No order as to costs.

S/d M. Katju, J. S/d R.S. Tripathi, J. 27.4.2004

12. In *State of Punjab and Others Vs. Savinderjit Kaur*, three judge bench of the apex court held:

even the doctrine of equal pay for equal work would not apply where it has not been established that duties and functions of two categories of employees are at par

13. In this writ petition it is not the argument of the petitioners that they are not being paid minimum wages, which are admissible to daily rated employees notified by the appropriate Government. Only parity is claimed in the pay scale: which can only be paid to an employee holding permanent post. In case the petitioners are discharging the duties of a regular employee they may approach to the Labour Court for adjudication of the disputed question of fact.

14. The judgments of the apex court as well as of Division Bench of this Court are binding upon this Bench. Thus, the petitioners are not entitled to the pay scale at par with the regular employees.

15. For the reasons stated above, this petition is dismissed. No order as to costs.