

(2004) 12 AHC CK 0152

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 49403 of 2004

Lakhan Lal Uttam

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-12-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 5 AWC 4058 : (2005) 1 ESC 247 : (2005) 1 UPLBEC 445

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : R.C. Uttam and S.K. Srivastava, for the Appellant; Sameer Sharma and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Vineet Saran, J.—Heard learned Counsel for the petitioner as well as Sri Sameer Sharma, learned Counsel appearing on behalf of the contesting respondents and have perused the record.

2. The petitioner claims that he was engaged as a driver on contract basis in the year 1997 and he has continuously been working as such and hence by means of this writ petition he has prayed that instead of payment being made under the terms of the contract, he should be paid the minimum pay scale as admissible to the post of driver and also be regularized in service on the vacant post of driver.

3. Sri Sameer Sharma, learned Counsel for the respondents, has pointed out that the petitioner has earlier, through the same Counsel and on similar facts, filed a writ petition praying for extension of the age limit and permission to apply for the post of driver in response to an advertisement issued by the U.P. State Road Transport Corporation on 28.10.2004. It has thus been contended that the second writ petition on the same facts, although may be for different prayers, would not be maintainable.

4. Having heard learned Counsel for the parties and considering the facts and

circumstances of this case, in my view, the petitioner is not entitled to the reliefs prayed for in this writ petition, besides the fact that this writ petition is liable to be dismissed on the ground of non-disclosure of filing of an earlier Writ Petition No. 48160 of 2004 by the petitioner on similar facts.

5. It is well settled that daily wage employees or persons engaged on contract basis would not be entitled to the payment of minimum pay scale of regular employees. The scale of pay is attached to a definite post and a daily wager or a contract employee holds no post and thus cannot be compared with the regular and permanent staff for any or all purposes including a claim for pay parity vide *State of Haryana and Another Vs. Tilak Raj and Others*, and *State of Orissa and Others Vs. Balaram Sahu and Others*, etc. etc., . A Division Bench of this Court in the case of *State of U.P. and Others Vs. U.P. Madhyamik Shiksha Parishad Shramik Sangh and Others*, has also held that principles of equal pay for equal work cannot be applied to daily wage employees and they cannot be regularized in service merely because they have worked for a reasonably long period nor can they be given the same pay scale as the regular employees.

6. In such view of the matter both the prayers for a direction to the respondents to pay the minimum pay scale and to regularize the petitioner in service on the post of driver cannot be granted. The writ petition is, accordingly, dismissed. No order as to cost.