

(2016) 01 PAT CK 0126

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3991 of 2011

Maresh Kumar and Others

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 2 PLJR 334

Hon'ble Judges : Rakesh Kumar, J.

Bench : Single Bench

Advocate : Aashish Giri and Pranav Kumar, for the Appellant; Pankaj, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—1. Heard Sri Aashish Giri, learned counsel, who was assisted by Sri Pranav Kumar, learned counsel for petitioners and Dr. Pankaj, learned counsel, who has appeared on behalf of respondent No. 3 to 6/Airport Authority of India.

2. Sixteen petitioners, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, have prayed for following reliefs:-

(i) To issue an appropriate writ/order/direction in the nature of Mandamus directing the respondent authorities to consider the case of the petitioners for payment of equal pay scale to that of permanent employees working in Jai Prakash Narayan International Airport, Patna plus other consequential benefits from the date of their initial appointment and further direct the respondents to payment petitioners the difference in arrear of salary accrued to them from the date of initial appointment as the petitioners are discharging similar services for last fifteen years.

(ii) To issue an appropriate writ/order/direction in the nature of Mandamus directing the respondent authorities to provide all the facilities to the petitioners

like D.A., HRA, Medical allowance, Transport allowances coupled with retiral benefits of Pension, Gratuity, Group Insurance etc. after the retirement.

(iii) To issue an appropriate writ/order/direction in the nature of Mandamus directing the respondent authorities to fix the scale of pay for the petitioners.

(iv) To any other relief or reliefs for which the petitioners are found to be entitled in the facts and circumstances of the case.

3. A plea has been taken that petitioners are doing same work, which are being discharged by the regular employee of the respondent/Airport Authority of India (hereinafter referred to as "Authority") and as such, they are entitled to get same pay scale, which are being provided to the regular employee of the Authority. To substantiate similarity of the nature of work, petitioners have elaborately given details in paragraph - 7 of the writ petition, which is as follows:-

4. It has also been indicated that petitioners are rendering the same kind of services, which are being rendered by the regular employee. Sri Giri, learned counsel for petitioners, to substantiate the claim, has firstly placed reliance on judgments of the Apex Court reported in , 1988 (3) Supreme Court Cases 354 (Jaipal -Vs.- State of Haryana) and , 2010 (7) Supreme Court Cases 739 (U.P. Land Development Corporation -Vs.- Md. Khurshid Ahmad) on the point that in equal circumstances, if the petitioners are discharging their services, they are entitled to get equal pay On the point of maintainability of the writ petition, he has relied on , (2011) 12 Supreme Court Cases 449 (Delhi International Airport Private Limited -Vs.- Union of India and Others), , 1995 Supp. (2) Supreme Court Cases 611 (Parimal Chandra Raha And Others -Vs.- Life Insurance Corporation of India And Others) and , (1985) 1 Supreme Court Cases 630 (Bhel Workers Assn. -Vs.- Union of India).

5. In respect of Delhi International Airport Private Limited case (supra), Sri Giri has placed reliance on paragraph 4, 15, 28, 37, 40, 47, 59, 69 and 70. Similarly, in respect of Parimal Chandra Raha's case (supra), he has referred to paragraph 1, 2, 3, 6, 7, 16, 19, 20, 29, 30 & 31 and in , (1985) 1 S.C.C. 630 (supra), he has referred to paragraph 1, 6 and 7. Besides this, he has argued that as per the provision contained in Contract Labour Act also, the petitioners are entitled to get similar status as of the regular employee, since as per Contract Act, they are deemed to be employee of the Airport Authority of India and as such, the writ petition is maintainable and therefore, he makes a prayer for allowing the writ petition.

6. Dr. Pankaj, learned counsel for the respondent No. 3 to 6/Authority, by way of referring to averment made in counter affidavit, submits that petitioners are not employees of the Authority. Specifically, in paragraph - 16 of the counter affidavit, a stand has been taken that the Airport Authority of India is not the employer of petitioners, rather for the purposes of Environmental Support Services (Up-keeping) work at Jai Prakash Narain International Airport at Patna, the Authority had invited tender and had estimated the cost for earlier three

years and as such, work is being done by the contractors on the basis of tender notice. In sum and substance, it has been argued that petitioners are not at all employee of the Authority. A preliminary objection has been raised by learned counsel for the respondent/Authority that petitioners, being not employee of the Authority, which is State, are not entitled to invoke the writ jurisdiction of this Court and as such, a prayer has been made to reject the writ petition. Dr. Pankaj, learned counsel for the respondent has also referred to Annexure - A to the counter affidavit i.e. Press Notice in respect of tender for work of Environmental Support Services (Up-keeping).

7. Besides hearing learned counsel for the parties, I have also perused the materials available on record. In the writ petition also, it has not been categorically stated that the petitioners are directly employee of the Authority. There is no specific statement that they are employee of the Authority, but a plea has been taken that they are under the control and supervision of Airport Authority of India. On the basis of pleading, it is evident that petitioners were employed as labourer by the contractor of the Authority, whereas, the petitioners have not even bothered to implead their contractor(s), who are directly employer of the petitioners. So far as equal pay for equal work is concerned, that is required to be examined in the similar situation and circumstances. The petitioners are not directly appointees of the Authority, rather they are working as contract labourers of the contractors, who have been granted work pursuant to the tender notice invited for grant of work for Environmental Support Services (Up-keeping) at J.P. Narayan International Airport at Patna and as such, there is no question of claiming for equal pay for equal work, since in this case, employer of petitioners is not the Authority. In cases referred by learned counsel for petitioners on the point of equal pay for equal work i.e. Jaipal's case (supra) and U.P. Land Development Corporation's case (supra), the nature of work was same and employer was also same, whereas in the present case petitioners are not employees of the Authority. Accordingly, petitioners may not get any help from the aforesaid judgments of the Apex Court. So far as Delhi International Airport Private Limited case (supra) and Parimal Chandra Raha's case (supra) are concerned, those cases were decided on entirely different facts, not in the similar situation. So far as , 1985(1) S.C.C. 630 (supra) is concerned, the claim of petitioners was rejected by the Apex Court.

8. Keeping in view the fact that in the present case, it is evident that petitioners are not employees of the Authority i.e. respondent No. 3 to 6 but employees of contractors and as such, they may not be entitled to claim equal pay for equal work from the Authority. Moreover, the direct employer of the petitioners being contractor, the petitioners may not seek any relief against the Authority.

9. In view of the facts and circumstances, I do not find any reason to allow the writ petition.

10. The writ petition stands dismissed.