

(2024) 03 GAU CK 0078
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 479 of 2013

Mamoni Borah

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 27-03-2024

Acts Referred:

Constitution Of India, 1950 — Article 141

Citation : (2024) 03 GAU CK 0078

Hon'ble Judges : N. Unni Krishnan Nair, J

Bench : Single Bench

Advocate : M.K. Choudhury, M. Sarma, R.K.D. Choudhury

Final Decision : Disposed Of

Judgement

1. Heard Mr. M.K. Choudhury, learned senior counsel, assisted by Mr. M. Sarma, learned counsel for the petitioner. Also heard Mr. R.K.D. Choudhury, learned Deputy Solicitor General of India, assisted by Ms. L. Devi, learned counsel representing all the respondents.

2. The petitioner by way of instituting the present proceedings has presented a challenge to an order dated 21.08.2012 issued by the Director, North Eastern Regional Institute of Water and Land Management (NERIWALM), by which the respondent No.3 Institute had revised the wages for casual workers and the petitioner was designated as a casual worker/staff of the Soil and Water Testing Laboratory. The petitioner has also prayed for a direction upon the respondent authorities, more particularly the respondent No.3, for regularization of her services in view of the long services rendered by her on contractual/casual basis in the Organization. The petitioner has further prayed for conversion of her service status from that of a casual worker to a temporary employee by passing appropriate order in the matter.

3. In pursuance to a walk in interview held, on 23.07.2005, the petitioner was appointed by the respondent No.3 in the post of Data Base Manager on

contract basis at a consolidated pay of Rs.9650/-. The petitioner, on her such joining as a Data Base Manager, was placed in a project titled "Prospective Plan preparation under Department of Rural Development under the control of P.S. to the Director". The services of the petitioner was thereafter extended for a period of further 1(one) year by an order dated 27.07.2006. It is the case of the petitioner that she was regularly working in the Organization in various capacities. The pay of the petitioner was reduced w.e.f. December, 2010 from Rs.9650/- per month to Rs.8450/- for 25 days of work, i.e. @ Rs.338/- per day, i.e. the wage as authorized for a non-matriculate casual worker, although she was initially recruited against a post for which Graduation was mandated as the minimum qualification. Thereafter, vide an order dated 21.08.2012, the petitioner was denoted as a casual worker and her services was proposed to be placed at the Soil and Water Testing Laboratory of the Institute with daily wages for regular work payable at 1/30th of the minimum Pay Scale plus Dearness Allowance as per Casual Labour Scheme of the Government of India, Department of Personnel and Training as outlined in the letters dated 23.01.2012 and 12.09.2008.

4. The petitioner left with no other alternative, was forced to agree to the terms although the same were prejudicial to her interest. Thereafter, the petitioner was paid her daily wages @ Rs.385/- per day, which is the wage as mandated for a matriculate employee. It is to be mentioned here that the petitioner was a graduate. The respondent Institute having terminated the services of casual employees without notice and without assigning any reasons thereof, the petitioner being apprehensive of a summary dispensation of her services by the respondent authorities, had approached this Court by way of instituting the present proceedings.

5. Mr. M.K. Choudhury, learned senior counsel appearing for the petitioner has submitted that the petitioner although engaged for appointment against a regular vacant post, her appointment was denoted to have been effected on a contractual basis. Mr. Choudhury submits that in the advertisement so issued, there was no stipulation that the appointment would be on contractual basis. The learned senior counsel for the petitioner by referring to the pleadings brought on record by the authority of the Institute has referred to the Selection Committee minutes for the post of Data Management of Project Relation, Rural Development held on 06.07.2005, wherein the Selection Committee had denoted that the selection of the candidate for the said post would be on contract basis. Mr. Choudhury further submits that although the petitioner was recruited on 06.07.2005 on contract basis, the respondent authorities have not thereafter appointed her on temporary basis as was done in respect of similarly situated persons recruited in the same manner. Mr. Choudhury referring to the case of Ms. Nirmali Hazarika, who was initially recruited as a Craftsman Grade-III on contractual basis and who also had entered her service after executing an agreement in this connection with a consolidated pay of Rs.4000/- per month, highlighted that the services of said Ms. Nirmali Hazarika was converted into a

temporary category and accordingly, she was authorized a Scale of Pay. It is contended that the said benefit was not extended to the petitioner. Mr. M.K. Choudhury submits that the conversion of contractual employees into temporary workers was the norm in the Institute, however, the petitioner was left out from the purview of such benefit.

6. Mr. M.K. Choudhury submits that although there were vacant Grade-III posts available in the Institute on account of superannuation of the incumbents working therein, the case of the petitioner for absorption against such vacant post on temporary basis was not considered by the respondent authorities. The learned senior counsel very fairly submits that the petitioner has since superannuated from her service on reaching the age of superannuation and accordingly the Institute not being a pensionable establishment, the petitioner would not be entitled to any pension, however, he prays that the petitioner having been discharging duties in the Organization similar in nature to that discharged by regular/temporary employees having a Scale of Pay, the petitioner is entitled to at least a minimum Scale of Pay of the corresponding post, which commensurate with the nature of the duties discharged by the petitioner and also which requires qualification as possessed by the petitioner. Accordingly, Mr. M.K. Choudhury submits that this Court would be pleased to direct the respondent authorities, more particularly the respondent No.3, to release to the petitioner her wages at the minimum of the Pay Scale plus Grade Pay as authorized to similarly situated posts and the arrears thereof as working out be released to the petitioner at the earliest.

7. Mr. R.K.D. Choudhury, learned Deputy Solicitor General of India, representing the respondents submits that the petitioner being engaged in connection with various Projects as was being executed by the respondent No.3 Institute, she was not an employee of the Institute per se but was so engaged in respect of the Projects as undertaken by the respondent No.3 Institute. However, with the passage of time, the Projects having dried out, the petitioner's services were not mandated to be retained in the Institution and accordingly, it was required that she be discharged from her services. However, in view of the directions passed by this Court vide order dated 07.02.2013 in the present proceedings not to terminate the services of the petitioner herein without leave of this Court, the petitioner was required to be continued in her service. It is further pointed out that the casual workers in the Institute are engaged on contract basis from time to time depending on the necessity for the same and it was not possible for the Institute to provide regular appointments to all such casual employees, who were so engaged basing on the need for suitable hands for the purpose of smooth execution of the Projects undertaken by the respondent No.3 Institute. Accordingly, Mr. R.K.D. Choudhury prays that the petitioner has not made out a case requiring interference in the matter by this Court and accordingly it was submitted that the writ petition was required to be dismissed.

8. I have heard the learned counsel appearing for the parties and have also

perused the material available on record.

9. It is seen that the initial recruitment of the petitioner is shrouded in mystery inasmuch as it is not known as to the terms and conditions under which it was decided to issue the advertisement pursuant to which the petitioner came to be appointed. It is seen that an advertisement being advertisement No.01/2005 was issued sometime in July, 2005 towards recruitment of a graduate in any discipline having experience in computer and familiarization with Rural Development Schemes and good contact with officials in the Rural Development Department for Data Management of Project Relation Rural Development. It was not disclosed in the said advertisement that such engagement would be on contractual basis. Further, it was provided that the remuneration/emoluments would be decided by the Selection Committee based on the candidate's capability.

10. The Selection Committee, in pursuance to the advertisement No.1/2005, proceeded to select the petitioner for the post so advertised after a walk in interview was held in the matter and the petitioner was required to be paid by the Selection Committee an amount of Rs.9650/- as monthly emolument and her appointment was directed to be made on contractual basis. Accordingly, the petitioner continued on such contractual basis appointment, which was extended from time to time. Subsequently, the nature of her duties was also changed. However, it is seen that persons similarly recruited by the Institute on contractual basis initially were subsequently brought to the regular cadre on temporary basis and authorized a Scale of Pay. The petitioner although being similarly situated and working in the Institute was not extended with such benefits. It is to be noted that the said Institute was subsequently taken over by the Ministry of Water Resources, Government of India w.e.f. 01.04.2012. Accordingly, the petitioner being in service for a considerable period of time ought to have been given some permanence at least for the purpose of drawing the Pay Scale as prescribed for the equivalent posts having similar nature of works as discharged by the petitioner in the Institute.

11. Mr. M.K. Choudhury, the learned senior counsel for the petitioner having limited the relief claimed for in the present writ petition to a direction upon the respondent authorities for releasing to the petitioner minimum of the Scale of Pay as authorized to the post in the regular establishment having similar nature of work as discharged by the petitioner, this Court would limit the consideration in the present proceedings to the said issue only.

12. It is to be noted that the Hon'ble Supreme Court in the case of State of Punjab -Vs- Jagjit Singh, reported in (2017) 1 SCC 148, after noticing the earlier judgments of the Hon'ble Supreme Court in the matter pertaining to pay parity had concluded that the principle of "equal pay for equal work" is applicable to temporary employees, i.e. daily wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like. The Hon'ble Supreme Court also held that the sole factor that requires determination is whether the employee concerned were rendering similar duties and

responsibilities as were being discharged by regular employees holding the same/ corresponding posts. It was held that the exercise would require application of the parameters of the principle of "equal pay for equal work" summarized in Paragraph 42 of the said judgment. The relevant portion of the said judgment, more particularly Paragraphs 56 to 61 thereof, are extracted herein below:-

"56. We shall now deal with the claim of temporary employees before this Court.

57. There is no room for any doubt that the principle of "equal pay for equal work" has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India under Article 141 of the Constitution of India. The parameters of the principle have been summarised by us in para 42 hereinabove. The principle of 'equal pay for equal work' has also been extended to temporary employees (differently described as work-charge, daily wage, casual, ad hoc, contractual, and the like). The legal position, relating to temporary employees has been summarised by us, in para 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us yet again.

58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to work at a lesser wage does not do so voluntarily. He does so to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows that his dependants would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situate constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

59. We would also like to extract herein Article 7 of the International Covenant on Economic, Social and Cultural Rights, 1966. The same is reproduced below:

'7. The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.”

(emphasis supplied)

India is a signatory to the above Covenant having ratified the same on 10-4-1979. There is no escape from the above obligation in view of different provisions of the Constitution referred to above, and in view of the law declared by this Court under Article 141 of the Constitution of India, the principle of ‘equal pay for equal work’ constitutes a clear and unambiguous right and is vested in every employee— whether engaged on regular or temporary basis.

60. Having traversed the legal parameters with reference to the application of the principle of ‘equal pay for equal work’, in relation to temporary employees (daily-wage employees, ad hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the employees concerned (before this Court), were rendering similar duties and responsibilities as were being discharged by regular employees holding the same/ corresponding posts. This exercise would require the application of the parameters of the principle of ‘equal pay for equal work’ summarised by us in para 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals were appointed against posts which were also available in the regular cadre/establishment. It was also accepted that during the course of their employment, the temporary employees concerned were being randomly deputed to discharge duties and responsibilities which at some point in time were assigned to regular employees. Likewise, regular employees holding substantive posts were also posted to discharge the same work which was assigned to temporary employees from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State that any of the temporary employees would not be entitled to pay parity on any of the principles summarised by us in para 42 hereinabove. There can be no doubt, that the principle of ‘equal pay for equal work’ would be applicable to all the temporary employees concerned, so as to vest in them the right to claim wages on a par with the minimum of the pay scale of regularly engaged government employees

holding the same post.

61. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding that all the temporary employees concerned, in the present bunch of cases would be entitled to draw wages at the minimum of the pay scale (at the lowest grade, in the regular pay scale), extended to regular employees holding the same post.”

13. Applying the decision of the Hon’ble Supreme Court in the case of Jagjit Singh (supra) to the facts involved in the present case, it is seen that the respondents have not disputed that the petitioner was also discharging her duties in the Organization similar in nature to the one being discharged by regular/ temporary employees appointed in the Organization against posts having recruitment condition with regard to the qualification similar in nature as possessed by the petitioner, i.e. Graduation. Accordingly, the petitioner is held to be entitled to draw the wages at the minimum of the Pay Band and Grade Pay as authorized to such similarly situated regular employees holding posts having similar nature of work as being discharged by the petitioner herein. The said benefit would be extended to the petitioner w.e.f. 01.02.2002, i.e. the date when the casual/ Muster Roll workers working in the Organization were brought over to the regular Scale of Pay against the sanctioned posts. The petitioner shall be paid her wages in the above manner till the date she retired from her service on reaching the age of superannuation.

14. The arrears now becoming due to the petitioner, in view of the direction passed hereinabove, be computed by the authorities of the Institute and be released to the petitioner within 3(three) months from the date of receipt of a certified copy of this judgment & order.

15. With the above observations and directions, the writ petition stands disposed of.