
(2016) 08 JH CK 0014
In the Jharkhand High Court
Case No : Writ Petition (S) No. 1711 of 2015

Md. Mosharaf Khan

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 02-08-2016

Acts Referred:

Citation : (2017) 1 JBCJ 151

Hon'ble Judges : Mr. H.C. Mishra, J.

Bench : Single Bench

Advocate : Mr. Rajesh Shankar, Advocate, for the Respondents; Mr. Saurabh Shekhar, Advocate, for the Petitioners

Final Decision : Allowed

Judgement

Mr. H.C. Mishra, J. - As common question is involved in both these writ applications, they are being heard together and disposed of by this common order.

2. Heard the learned counsel for the petitioners and the learned counsel for the respondent State.

3. The petitioners, who were earlier working on daily wages in Water Resources Department, had moved this Court in W.P (S) No.5888 of 2013 and in W.P (S) No.4710 of 2012, claiming for payment of remuneration equal to the salary at the lowest grade of the employees of that cadre. The said writ applications were disposed of by orders dated 24.2.2014 and order dated 31.08.2012 as contained in Annexure-10 to the writ applications, in which, this Court had taken note of the Judgment dated 04.08.2011 passed in Nand kishore Rai & Ors. v. State of Jharkhand & Ors., in W.P (S) No.700 of 2009, wherein, the directions were passed in similarly situated cases for making payment of the wages equal to the salary at the lowest grade of the employees of that cadre in Water Resources Department. The said order was upheld in L.P.A by this Court and the SLP filed against that order was also dismissed by the Hon''ble Supreme Court of India.

The petitioners were, however, directed to give representations to the Principal Secretary, Water Resources Department, Government of Jharkhand, Ranchi, with all supporting facts and necessary documents, which was to be decided by the concerned respondent.

4. It is the case of the petitioners that pursuant to the orders dated 24.2.2014 and 31.8.2012 passed in W.P (S) No.5888 of 2013 and in W.P (S) No.4710 of 2012, they have since been paid their wages equal to the salary at the lowest grade of the employees of their cadre. In these writ applications, the petitioners have challenged the orders contained in memo No. 8296 dated 16.10.2014 and memo No. 8092 dated 23.09.2014 passed by the State Government in its Water Resources Department, which have been brought on record as Annexure-11 to the respective writ applications, whereby, the claim of the persons working on daily wages, for the other admissible allowances, including the dearness allowance, has been rejected by the State Government.

5. Learned counsel for the petitioners has confined his argument to the rejection of dearness allowance only and has submitted that the impugned orders dated 16.10.2014 and 23.09.2014 as contained in Annexure-11 to the writ applications cannot be sustained in the eyes of law, so far as by the said orders, the claim of dearness allowance has also been denied to the persons, working on daily wages. It is submitted by the learned counsel for the petitioners that the D.A is a part of the salary and accordingly, the petitioners are also entitled to the dearness allowance on the minimum of the basic pay, which they are getting.

6. Learned counsel for the State, on the other hand, has opposed the prayer, submitting that there is no illegality in the impugned order, inasmuch as in *State of Karnataka and Others v. Uma Devi and Others*, reported in (2006) 4 SCC 1, it has been held by the Hon''ble Supreme Court of India, that the daily wages earners are not entitled to the other allowances, being paid to them. Learned counsel for the State has also placed reliance upon the resolution of the State Government in its Department of Finance dated 28.02.2009 with regard to the revision of scale of pay to the State Government employees, in which, the basic pay has also been defined which does not include any other type of pay like special pay etc. Learned counsel for the State accordingly, submitted that the impugned orders, rejecting the claims of other allowances to the petitioners, do not suffer from any illegality.

7. Having heard the learned counsels for both sides and upon going through the record, I find that pursuant to the directions of this Court as contained in Annexure-10 to the writ applications, the petitioners have since been paid their wages equal to the salary at the lowest grade of the employees of that cadre in their department. Learned counsel for the petitioners has confined his argument for the payment of dearness allowance only.

8. In *Union of India & Others v. Dharma Pal and Others*, reported in (1996) 4 SCC 195, the Hon''ble Apex Court has held that the daily wages earners are also

entitled to the admissible D.A on their wages equal to minimum scale of pay, laying down the law as follows:-

"6. ----- The daily wage workers/casual workers who are not regularised and work is taken from them are entitled to minimum of scale of pay prescribed for that post. In addition to that, they are also entitled to 60% of the DA at Punjab pattern which is being followed in all other cases. ----- ."

8. As such, the question whether the persons working on daily wages shall be entitled to the D.A on the minimum of the basic pay scale, is no more res-integra and the Hon"ble Apex Court has held that they are entitled to the benefits of dearness allowance.

9. In view of the aforementioned discussions, the respondents authorities are directed to allow the benefits of D.A to the petitioners also on their wages, equal to the minimum on the basic pay scale, at the rates of D.A applicable from the dates from which the petitioners are getting their wages on the minimum of the pay scale.

10. The respondent authorities, particularly respondent No.2, the Principal Secretary, Water Resources Department, Government of Jharkhand, is directed to pass necessary orders, allowing the D.A to the petitioners on their wages on the minimum of the pay scale, positively within a period of two months from the date of receipt of this order. The orders contained in Memo No. 8092 dated 23.09.2014 & Memo No. 8296 dated 16.10.2014 as contained in Annexure-11 to the writ applications, stand quashed to the extent the benefits of D.A is disallowed by the said orders.

11. Both these writ applications are accordingly, allowed in part, with the directions as above.