
(2017) 03 AHC CK 0029
In the Allahabad High Court
Case No : Special Appeal No. 1068 of 2011

Ram Pravesh

APPELLANT

Vs

Chief Medical Officer Ghazipur

RESPONDENT

Date of Decision : 20-03-2017

Acts Referred:

Constitution of India, 1950 — Article 21, Article 23

Citation : (2017) 4 AILLJ 1

Hon'ble Judges : V.K. Shukla and Ashok Kumar, JJ.

Bench : Division Bench

Advocate : O.P. Rai, Advocate, for the Appellant; C.S.C, for the Respondent

Final Decision : Allowed

Judgement

1. Ram Pravesh, who is presently working as "Kahar" at Prathamik Swasthya Kendra, Mardah, District Ghazipur is before this Court with the prayer that he has been engaged on part time basis on fixed pay as Rs.100/- per month since the year 1985 whereas the fact of the matter is that he perform and discharge duties for more than eight hours per day but till today regular pay scale as is admissible to Class IV employees along with other pay and allowances has not been extended to him.

2. Learned Single Judge of this Court in Writ Petition No.8780 of 2006 (Ram Pravesh v. C.M.O. Ghazipur and another) placed reliance in the case of State of Rajasthan and others v. Daya Lal and others 2011(2) SCC 429 as well as the case of Secretary, State of Karnataka v. Uma Devi 2006(4) SCC 1 and concluded that the relief that has been so claimed by petitioner appellant cannot be accorded and accordingly turned down the request in question.

3. Petitioner-appellant, in his turn, has proceeded to file the present Special Appeal assailing the validity of the action so taken and the Division Bench of this Court on 02.05.2011 proceeded to make a mention that it is difficult to believe that in the year 2010-11 a person can survive on the meagre amount of Rs.100/-

per month and that even if he is doing part time work, the amount paid to him for rendering part time services is ridiculously low and amounts to "begar", prohibited by Article 23 of the Constitution of India. This much fact has also been taken note of that nature and hours of work performed by the petitioner-appellant has not been disputed and as an interim measure the Division Bench directed to pay petitioner same wages as is admissible to daily wager employed in the State Government beginning from 15th May, 2011.

4. Today, when the matter has been taken up, Shri O.P. Rai, learned counsel for the petitioner-appellant has contended that in this era when petitioner-appellant is admittedly working for more than eight hours, he cannot be forced to work for a meagre sum amount of Rs.100/- per month and the amount paid to him for rendering services is ridiculously low and in view of this, the action so taken by the respondent authorities is totally within the teeth of Article 21 and 23 of the Constitution of India and the same here has been breached with impunity.

5. Learned Standing Counsel, on the other hand, has contended that petitioner-appellant's appointment has been on part time basis under the scheme of things provided for by the Government Order dated 25.06.1985 whereas petitioner appellant has been entitled to receive remuneration @ Rs.100/- per month and he has been provided with the said amount and as such none of the legal rights of petitioner-appellant has been infringed and in view of this, no interference is required to be made by this Court.

6. We have proceeded to examine the averments that have come forward by means of pleadings in the Writ Petition and the Counter Affidavit before the Learned Single Judge as well as the observations made by Learned Single Judge and what we find that engagement of petitioner-appellant has been made under the scheme of things that has been so floated by the State Government and under the said scheme, against various posts that are to be filled up, remuneration that has to be paid has been provided for and mentioned in the letter dated 21.09.1985 wherein the post of "Kahar" has been referred to at serial no.9 against which a sum of Rs. 100/- has been provided to be paid. This is an accepted position that petitioner-appellant has been engaged in the year 1985 and since then he has been performing and discharging his duties. Petitioner has proceeded to mention that he has been working for eight hours and he performs and discharge duties as watermen, used to clean utensils, required to perform sundry work in hospital and the kitchen of the hospital, and also required to work in various programmes such as pulse polio camp of the State Government in the hospital and the aforementioned fact has not at all been disputed in the Counter Affidavit. In view of this, it cannot be accepted by us that petitioner-appellant has not at all worked on full time basis in the aforementioned establishment though he has been shown as a part time employee and this is also an accepted position that petitioner-appellant has been forced to perform and discharge duties on a meagre sum amount of Rs.100/-. This much fact has also come forward that when order dated 02.05.2011 has

been passed by Division Bench of this Court, for a certain period petitioner has received payment of daily wage but since last one year on the pretext that there is no order passed by Special Appeal Bench of this Court, the payment in question has been withheld.

7. Learned Single Judge, at the point of time when he has proceeded to non suit the claim of petitioner, has proceeded to place reliance on the judgement of the Apex Court in the case of State of Rajasthan (supra) and Uma Devi (supra). Judgement in the case of State of Rajasthan (supra) has relied upon the judgement in the case of Uma Devi (Supra). Recently Apex Court in the case of State of Punjab v. Jagjit Singh 2017 (1) SCC 148 has clarified the principles that would govern the grant of "equal pay for equal work". Uma Devi (supra) has extensively been dealt with there. Relevant paragraphs are as follows:-

"Yet again, we are of the view, that the full bench erred in referring to the above observations, to draw its conclusions. Our reasons are summarized herein below:-

(i) It is apparent, that this Court in State of Punjab v. Surjit Singh, did hold, that the determination rendered in paragraph 55 of the judgment in the Secretary, State of Karnataka case, was in exercise of the power vested in this Court, under Article 142 of the Constitution of India. But the above observation does not lead, to the conclusion or the inference, that the principle of "equal pay for equal work" is not applicable to temporary employees. In fact, there is a positive take-away for the temporary employees. The Constitution Bench would, in the above situation, be deemed to have concluded, that to do complete justice to the cause of temporary employees, they should be paid the minimum wage of a regular employee, discharging the same duties. It needs to be noticed, that on the subject of pay parity, the findings recorded by this Court in the Secretary, State of Karnataka case, were limited to the conclusions recorded in paragraph 55 thereof (which we have dealt with above, while dealing with the case law, on the principle of "equal pay for equal work").

(ii) Even in the case under reference - State of Punjab v. Surjit Singh, this Court accepted the principle of "equal pay for equal work", as applicable to temporary employees, by requiring the State to examine the claim of the respondents for pay parity, by appointing an expert committee. The expert committee was required to determine, whether the respondents satisfied the conditions stipulated in different judgments of this Court including State of Punjab v. Charanjit Singh, wherein this Court had acceded to the proposition, that daily-wagers who were rendering the same duties and responsibilities as regular employees, would be entitled to the minimum wage payable to regular employees. And had therefore, remanded the matter back to the High Court for a fresh adjudication. Paragraph 38 of the judgment in State of Punjab v. Surjit Singh, wherein the remand was directed, is being extracted below:-

"We, therefore, are of the opinion that the interest of justice would be subserved if the State is directed to examine the cases of the respondents herein by

appointing an expert committee as to whether the principles of law laid down herein viz. as to whether the respondents satisfy the factors for invocation of the decision in *State of Haryana v. Charajnit Singh*, (2006) 9 SCC 321 in its entirety including the question of appointment in terms of the recruitment rules have been followed."

(iii) For all the above reasons, we are of the view, that the claim of the temporary employees, for minimum wages, at par with regularly engaged Government employees, cannot be declined, on the basis of the judgment in *State of Punjab v. Surjit Singh*.

8. The impugned judgment rendered by the full bench, also relied upon the judgment in *Satya Prakash v. State of Bihar*, which also attempted to interpret the judgment in the *Secretary, State of Karnataka* case. Learned counsel for the State of Punjab also referred to the same, to canvass the case of the State government. Relevant observations relied upon, are reproduced below:-

"7. We are of the view that the appellants are not entitled to get the benefit of regularization of their services since they were never appointed in any sanctioned posts. The appellants were only engaged on daily wages in the Bihar Intermediate Education Council.

8. In *State of Karnataka v. Umadevi* (3), (2006) 4 SCC 1, this Court held that the Courts are not expected to issue any direction for absorption/regularization or permanent continuance of temporary, contractual, casual, daily-wage or ad hoc employees. This Court held that such directions issued could not be said to be inconsistent with the constitutional scheme of public employment. This Court held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. In view of the law laid down by this Court, the directions sought for by the appellants cannot be granted.

9. Paragraph 53 of *Umadevi* (3) judgment, deals with irregular appointments (not illegal appointments). The Constitution Bench specifically referred to the judgments in *State of Mysore v. S.V. Narayanappa*, AIR 1967 SC 1071, and *R.N. Nanjundappa v. T. Thimmiah*, (1972) 1 SCC 409, in para 15 of *Umadevi* (3) judgment as well. Let us refer to paras 15 and 16 of *Umadevi* (3) judgment in this context.

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15. In our view, the appellants herein would fall under the category of persons mentioned in paras 8 and 55 of the judgment and not in para 53 of judgment of *Umadevi* (3)."

9. Yet again, all that needs to be stated is, that the observations relied upon by

the full bench of the High Court, dealt with the issue of regularization, and not with the concept of "equal pay for equal work".

10. Paragraph 7 extracted above, leaves no room for any doubt, that the issue being considered in the Satya Prakash case³⁵, pertained to regularization of the appellants in service. Our view, that the issue being dealt with pertained to regularization gains further ground from the fact (recorded in paragraph 1 of the above judgment), that the appellants in the Satya Prakash case³⁵ had approached this Court, to claim the benefit of paragraph 53 of the judgment in the Secretary, State of Karnataka case²⁸. Paragraph 53 aforementioned, is reproduced below:-

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *State of Mysore v. S.V. Narayanappa*, AIR 1967 SC 1071, *R.N. Nanjundappa v. T. Thimmiah*, (1972) 1 SCC 409, and *B.N. Nagarajan v. State of Karnataka*, (1979) 4 SCC 507, and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

11. A perusal of paragraph 53 extracted above, leaves no room for any doubt, that the issue canvassed was of regularization, and not pay parity. We are therefore of the view, that reliance on paragraph 53, for determining the question of pay parity (claimed by the concerned employees), resulted in the High Court drawing an incorrect inference.

The full bench of the High Court, while adjudicating upon the above controversy had concluded, that temporary employees were not entitled to the minimum of the regular pay-scale, merely for the reason, that the activities carried on by daily wagers and regular employees were similar. The full bench however, made two exceptions. Temporary employees, who fell in either of the two exceptions, were held entitled to wages at the minimum of the pay-scale drawn by regular employees. The exceptions recorded by the full bench of the High Court in the

impugned judgment are extracted hereunder:-

"(1) A daily wager, ad hoc or contractual appointee against the regular sanctioned posts, if appointed after undergoing a selection process based upon fairness and equality of opportunity to all other eligible candidates, shall be entitled to minimum of the regular pay scale from the date of engagement.

(2) But if daily wagers, ad hoc or contractual appointees are not appointed against regular sanctioned posts and their services are availed continuously, with notional breaks, by the State Government or its instrumentalities for a sufficient long period i.e. for 10 years, such daily wagers, ad hoc or contractual appointees shall be entitled to minimum of the regular pay scale without any allowances on the assumption that work of perennial nature is available and having worked for such long period of time, an equitable right is created in such category of persons. Their claim for regularization, if any, may have to be considered separately in terms of legally permissible scheme.

(3) In the event, a claim is made for minimum pay scale after more than three years and two months of completion of 10 years of continuous working, a daily wager, ad hoc or contractual employee shall be entitled to arrears for a period of three years and two months."

12. A perusal of the above conclusion drawn in the impugned judgment (passed by the full bench), reveals that the full bench carved an exception for employees who were not appointed against regular sanctioned posts, if their services had remained continuous (with notional breaks, as well), for a period of 10 years. This category of temporary employees, was extended the benefit of wages at the minimum of the regular pay-scale. In the Secretary, State of Karnataka case, similarly, employees who had rendered 10 years service, were granted an exception (refer to paragraph 53 of the judgment, extracted in the preceding paragraph). The above position adopted by the High Court reveals, that the High Court intermingled the legal position determined by this Court on the subject of regularization of employees, while adjudicating upon the proposition of pay parity, emerging under the principle of "equal pay for equal work". In our view, it is this mix-up, which has resulted in the High Court recording its afore-extracted conclusions.

(ii) The High Court extended different wages to temporary employees, by categorizing them on the basis of their length of service. This is clearly in the teeth of judgment in the Daily Rated Casual Labour Employed under P&T Department through Bhartiya Dak Tar Mazdoor Manch case. In the above judgment, this Court held, that classification of employees based on their length of service (- those who had not completed 720 days of service, in a period of 3 years; those who had completed more than 720 days of service - with effect from 1.4.1977; and those who had completed 1200 days of service), for payment of different levels of wages (even though they were admittedly discharging the same duties), was not tenable. The classification was held to be

violative of Articles 14 and 16 of the Constitution.

(iii) Based on the consideration recorded herein above, the determination in the impugned judgment rendered by the full bench of the High Court, whereby it classified temporary employees for differential treatment on the subject of wages, is clearly unsustainable, and is liable to be set aside.

In view of all our above conclusions, the decision rendered by the full bench of the High Court in *Avtar Singh v. State of Punjab & Ors.* (CWP no. 14796 of 2003), dated 11.11.2011, is liable to be set aside, and the same is hereby set aside. The decision rendered by the division bench of the High Court in *State of Punjab & Ors. v. Rajinder Singh & Ors.* (LPA no. 337 of 2003, decided on 7.1.2009) is also liable to be set aside, and the same is also hereby set aside. We affirm the decision rendered in *State of Punjab & Ors. v. Rajinder Kumar* (LPA no. 1024 of 2009, decided on 30.8.2010), with the modification, that the concerned employees would be entitled to the minimum of the pay-scale, of the category to which they belong, but would not be entitled to allowances attached to the posts held by them."

13. Apex Court also took note of the fact that it would be fallacious to determine artificial parameters to deny fruits of labour.

14. Anyone who is compelled to do work at a lesser wage does not do so voluntarily. Relevant paragraphs are as follows:-

"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 summarized by us in paragraph 42 herein above. 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 summarized by us, in paragraph 44 herein above. The above legal position which has been repeatedly declared, is being reiterated by us, yet again.

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. Any one, 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 dependents 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.

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 recognize 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."

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.

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 concerned employees (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" summarized by us in paragraph 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 concerned temporary employees 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 summarized by us in paragraph 42 herein above. There can be no doubt, that the principle of "equal pay for equal work" would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay scale of regularly engaged Government employees, holding the same post.

In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding, that all the concerned temporary employees, 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."

15. Once such is the law of the land and the factual situation that is so emerging before us, we do not approve the conduct of the incumbents, who were responsible for not ensuring the payment to the petitioner-appellant inasmuch as, the object of the order passed by Special Appeal Bench of this Court dated 02.05.2011 was that petitioner should proceed to live with dignity along with his family members. Petitioner has been discharging duties of perennial nature for eight hours and has been forced to sustain on a meagre sum of Rs.100/- per month since 1985. Petitioner, in the facts of the case, has been forced to work at a lesser wage for the obvious reason to provide food and shelter to his family. Such action of State cannot be approved of by us and the State being welfare State it is the duty and obligation of the State to ensure at least the minimum wages provided to a daily wager be provided, in view of this, we allow the Special Appeal in question by setting aside the order of learned Single Judge and by issuing directives to the State Government to ensure payment to the petitioner-appellant as a daily wager employed by the State Government beginning from 15.05.2011 and for future months also the claim in question be considered month by month along with other staff of the establishment concerned.

16. Before parting we would observe that being a welfare State, the State of U.P. is obligated to ensure fair wages and it cannot be a mute spectator to the situation wherein incumbents are driven to work at lesser wage thus constituting an act of exploitative enslavement, emerging out of domineering position. Such a situation clearly attracts breach of Article 21 and 23 of the Constitution as it

strikes at the very foundation of human dignity. Consequently in reference of all other similarly situated employees, who have been engaged in this particular scheme, similar treatment be extended and for future, further policy decision be taken to remedy the situation as has been observed in the case of Uma Devi (supra) and Jagjit Singh (supra).

17. With this, Special Appeal is allowed.