

(2015) 02 AHC CK 0130

In the Allahabad High Court

Case No : Special Appeal Defective No. 119 of 2015

Ram Shri and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 11-02-2015

Acts Referred:

Constitution of India, 1950 — Article 142

Citation : (2015) 3 ADJ 651 : (2015) 4 ALJ 244 : (2015) 3 AWC 2536 : (2015) 145 FLR 1034 : (2015) 2 UPLBEC 1024

Hon'ble Judges : D.Y. Chandrachud, C.J.;Suneet Kumar, J

Bench : Division Bench

Advocate : Suresh Singh and Bhanu Pratap Singh, for the Appellant; Shiv Nath Singh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. The appellants are daily wagers in the employment of the Chandra Shekhar Azad University of Agriculture and Technology, represented in these proceedings by the second and third respondents. The appellants had filed a writ petition (Writ-A No. 27080 of 2014) seeking to challenge an order passed by the third respondent declining their claim for the payment of wages at the minimum of the pay-scale admissible to regular employees and a writ of mandamus for the payment of the minimum of the pay-scale. By the impugned judgment and order of the learned Single Judge dated 15 May 2014, the University has been directed to pay atleast the minimum wages as prescribed by the Government. The appellants are in appeal, seeking a direction [for the payment of the minimum of the pay-scale as admissible to regular employees of the University. Initially, the appellants filed a writ petition (Writ - A No. 29214 of 2013), seeking regularization and pay parity of the minimum wages being paid to the regular employees of the University. The University resisted the petition on the ground that there was no rule for regularization and such a claim could not be made in view of the judgment of the Supreme Court in Secretary, State of Karnataka and

Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 . The writ petition was disposed of with a direction to the competent authority to consider the grievance in accordance with law and to pass an order thereon. Contempt proceedings (Contempt Application No. 5585 of 2014) were initiated, in which on 22 November 2013 an order was passed directing a decision in accordance with the earlier order within two months, failing which, it was stated, that the competent authority would be liable to be summoned and prosecuted after framing charges. An order was passed by the third respondent on 27 January 2014 declining the claim of the appellant. The impugned order records that, in the past, payment at minimum of the pay-scale had been allowed to certain daily wage employees based on a judgment of the Allahabad High Court rendered in 2000. However, in view of the subsequent decision of the Supreme Court in Uma Devi (supra), it was held that these daily wage employees who have been appointed illegally could not be given the benefit of the earlier decision. Moreover, it was stated that the State Government has not provided funds to the University for payment at the minimum of the pay-scale and that the University was unable to bear the financial burden. This led to the filing of the writ petition in which the learned Single Judge has issued directions on 15 May 2014, directing that the appellants be paid atleast the minimum wages prescribed by the Government to such daily wage employees.

2. The sole basis on which the appellants claim payment at the minimum of the pay-scale, is an alleged claim of parity with certain other daily wagers who had succeeded in writ proceedings before this Court. As the record before this Court indicates, initially on 24 April 2000, an order was passed by the learned Single Judge in Writ Petition No. 7942 of 1994, directing the University to pay the minimum of the pay-scale admissible to Class-III and Class-IV daily waged workers. A special appeal (Special Appeal No. 565 of 2000) was dismissed on 10 May 2001. The Supreme Court dismissed the Special Leave Petition on 10 December 2001. Following this, certain orders were passed by the learned Single Judges of this Court directing the University to pay at the minimum of the pay-scale admissible to regular employees. The appellants have annexed to these proceedings, an order passed by Rakesh Sharma, J. in Santosh Kumar Asthana and others v. State of U.P. and another, Civil Misc. Writ Petition No. 51066 of 2003.

3. On the other hand, in a special appeal filed by the University, Chandra Shekhar Azad University of Agriculture and Technology v. Smt. Renu and others, Special Appeal No. 477 of 2010, a Division Bench of this Court in an order dated 3 April 2013 observed that until the State Government provided funds to the University, the University would be permitted to continue to pay such wages as were now being paid to the daily wage employees and in case funds were provided by the State Government, they would be paid the minimum scale of regular employees. The University in the present case passed an order on 27

January 2014, as noted earlier, recording that (i) the position which obtained prior to the decision of the Supreme Court in Uma Devi (supra) where certain orders have been passed provisionally by this Court in 2000 is materially altered after the decision of the Constitution Bench of the Supreme Court; and (ii) the University is unable to bear the financial burden in the absence of funds being allocated by the State Government and those cases where the University was paying at the minimum of the pay-scale were situations in which, following the earlier directions and contempt proceedings, the University had been constrained to pay at the minimum of the pay-scale. Those orders would be binding inter-se between the parties to those proceedings.

4. Essentially, what the Court must deal with, as a matter of first principle, is whether, on the position of laws as it stands today, daily wage employees are entitled to assert a right to claim wages at the minimum of the pay-scale. The position, as it obtained prior to the decision of the Constitution Bench of the Supreme Court in Uma Devi (supra), stands modified in view of the observations contained in paragraph 54 of the judgment, to the following effect:

"54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents."

5. In paragraph 55 of the decision in Uma Devi (supra), the following directions were issued by the Supreme Court referable to the powers of the Supreme Court under Article 142 of the Constitution.

"55...We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that is being paid to regular employees be paid to these daily-wage employees with effect from the date of its judgment. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily-wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in Government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily-wage earners, there would be no question of other allowances being paid to them..."

6. Subsequently, in State of Punjab and Another Vs. Surjit Singh and Others, (2009) 10 JT 424 : (2009) 11 SCALE 149 : (2009) 9 SCC 514 : (2009) 13 SCR 394 : (2010) 1 SLJ 403 : (2009) 10 UJ 5019 , these directions in paragraph 55 of the judgment in Uma Devi (supra) were expressly held to constitute directions referable to the jurisdiction under Article 142 of the Constitution. The Supreme Court observed as follows:

"29. It is in the aforementioned factual backdrop, this Court in exercise of its jurisdiction under Article 142 of the Constitution of India, directed: (Umadevi case, SCC p. 43, para 55)

"55.....Hence, that part of the direction of the Division Bench is modified and it is

directed that these daily-wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in Government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily-wage earners, there would be no question of other allowances being paid to them. In view of our conclusion, that the Courts are not expected to issue directions for making such persons permanent in service, we set aside that part of the direction of the High Court directing the Government to consider their cases for regularisation. We also notice that the High Court has not adverted to the aspect as to whether it was regularization or it was giving permanency that was being directed by the High Court. In such a situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent. If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of selection. But when regular recruitment is undertaken, the respondents in CAs Nos. 3595-612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time. That would be the extent of the exercise of power by this Court under Article 142 of the Constitution to do justice to them.

30. We, therefore, do not see that any law has been laid down in para 55 of the judgment in Umadevi (3) case. Directions were issued in view of the limited controversy. As indicated, the State's grievances were limited."

7. In a recent judgment of a Division Bench of this Court in State of U.P. and others v. Mahipal Singh and another, 2014(10) ADJ 703 (DB), this position of law has been followed.

8. In this background and in view of the clear position in law, it would not be possible for this Court to accept the contention of the appellants that they should be allowed the minimum of the pay-scale merely on the basis of certain directions which were issued in the past. This Court must be governed by the principle of law which has been laid down in several judgments of the Supreme Court noted above. As daily wage employees, the appellants would be entitled to receive minimum wages, as directed by the learned Single Judge in the impugned judgment. Their claim to receive salary payable to regular employees of the University at the minimum of the pay-scale would not be maintainable in law.

9. The University has observed that the appellants were recruited without following any procedure prescribed under the law for recruitment. Moreover, the University has also observed that it is unable to bear the financial burden in the absence of financial support from the State. We see no reason to entertain the special appeal since the judgment of the learned Single Judge is in accordance with the position in law as it now stands. The special appeal is, accordingly, dismissed. There shall be no order as to costs.