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(2015) 11 AHC CK 0132

In the Allahabad High Court

Case No : Writ A No. 59268 of 2014

Ramaasre and Others — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 20-11-2015

Acts Referred:
Constitution of India, 1950 — Article 14, 142, 16, 226
Contempt of Courts Act, 1971 — Section 12

Citation : (2015) 11 AHC CK 0132

Hon'ble Judges : M.C. Tripathi, J.

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

M.C. Tripathi, J.—Heard Sri Satendra Singh, Advocate holding brief of Sri Suresh Singh, learned counsel for the petitioners and Shri Shiv Nath Singh, learned counsel appearing for respondent Nos. 2, 3 and 4. Learned Standing Counsel has appeared for State-respondent No. 1.

2. Brief facts giving rise to the present writ petition are that the petitioner Nos. 1, 2, 3, 4 and 6 are working from the year 1992; the petitioner No. 5 is working from the year 1993; the petitioner No. 8 is working from the year 1996; the petitioner No. 9 is working from the year 1999 and petitioner No. 7 is working from the year 2000 as daily wagers in Chandra Shekhar Azad University of Agricultural and Technology, Kanpur Nagar (in short, the University). Although, the petitioners have worked since the year 1992, but they were treated as daily wage employees and they were given daily rated remuneration from the respondent-University. Some similarly situated employees preferred a Writ Petition No. 37309 of 2000 (Navneet Kumar Yadav vs. State of U.P. & Ors.), for regularizing their services and for payment of salary equal to salary which is being paid to other similarly situated employees or regular employees. The said

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writ petition was disposed of on 4.4.2005 with following directions:-

".....This writ is decided finally with the direction to the respondent No. 4 to consider the case of the petitioners for regularization in view of the judgment of learned Single Judge and will take appropriate action with the respondent No. 1 for sanction of fund for the purpose of the payment of minimum wages to the daily wagers within six weeks from the receipt of the order. The State Government is also directed to consider the requisition of the respondent No. 4 according to law. The State Government is also directed to consider the requisition of the respondent No. 4 according to law. The State Government respondent No. 1 is further directed to pass the appropriate order relating to receipt of fund within a period of three weeks from the date of receipt of the requisition from the respondent No. 1.

With this observation, this writ petition is disposed of."

3. The petitioners have also preferred Writ Petition No. 15664 of 2007, which was disposed of by this Court on 06.02.2009 following the judgment and order dated 4.4.2005 passed in Writ Petition No. 37309 of 2000. When the respondent University did not comply with the order dated 06.02.2009, the petitioners were compelled to file a Contempt Petition No. 1821 of 2009, in which notices were issued to the respondents. In the meantime, the respondent-University had filed Special Appeal No. 633 of 2012 (Chandra Shekhar Azad University of Agriculture and Tech. vs. Smt. Laxaminiya and others), challenging the order dated 06.02.2009 passed in Writ Petition No. 15664 of 2007. The said special appeal was also dismissed by a Division Bench of this Court on 29.01.2013. For ready reference, the order dated 29.01.2013 is reproduced herein below:-

"It appears from the impugned order dated 6.2.2009 passed by the learned Single Judge that he had heard the parties, which included the appellant, and there was no dispute set up at the time of argument that the case was not fully covered by the decision in the case of Navneet Kumar Yadav Vs. State of U.P. and others. On that basis the learned Single Judge disposed of the present writ petition by the impugned order in the same terms as the case of Navneet Kumar Yadav.

Once a party contended that the controversy involved in the writ petition was fully covered by the judgment in the case of Navneet Kumar Yadav Vs. State of U.P., and no attempt was made by the appellant to dispute this proposition, and on that basis the judgment has been rendered by the learned Single Judge, it may be open to the appellant to file a review petition before the learned Single Judge disputing his express or implied concession even on the law point, but it is not open to canvas in appeal that such concession has not been made, according to the law settled by the Supreme Court. Therefore, leaving that option of review open, this appeal is dismissed."

4. Despite the order passed by the learned Single Judge and the order passed by the Division Bench in Special Appeal, the answering respondents had not

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complied with the same. Although, when the Contempt Application No. 1821 of 2009 was connected with Contempt Application No. 5162 of 2011, in the said case, the Principal Secretary (Agricultural), Government of U.P. was directed to appear in person. Thereafter, Sri Devasheesh Panda, the then Principal Secretary had passed an order dated 14.12.2013 to comply with the orders passed in Writ Court, Special Court and Contempt Court. In compliance of the orders passed by Writ Court, Special Court and Contempt Court, the respondent-University have passed an order on 03.01.2014, by which the respondents authority have given equal pay for equal work to the petitioners. When the petitioners'' case was allowed by Writ Court on 06.02.2009, they approached before the respondent-University for getting the arrears of salary since February 2000 but the respondents authority have not made any efforts in the said matter.

5. Being aggrieved, the petitioners have preferred Writ Petition No. 22376 of 2014 and the same was disposed of by this Court on 18.04.2014. For ready reference, the order dated 18.04.2014 is reproduced herein below:-

"Heard learned counsel for the petitioners, learned Standing Counsel for the State-respondent and Sri Shiv Nath Singh, learned counsel representing respondent Nos. 2 and 3.

Petitioners are daily wagers working in the Chandra Shekhar Azad University of Agriculture and Technology, Kanpur Nagar. They are claiming arrear of the pay scale. In this regard they have represented to the respondent No. 2/Vice Chancellor of the University vide representation dated 6th March, 2014 (Annexure 6 of the writ petition). According to the learned counsel for the petitioners the said representation is still pending without any orders.

Considering the facts and circumstances of the case, this petition is disposed of with the direction to respondent No. 2/Vice Chancellor of University to take an appropriate decision on the pending representation of the petitioners referred to above strictly in accordance to law within a period of two months from the date of production of a certified copy of this order."

6. When the respondent-authorities had not complied with the order dated 18.04.2014, the petitioners have filed Contempt Petition No. 4845 of 2014 and the same was disposed of vide order dated 27.08.2014 with following observations:-

"Heard learned counsel for the applicants. Sri Shiv Nath Singh, learned counsel has entered suo moto appearance for opposite party No. 2.

This contempt petition has been filed with the allegation that in spite of an order dated 02.05.2014 passed by this court in Writ-A No. 25219 of 2014, the opposite party has not complied with the directions of the writ court though the stipulated time has elapsed.

The opposite party is bound by the order of this court and in case he does not comply with the directions of the writ court within a period of two months of

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receipt of this order, without any reasonable cause, the court would have no option except to punish him under Section 12 of the Contempt of Courts Act and other allied powers.

The applicants shall supply a duly stamped registered envelope addressed to the opposite party and another self-addressed stamped envelope to the office within two weeks from today. The office shall send a copy of this order along with the self-addressed envelope of the applicants with a copy of contempt application to the opposite party within three weeks from today and keep a record thereof. The opposite party shall comply with the directions of the writ court and intimate them of the order through the self-addressed envelope within a week thereafter.

In case, opposite party does not comply with the aforesaid directions, it would be open to the applicant to approach this court again.

With the aforesaid observations, this application is finally disposed of at this stage."

7. In compliance of the order dated 27.08.2014 passed by this Court in Contempt Petition No. 4845 of 2014, the respondent authorities have passed the impugned order dated 30.08.2014, by which the University concerned has rejected the claim of petitioners for arrears of salary due to lack of funds.

8. Learned Single Judge vide an order dated 4.4.2005 had disposed of the Writ Petition No. 37309 of 2000 with a direction to the respondent No. 1 for sanction of fund for the purpose of the payment of minimum wages to the daily wagers within six weeks from the receipt of the order. The concerned University had also preferred Special Appeal No. 633 of 2012. The Appellate Court vide an order dated 29.1.2013 had dismissed the same.

9. In this background, learned counsel for the petitioner submitted that since the aforesaid writ petition was disposed of on 4.4.2005; the special appeal filed by the University was dismissed on 29.1.2013 and even, the University also filed the Special Leave Petition, which was also rejected, and as such, the judgment and order passed by learned Single Judge dated 4.4.2005 has become final. If the University in compliance of the directions of learned Single Judge framed the scheme for absorption of the petitioners and recommended the same to the State Government, in that event, the respondents shall take appropriate decision expeditiously in accordance with law. The petitioners are liable to get arrears of salary since February, 2009 to January, 2014 in compliance of the order passed by the Writ Court in Writ Petition No. 15664 of 2009.

10. Per contra, Shri Shiv Nath Singh, learned counsel for the University submitted that on the basis of the aforesaid directions, the University vide an order dated 9.1.2014 has provided the minimum wages amounting Rs. 2550/- but at the same time, he submitted that the present writ petition has been filed on the basis of misrepresentation of facts. The petitioners are not entitled for minimum pay scale, however, they were paid minimum pay scale on the basis of

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funds provided by the State Government. Admittedly, all the petitioners were engaged in the University as daily wagers by back door entry. Neither, their appointments were made against the sanctioned posts nor any procedure of recruitment had been followed and as such, they are not entitled to be regularized in service and for payment of minimum pay scale.

11. Learned counsel for the respondent University further made submission that the petitioners were not entitled for payment of minimum pay scale in view of the facts that the pay scale is always attached to a post, whereas the daily wagers do not hold any post. Moreover, it is held that the doctrine of equal pay for equal work only applies between similar situate employees and would not be applicable in case, parity is being asked by a daily wager with permanent employees. The submission has also been advanced that the State Government has completely refused to provide any fund for payment of minimum scale to the daily wagers on the basis that these employees were engaged by the University without any sanctioned post and without any permission from the State Government. Even though, if there was complete ban on the recruitment, therefore, it was not possible for the State Government to release any fund in this regard. The reliance has been placed on the letter dated 20.1.2014 annexed as Annexure-CA-2 to the counter affidavit wherein categorical averment has been made by the State Government that in these circumstances, it was not possible to release any fund.

12. Heard rival submission and perused the records.

13. The petitioners filed the writ petition seeking their regularization and pay parity of the minimum wages being paid to the regular employees of the University. Initially, the University resisted the petition on the ground that there was no rule for regularization and as such, the claim could not be considered in view of judgment of Hon''ble Apex Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, . It also transpires from the record that in the past, the payment at minimum of the pay scale had been allowed to certain daily wage employees based on a judgment rendered by this Court in the year 2000. However, in view of the subsequent decision of Hon''ble Apex Court in Uma Devi (supra), it was held that these daily wage employees, who were engaged/ appointed illegally, could not be given the benefit of the earlier decision. Moreover, categorical decision was taken by the State Government not to provide any funds to the University for payment at the minimum of the pay scale and that the University was unable to bear the financial burden. In this background, learned Single Judge, while disposing the earlier writ petition, had directed that the petitioners be paid at least the minimum wages prescribed by the Government to such daily wage employees. Initially, the claim set out by the petitioners for payment at the minimum of the pay scale, is an alleged claim of parity with certain other daily wages, who had earlier succeeded in writ proceeding before this Court.

14. Learned Single Judge vide an order dated 24.4.2000 passed in Writ Petition

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No. 7942 of 1994 directed the University to pay the minimum of the pay scale admissible to the Class-III and Class-IV daily wage workers. The Special Appeal was dismissed on 10.5.2001. Hon''ble Apex Court had also rejected the Special Leave Petition on 10.12.2001. In this background, Writ Petition No. 51066 of 2003 (Santosh Kumar Asthana and Ors. vs. State of U.P. and Ors.) was filed, and learned Single Judge had directed the University to pay at the minimum of the pay scale admissible to the regular employees.

15. It would be appropriate to refer Paragraph 54 of the Constitution Bench decision of the Apex Court in the case of Secretary, State of Karnataka v. Uma Devi (supra), which reads as follows:

"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."

16. In view of the aforesaid observation of the Constitution Bench of the Apex Court, any decisions or directions given by the Courts, which are counter to the principles laid down by the Apex Court in the case of Secretary, State of Karnataka v. Uma Devi (supra) will stand denuded on their status as precedent.

17. At this stage, it would be appropriate to refer the principles laid down by the Apex Court in the case of Secretary, State of Karnataka v. Uma Devi (supra). Relevant paragraphs of the judgment of the Apex Court are being reproduced below:

"43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified 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. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do

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not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as ''litigious employment'' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

45. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain - not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily

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employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India.

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

48. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those

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who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

49. It is contended that the State action in not regularizing the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in Tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.

52. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College, . That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent."

18. The Apex Court in the aforesaid case has held that there is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by the Apex Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments

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consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules.

19. In view of the aforesaid observation of the Constitution Bench of the Apex Court, any decisions or directions given by the Courts, which are counter to the principles laid down by the Apex Court in the case of Secretary, State of Karnataka v. Uma Devi (supra) will stand denuded on their status as precedent.

20. Subsequently, in State of Punjab and Another Vs. Surjit Singh and Others, , 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 8, 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 regularization. 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."

21. In this background and in view of the clear position of law, it is not possible

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for this Court to accept the argument advanced on behalf of the petitioners that they should be allowed the minimum of the pay scale merely on the basis of certain directions, which were issued in the past. However, in the present matter, the decision has already been taken by the University on 3.4.2014, whereby the petitioners have been provided the minimum pay scale. Similar controversy relating to the present University has already been considered by Hon''ble Division Bench in Special Appeal Defective No. 119 of 2015 (Smt. Ram Shri and another vs. State of U.P and 2 others), which was dismissed on 11.2.2015 with following observations:-

"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 entitle 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.

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."

22. While deciding the same controversy, the Division Bench of this Court has considered the judgments of Hon''ble Apex Court and held that as daily wage employees would be entitled to receive minimum wages, as has been directed by learned Single Judge and as such the claim to receive salary payable to regular employees of the University at the minimum of the pay scale would not be maintainable in law.

23. In Smt. Ram Shri and another vs. State of U.P. and 2 others (supra) once the Division Bench of this Court has already decided the same controversy of the University, then the judicial propriety demands to follow the decision rendered by the Division Bench in Special Appeal Defective No. 119 of 2015.

24. Therefore, I see no reason to entertain the present writ petition. Accordingly, the writ petition is dismissed.

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