
(2014) 11 OHC CK 0038
In the Orissa High Court
Case No : W.P.(C) No. 7821 of 2014

Satya Narayan Pattnaik

APPELLANT

Vs

Zonal Manager, UCO Bank and Others

RESPONDENT

Date of Decision : 10-11-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 37, 38

Citation : (2015) 145 FLR 742 : (2015) LabIC 1389 : (2015) 1 OLR 231

Hon'ble Judges : Biswanath Rath, J

Bench : Single Bench

Advocate : S.N. Panda and P. Swain, Advocates for the Appellant; C.N. Murty, Advocates for the Respondent

Judgement

Biswanath Rath, J.—By filing this writ petition, the petitioner has called upon this Court to issue Rule NISI calling upon the opposite party-Bank to pay the minimum wages from the date of his first engagement i.e. 22.4.1985 till the date of regularization in the Bank as a sub staff. The petitioner has also claimed relief for regularization from the date of empanelment protecting superannuation benefit such as pension, gratuity and other dues. During course of argument, petitioner has confined his claim with regard to minimum wages and has dropped the claim with regard to regularization of his service with liberty to move for the same in a separate writ petition.

2. The petitioner made his claim on the basis that he being engaged as a Daily Wager at Janla Branch of the opposite party-Bank with effect from 22.4.1985 getting remuneration at the rate of Rs. 10/- per day on weekly basis. While the matter stood thus, the Bank Authority made a panel of all the Daily Wagers engaged at different branches of the Bank in the State vide Bank's Circular dated 31.3.1990 to regularize them in the services of the Bank and to quantify their daily wages from time to time. The petitioner further submitted that while he was continuing as such and after the preparation of panel, he was transferred to Itamati Branch vide letter dated 7.12.1990 with a stipulation that he will get

remuneration as per Head Office Circular dated 31.3.1990. It is further submitted that the petitioner has been subsequently transferred to Tangi Branch, Tangi and CRP Headquarters at Bhubaneswar. At a subsequent point of time, the petitioner claimed that even though he is continuing with an unblemished career and without any break, he is not paid minimum wages following the provisions of law taking into account the initial wage i.e. basic and D.A. of the permanent subordinate staff according to the wage structure fixed in terms of industry wise Bipartite Settlement from time to time. It is further contended by the petitioner that finding no relief from the opposite party-Bank, the petitioner had approached this Court in W.P.(C) No. 17188 of 2013 for redressal of his grievance. The said writ petition was disposed of with a direction to the opposite party-Bank for taking decision in the matter and communicate the same to the petitioner. The opposite party-Bank in taking a final decision declined to regularize the petitioner in service. It is made clear that this issue has not been pressed by the petitioner in this writ petition and he has taken liberty to make for the same in a separate writ petition. To substantiate his claim, the petitioner relied on the decisions reported in the cases of *Dak Tar Mazdoor Manch v. Union of India and others*, (1983) 1 Supreme Court Cases 122 and *Rulda Ram Vs. State of Punjab and Others*, .

3. Per contra, the opposite parties on their appearance filed a counter indicating therein that the petitioner has been engaged as a casual worker. The scales of pay are applicable to the employees, who were appointed as permanent staff and on the rolls of the Bank. It is contended that the petitioner was engaged as a casual worker and is, thus, not entitled for proportionate wages as claimed by the petitioner. The petitioner was paid minimum wages which are fixed as per the directions/guidelines of the Bank's Head Office. The Bank instructed the branches to pay the fixed wages to casual workers and the petitioner was paid wages accordingly. The petitioner is getting minimum wages but the claim made is for proportionate wages is not justified. The opposite parties have also filed various documents issued by the Bank from time to time in support of their claim.

It is these pretext, the opposite parties claimed refusal of relief in favour of the petitioner.

4. There is no denial by the opposite parties to the fact that the petitioner is working as a casual worker since his date of joining on 22.4.1985. There is also no allegation that there is any deficiency in the working of the petitioner. Petitioner has already served in the Bank for at least 29 years. The issue of payment of wages at the rate minimum pay in the pay scale of the regular workers plus D.A. but without increments was drawn attention of the Apex Court in Writ Petition No. 373 of 1986, in a case between *Daily Rated Casual Labour Employed under P & T Department through Bhartiya Dak Tar Mazdoor Manch v. Union of India and others* and another writ petition at the instance of National Federation of P & T Employees through its Secretary General and another v. Union of India and another. This matter was decided by the apex Court by its

judgment dated 27th October, 1987 as reported in Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others, . The facts involved in the said cases was even though many of the petitioners have been working for last ten years as casual labourers, the wages paid to them are very low and far less than the salary and allowances paid to the regular employees of the Post & Telegraph Department belonging to each of the categories referred to therein. In absence of any scheme prepared by the Union of India to absorb them regularly in its services and consequentially they have been denied the benefits, such as, increment, pension, leave facilities etc., which are enjoyed by those who have been recruited regularly. In-deciding the said case after considering the contention of the rival parties, in paragraph-7 of the said judgment the apex Court held as follows:

"It may be true that the petitioners have not been regularly recruited but many of them have been working continuously for more than a year in the department and some of them have been engaged as casual labourers for nearly ten years. They are rendering the same kind of service which is being rendered by the regular employees doing the same type of work. Clause (2) of Article 38 of the Constitution of India which contains one of the Directive Principles of State Policy provides that "the State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations". Even though the above directive principle may not be enforceable as such by virtue of Article 37 of the Constitution of India, it may be relied upon by the petitioners to show that in the instant case they have been subjected to hostile discrimination."

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"We are of the view that such denial amounts to exploitation of labour. The government cannot take advantage of its dominant position and compel any worker to work even as a casual labourer on starvation wages. It may be that the casual labourer has agreed to work on such low wages. That he has done because he has no other choice. It is poverty that has driven him to that State. The Government should be a model employer. We are of the view that on the facts and in the circumstances of this case the classification of employees into regularly recruited employees and casual employees for the purpose of paying less than the minimum pay payable to employees in the corresponding regular cadres particularly in the lowest rungs of the department where the pay scales are the lowest is not tenable."

5. In the very same judgment, the Hon"ble Apex Court has not only held such classification is violative of Article 14 and 16 of the Constitution of India but also held the action of the State being opposed to the spirit of Article 7 of the International Covenant on Economic, Social and Cultural Rights, 1966 which exhorts all States parties to ensure fair wages and equal wages for equal work.

6. Taking note of a similar view in a decision reported in 1 (1986) SCC 637, the Hon"ble Apex Court directed the Union of India and the other respondents to pay wages to the workmen who are employed as casual employees so long as they are performing the same duties must receive the same salary and conditions of service as that of Class-IV employees.

7. During course of argument, learned counsel for the opposite parties stressed reliance on the decision rendered in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, and opposed grant of any relief in favour of the petitioner. In paragraph-46 of the said decision, the Apex Court held as follows:

"We find that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called and were entitled to any other benefit. They had also been engaged in the teeth of directions not to do so. 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 are 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."

I find submission of opposite parties runs contra above decision.

8. In counter to the above proposition of the apex Court, learned counsel for the opposite parties also stressed reliance on a judgment of the apex Court in the case of State of Haryana and another v. Tilak Raj and others in Appeal (Civil) No. 4570 of 2003 decided on 14th July, 2003. The decision relied upon by the opposite parties is not applicable to the present case in as much as there is dispute with regard to claim of the petitioners for regularization of their services along with payment of equal salary in comparison to the salary paid to the regular employees. However, even though the Apex Court in the above judgment declined to grant equal pay for equal work but at the conclusion directed State to ensure that minimum wages prescribed for such workers and the same is paid to them. This part of the judgment rather covers the case of the petitioner.

9. Thus, while I find no force in the submission of the opposite parties, I find force in the submission of the petitioner. The case of the petitioner is *pari materia* similar to the case those have been decided by the Hon"ble Apex Court

in the decision rendered in the case of *Dak Tar Mazdoor Manch* (supra) which has been confirmed with little deviation in the direction part by the Hon''ble Apex Court. In the case of *State of Karnatak* (supra) a Constitution Bench of the Hon''ble Apex Court while directing for payment of wages equal to the salary at the lowest grade of employees of their cadre from the date of judgment of the High Court declined to grant any other allowances being paid to them, as they are daily wage earners.

Taking into consideration the submissions made by the petitioner being support from the above two cited decisions of the Hon''ble Apex Court, I allow the writ petition directing the employer-opposite parties to pay the daily wage earners wages equal to the salary at the lowest paid employees of their cadre in the services of the Bank from the date of filing of the writ petition. The arrears be calculated within a period of four weeks from today and be released within a period of two weeks thereafter.

10. The writ petition succeeds to the above extent. However, there shall be no order as to cost.