

(2004) 08 JH CK 0096
In the Jharkhand High Court
Case No : C.W.J.C. No. 2019 of 1995 (R)

Seshnath Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 31-08-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 4 JCR 655

Hon'ble Judges : Vikramaditya Prasad, J

Bench : Single Bench

Advocate : A.K. Sahani, for the Appellant; H.K. Singh, SC I and A.K. Singh, JC to SC I, for the Respondent

Final Decision : Allowed

Judgement

Vikramaditya Prasad, J.—The petitioners are undisputedly daily wage. workers engaged during the period 1976 to 1979. Earlier they had come to this Court for the same and similar relief, besides the additional plea that equal pay for equal work be given to them as is being given to the regular employees for the similar work. By Annexure-1, a Division Bench of this Court directed that the respondent No. 2 therein shall consider the matter and pass appropriate order in this regard upon verification as to whether the petitioners are performing the same and similar nature of work, within a period of four weeks from the date of receipt of a copy of this order. It is pertinent to say here that before making this order, the learned Division Bench had also relied on the several decisions of the Supreme Court wherein it has been held that the persons who are discharging the similar functions are entitled to be paid same salary in terms of Article 39(d) read with Article 14 of the Constitution. Thereafter it appears -that Annexure-3 was passed, but this annexure did not confirm to the directions given by the Division Bench. Thereafter one writ was again filed claiming equal pay for equal work and for quashing the Annexure-3, in which a learned single Judge found that the Division Bench's direction were not complied with and consequently this was

quashed and the matter was remitted back to the respondent- authority to consider the ease of the petitioners strictly in the light of the observations made by the Division Bench of this Court and it was further directed that decision must be taken as early as possible, preferably within a period of six weeks from the date of its receipt. Thereafter, Annexure-6 has been passed, which is the impugned annexure and sought to be quashed.

2. From the impugned order, the following facts reveal:-

(1) The petitioners were working on such projects, which were closed since long.

(2) These petitioners had not discharged their responsibilities (i) as Prem Nath Singh was a daily wage worker as chowkidar and during his presence, there was a theft from the godown; consequently, he was removed and another chowkidar was engaged in his place, (ii) as Ram Pratap Thakur, Jeep Driver, was without work as the Jeep was not available, (iii) as Udit Narayan was chowkidar of Chanhoo godown and in his presence; there was a theft; consequently, he was replaced by another chowkidar and (iv) as Deo Lal Prasad and Birendra Prasad were engaged as chowkidars, but in their presence theft was committed and they were replaced.

(3) Regarding all other petitioners it has been stated that the projects in which they were engaged are all closed and there is no chance of their re-opening in future, nor there is a chance of repair of vehicles.

(4) It has also been stated therein that if and when work arose, then daily wage workers are engaged and there cannot be any comparison between them and the persons who are working as regular employees. Further the Secretary has also considered that the principle of equal pay for equal work is a national problem and consequently such principle cannot be applied to a particular Department of the Government and it can be applied only after a decision in this regard has been taken by the State Government and consequently, the respondent Secretary of the Minor Irrigation Department was not competent to pass such order. More so, if this principle is applied, the State will have to bear a load of extra expenditure, which is not possible, considering the existing financial conditions of the State. Another ground taken in the impugned order is that the question of regularization of the daily wage workers falls under the jurisdiction of the Personnel & Administrative Department and that matter is pending consideration in that department and only after their concurrence of the Department, they will take appropriate steps. Another ground taken is that if they have to be paid the wages as that of the regular employees, then their services have to be regularized, but in absence of the sanctioned post, this is not possible. Most of the projects have been completed or are for want of fund closed. In such a situation, neither the appointment is possible, nor it is in conformity with the existing policy of the State.

3. A bare perusal of the original order passed by the Division Bench, it is clear that the question was very limited and that was that the Secretary has to verify

whether the petitioners were performing the same and similar nature of work. If they did the same and similar nature of work, then they have to be paid the pay as that of the regular workers". But it is clear from the facts as found in the impugned order that the Secretary concerned has went beyond the scope of verification that was fixed by the Court. The Secretary in his attempt has gone beyond the parameters of the directions and in fact, has challenged the order of the Division Bench by stating that equal pay for equal work is a national problem and cannot be made applicable to a particular Department. If this was so, they could have filed an LPA for quashing the Division Bench order or they could have taken this plea in their counter-affidavit etc., but nevertheless, such argument would have been raised in the context of the order that was passed by the Division Bench. The Division Bench order given to the Secretary does not ask for their regularization, that is a separate issue and therefore, the question of regularization has been amalgamated with that of making available same pay for same work and the whole thing has been made, to be confused by the Secretary concerned.

4. As per showing of the learned counsel for the petitioners as based on Annexure-A, there has been a direct Jon by the Government that if some persons have been appointed on daily wage basis in a particular department of the Government, their services may discontinued and the cut-off date is 1.8.1985 and undisputedly all the petitioners had been engaged prior to the cut-off date and as such, the Government should adhere to the policy as contained in Annexure-A. This Court takes notice of the fact that if, in fact, in presence of some of the petitioners (*supra*), who were engaged as chowkidar, some theft did take place, then definitely they do not deserve to be retained even as daily wage workers. The plea equal pay for equal work will similarly entail upon the petitioners for equal punishment for equal fault, had they been regular workers, for this dereliction they must have been departmentally dealt with and would have been punished by various types of punishments prescribed under the law. In this case, the Secretary's report does not give any particular date on which the particular dereliction or negligence was found at least in respect of the three petitioners. If the Jeep was out of order and there was no need for Jeep Driver, then in that case also, if they were employed on daily wages, they could have been removed, which was not done. Similarly, more projects were closed, then also they were being paid at an ordinary rate of daily wages. If the Secretary was so much concerned about the financial constraints of the State, then he could have straightway removed those persons since the projects had been closed and there was no justification to retain them in job. Therefore, in the spirit of the order of the Division Bench on that very date, on which such negligence or dereliction of the three petitioners were found, that led theft in their presence, their services would have been discarded, but prior to that date, they should get the pay, which were given to such regular employees like chowkidar. Since the other employees were retained even after closure of the projects and other regular employees were employed without any work within the closed projects,

then also these petitioners other than the aforesaid should get the same pay in compliance of the order of the Divisions Bench. It is made clear that out of the limited scope of this writ which was intended to give effect to the order of the Division Bench, no order is being passed as to the regularization of services of the petitioners. The payment should be made within three months from the date of receipt/production of a copy of this judgment. The writ application is allowed and the impugned order is set aside.