

(2018) 12 CAT CK 0031

In the Central Administrative Tribunal

Case No : Original Application No. 063, 001526 Of 2017

Shakuntla Devi

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 04-12-2018

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Administrative Tribunals Act, 1985 — Section 19

Citation : (2018) 12 CAT CK 0031

Hon'ble Judges : Sanjeev Kaushik, J;Ajanta Dayalan, J

Bench : Division Bench

Advocate : Ashwani Verma, Vinod K. Arya

Final Decision : Allowed

Judgement

1. The applicants have filed this Original Application (OA) under section 19 of the Administrative Tribunals Act, 1985, for quashing the orders dated 29.1.2018 (Annexure A-1 coolly), vide which their claim for grant of minimum of pay scale as wages has been declined and for issuance of direction to the respondents to grant them 1/30th of the pay, at the minimum of the relevant pay scale plus dearness allowance, for working 8 hours a day, for the same nature of work being done by them as regular staff like MTS etc. Quashing of the orders dated 7.6.2017 and 30.6.2017 (Annexure A-2) has also been sought for by them.

2. The facts, which led to filing of this case, are that the applicants were employed as unskilled casual workers (non temporary status) for cleaning, sweeping and watch and ward duty for upkeep of monuments of the various sub circles under the respondents etc. since 2004 onwards. The work and conduct performed by them is stated to be satisfactory. They submit that the Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, issued O.M. dated 7.6.1988, regarding grant of minimum wages to the casual workers and in that behalf, a decision has been taken to grant such staff payment @ 1/30th of the pay of the minimum of the relevant

pay scale, plus dearness allowances for work of 8 hours, a day. The applicants were engaged by the respondents in the year 2004. Their names were to found in the order issued in that behalf at Sr. No. 43 onwards. They submit that the employees upto Sr. No. 43 have already been granted 1/30th of the relevant scale w.e.f. 1.10.2010 onwards, but the applicants have been denied such benefit without any basis. They submit that as per notification dated 31.1.1997 issued by department, the applicants are performing same nature of duties and responsibilities, as other staff, but they are being denied the wages which is discriminatory, despite issuance of notification dated 11.5.2009 (Annexure A-7) by respondent department itself for grant of minimum wages to such like employees. The casual workers, who have worked for at least 240 days for each year for 3 years or more, become eligible for grant of ad-hoc bonus, as per notification dated 28.8.2009 (Annexure A-8). The regular posts are available with the department but the department has not regularized them. The applicants submitted representations (Annexure A-11 colly), which have been rejected vide orders dated 29.1.2018 (Annexure A-1 Colly). The other Circles have made payment @ 1/30th of pay at the minimum of the relevant pay scale to employees, as is apparent from RTI replies, Annexure A-10. The respondents have admitted in letters dated 30.7.2010 and 24.8.20154, that applicants are working as casual workers for annual repairs, watch and ward and other works at different places - centrally protected monuments and sites, Kangra site museum, circle and sub circle office etc. in view of acute shortage of manpower for running and managing the essential work in these places. The colleagues of applicants were getting wages @ 1/30th of pay of the minimum of the relevant pay scale + Grade pay + D.A. It is admitted that applicants who are doing same nature of work, have requested for grant of same relief and it was recommended that applicants be also granted payment on similar basis. The applicants plead that such proposal has never seen the light of the day. Not only that, after applicants indulged in litigation for redressal of their grievances, their nature of employment is also sought to be changed and now they are claimed to be being employed through contractors.

3. The applicants approached this Tribunal by way of O.A. No. 063/01267/2017 which was disposed of on 25.10.2017, with direction to the respondents to pass a formal order on claim of the applicants, as reply to a legal notice could not be challenged in this Tribunal. However, their claim has been rejected vide impugned order, Annexure A-1, hence the O.A.

4. The respondents have filed a reply. They submit that the applicants were engaged based on availability of work and funds and are not working continuously anywhere from any time. They work on DC rates and on muster rolls. As and when work is available, the services of the applicants are engaged and they are paid accordingly. As per O.M dated 7.6.1988, persons on daily wages should not be recruited for work of regular nature and recruitment of daily wagers can be made only for work which is casual or seasonal or intermittent nature or for work which is not of full time nature for which regular posts cannot

be created. Thus, they claim that applicants could not be appointed against regular nature of work.

5. The applicants have filed a replication reiterating the averments made in the O.A. and claiming that the respondents are trying to defeat their rightful claim of minimum of the pay scale, claimed by them.

6. We have heard the learned counsel for the applicants at length and examined the material on file.

7. Learned counsel for the applicants vehemently argued that since the applicants are performing regular nature of work and are being paid regularly on muster roll basis and as such it cannot be said that they are working against intermittent work and as such they are entitled to the salary minimum of the scale for relevant post whereas this was vehemently opposed by learned counsel for the respondents stating that Scheme of 1988 is very clear that staff cannot be engaged against regular nature of work and as such question of payment of salary prayed for by the applicants does not arise, at all.

8. We have considered the submissions on both sides and have gone through the material on file minutely, with the able assistance of the learned counsel for the parties.

9. The instructions as contained in office memorandum dated 07.06.1988, being the policy for recruitment of casual workers and persons on daily wages, which provided, inter alia, as under: -

"Subject: Recruitment of casual workers and persons on daily wages - Review of policy.

The policy regarding engagement of casual workers in Central Government offices has been reviewed by Government keeping in view the judgment of the Supreme Court delivered on the 17th January, 1986 in the Writ Petition filed by Shri Surinder Singh and others vs. Union of India and it has been decided to lay down the following guidelines in the matter of recruitment of casual workers on daily wage basis:-

- i) Persons on daily wages should not recruited for work of regular nature.
- ii) Recruitment of daily wagers may be made only for work which is casual or seasonal or intermittent nature or for work which is not of full time nature, for which regular posts cannot be created.
- iii) The work presently being done by regular staff should be reassessed by the administrative Departments concerned for output and productivity so that the work being done by the casual workers could be entrusted to the regular employees. The Departments may also review the norms of staff for regular work and take steps to get them revised, if considered necessary.
- iv) Where the nature of work entrusted to the casual workers and regular

employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day.

v) In cases where the work done by a casual worker is different from the work done by a regular employee, the casual worker may be paid only the minimum wages notified by the Ministry of Labour or the State Government/Union Territory Administration, whichever is higher, as per the Minimum Wages Act, 1948. However, if a Department is already paying daily wages at a higher rate, the practice could be continued with the approval of its Financial Adviser.

vi) The casual workers may be given one paid weekly off after six days of continuous work.

vii) The payment to the casual workers may be restricted only to the days on which they actually perform duty under the Government with a paid weekly off as mentioned at (vi) above. They will, however, in addition, be paid for a National Holiday, if it falls on a working day for the casual workers."

9. It is, thus, clear that where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day. In this case, the working of the applicants is not even disputed by the respondents. There are specific averments in the O.A. as well as in the replication filed by the applicants that they are performing regular nature of work and not that of intermittent. However, the reply does not specifically deny these specific averments and recites only routine denials typical in nature, which is hard to believe. In these circumstances, we have no hesitation in accepting the plea of the applicants that they are working against regular nature of work and as such they are entitled to the pay at the rate claimed by them. The issue raised in this case is no longer res-integra and stands settled in a number of cases. Our own Hon'ble Jurisdictional High Court, while dealing with similar claims, has settled the issue vide order dated 21.4.2017 in CWP-14887-2013 titled SWARNA SINGH AND OTHERS VS. PEPSU ROAD TRANSPORT CORPORATION, PATIALA AND ANOTHER, in the following words:-

"10. The argument that the petitioners are mere commission agents and not contractual employees, not working against a definite post and would thus not be entitled to equal pay for equal pay, is an argument not sustainable. It is the admitted case of the respondent corporation that the petitioners are working on a contract basis. The respondents herein have full effective control over the working of the petitioners as has been noted herein above. The payment made to them is as per the number of tickets sold, but what cannot be ignored is that work hours have been fixed as per clause 9 of the agreement to be between 4.30 a.m. to 10.30 p.m. Remuneration is in the form of commission based upon the number of tickets sold, which depends upon the volume of the traffic on a particular day on the particular sector. The volume of traffic or the number of

persons buying tickets is not in the realm of control of the petitioners. Why should 5 of 10 the petitioners be put at disadvantage only on account of the fact they are getting commission instead of a regular salary/ wage especially when they are putting in equal number of hours and performing duties of a regular employee? The term 'commission' has several meanings and as per the Cambridge Advanced Learners Dictionary Fourth Edition the term 'Commission' has been defined to mean : "a payment to someone who sells goods that is directly related to the amount of goods sold, or a system that uses such payments". The term salary /wage would mean payment for the work done. In the given circumstances, when the Corporation is having an effective control over the working of the petitioners and they are bound by the terms of the contract entered into, the term 'commission' would also be interchangeable in the instant matter as payment for work done. It is to be appreciated that the petitioners though employed on contract and on commission discharge the duties of Ticket Vendors of the Corporation and without their valuable input passengers would be hardly ticketed or put to great inconvenience.

11. As regards the argument raised that there are no comparable sanctioned posts for Advance Booking Agents and, thus, no comparison can be made, this court places reliance upon a judgment rendered by Hon'ble Supreme Court in State of Haryana vs Tilak Raj 2003 (6) SCC 123 wherein it was held :

"11. A scale of pay is attached to a definite post and in case of a daily-wager, he holds no posts. The respondent workers cannot be held to hold any posts to claim even any comparison with the regular and permanent staff for any or all purposes including a claim for equal pay and allowances. To claim a 6 of 10 relief on the basis of equality, it is for the claimants to substantiate a clear-cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with the other group vis-à-vis an alleged discrimination. No material was placed before the High Court as to the nature of the duties of either categories and it is not possible to hold that the principle of "equal pay for equal work" is an abstract one.

12. "Equal pay for equal work" is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula."

But, despite holding that the petitioners in the case aforesaid would not be entitled to "equal pay for equal work", the Supreme Court did direct the State of Haryana to pay minimum wages as prescribed for such workers. In the instant case, though there is nothing on the record to show that the petitioners have counter parts working against a regular post and drawing a particular salary, there are no doubts, the petitioners are working as Advance Booking Clerks since 2003 against regulars hours and cannot be denied minimum wages by holding them to be mere commission agents."

10. Not only that, the Hon'ble Apex Court in STATE OF PUNJAB AND OTHERS VS. JAGJIT SINGH AND OTHERS, 2017 (1) SCC 148, has held that if one set of temporary employees are discharging similar duties and responsibilities as are being discharged by regular employees holding the same/corresponding posts, they would be entitled to the same minimum pay scale. The Hon'ble Court has delineated upon the law as settled regarding the principle of "equal pay for equal work" and came to hold as under:

"Having traversed the legal parameters with reference to the 7 of 10 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 8 of 10 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 hereinabove. 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."

11. The matter does not end here. The Cuttack Bench of this Tribunal in O.A. No.340 of 2013 titled BIDYADHAR BARIK & OTHERS VS. UOI ETC. decided on 29th April, 2016, relating to the same department, has crystallized the issue. It has been held, while examining the Instructions of 1988, that applicants therein were entitled to and consequently, respondents were directed to pay them, 1/30th of pay at the minimum of the relevant pay scale of a Group D plus DA, as has been paid to the counterpart employees of the applicants (therein) etc, and

non payment of same was to invite interest also.

12. The law as laid down in the indicated decisions is applicable to the case in hand also, as applicants are, admittedly, casual employees and discharging duties of a regular employee. In view of the above, once the law is settled in this regard that those persons who are daily wage/ad hoc and even contractual employees and the likes of them would be entitled to the minimum pay, the same would be also applicable to the applicants as well.

13. A perusal of the pleadings do indicate that the applicants were engaged and paid on muster roll basis and the nature of work against which they have been engaged is regular one. It appears that the respondents are taking shelter under the guidelines issued in 1988, to oppose the claim of the applicants. No doubt, there is advice in that Scheme that persons should not be engaged against regular nature of work but it is equally true that the applicants are performing regular nature of job and have been paid on muster roll basis in the past, though an attempt is now being made to project as if they are going to the engaged through contract on job basis. It is not in dispute that earlier, recommendation was made for grant of minimum of the wages to them at par with their counterparts but that has not seen light of the day till now. In these circumstances, we are of the considered opinion that the applicants in the instant case are also legally entitled to the similar treatment and pay in the similar circumstances of the case under Articles 14 and 16 of the Constitution of India, in view of the law laid down by Hon'ble Apex Court in cases MAN SINGH VS. STATE OF HARYANA AND OTHERS AIR 2008 SC 2481 and RAJENDRA YADAV VS. STATE OF M.P. AND OTHERS 2013 (2) AISLJ, 120 wherein, it was ruled that the concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equals are to be treated equally even in the matter of executive or administrative action. As a matter of fact, the Doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. It was also held that the administrative action should be just on the test of 'fair play' and reasonableness.

14. Therefore, it is held that the applicants are also entitled to the similar treatment and the ratio laid down in the indicated judgments is mutatis mutandis applicable to the present controversy.

15. In the light of aforesaid prismatic reasons, the instant O.A. is allowed. The impugned orders are quashed and set aside. The respondents are directed to grant the applicants pay in similar terms as granted to similarly placed persons i.e. 1/30th of pay at the minimum of relevant pay scale and other related benefits available under the policy. However, the arrears shall be restricted to 3 years, prior to the date of filing of this O.A. which happens to be 22th March, 2018. Needful be done within a period of 3 months from the date of receipt of a

certified copy of this order. However, the parties are left to bear their own costs.