
(1995) 12 AHC CK 0029
In the Allahabad High Court
Case No : C.M.W.P. No. 26415 of 1990

Sichai Mazdoor Sangh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-12-1995

Acts Referred:

Citation : (1996) 3 LLJ 805 : (1996) 1 UPLBEC 9

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Advocate : B.D. Mandhyan, for the Appellant;

Final Decision : Allowed

Judgement

B.S. Chauhan, J.—The instant writ petition has been filed by Sichai Mazdoor Sangh, a registered union, on behalf of its 29 members, i.e., part-time Tube-well operators of district Aligarh. It raises various issues and several reliefs have been claimed. Shri B.D. Mandhyan, learned Counsel for the petitioner has restricted his submission only for the claim of "equal pay for equal work" and no other issue has been agitated by him.

2. The petitioner claimed that though the members of the Sangh are called part-time Tube-well operators, they work equal to the work done by the full time Tube-well operators and thus they are entitled for the similar treatment as was given to the full-time Tube-well operators.

3. In the case of State of Punjab and others Vs. Surinder Kumar and others, , the Apex Court has dealt with the case of the part-time teachers and observed as under.

"It is also not suggested that the respondents accepted the terms set out in Annexure P/1 and P/2 under mistake. We, therefore, do not find any reason as to why the specific terms on which the appointments were made could not be enforced."

4. Shri Mandhyan has most articulately argued that the ratio of the aforesaid judgment is not applicable in the instant case as after reading all the terms and conditions of the appointments of the members of the petitioners' Sangh, it would be clear that they were working just like the full-time Tubewell operators. No doubt the duration of their duties has been shown only 2-1/2 hours but they were not permitted to go out of their respective command areas. In support of his case Shri Mandhyan further referred to and relied upon the judgment dated August, 16, 1994 of the Lucknow Bench of this Court passed in writ petition No.3558 (S/S) of 1992 "Suresh Chandra Tewari and Ors. v. State of U.P. and Ors.". The following observation of the said judgment are worth quoting:-

"As a matter of fact the other condition that the part-time Tube-well operators have to be available at the Tube-wells during duty hours and for the rest of the time, within the command area, nullified the fact of alleged freedom given to them to take up any other job or profession. The Tubewells are to be operated even beyond the said duty hours from 9.30 A.M. to 12 in the noon on the own showing and affidavit filed on behalf of the opposite parties. The part-time Tube-well operators are also required to be available all the time within the command area. The inference that they will be called upon to operate Tubewell any time for any length of time is plain as two plus two makes four. In my view the alleged freedom of taking up any job or profession is a mere farce and a device adopted to deprive the petitioner of their lawful emoluments by calling them part-time Tube-well operators and now as Tube-well assistants".

The aforesaid case was decided after relying upon the catena of decisions of the Supreme Court.

5. Learned Standing Counsel referred to and placed reliance upon the cases, K. Vasudevan Nair and others Vs. Union of India and others, and Union of India (UOI) and Others Vs. Secretary, Madras Civil Audit and Accounts Association and Another, wherein the Supreme Court declined to interfere with the pay fixed by their respective employers. The said authorities are not applicable in the present case as in the said cases the parties could not place sufficient material before the Apex Court to prove their cases.

6. The said judgment of the Lucknow Bench of this Court in the case of Suresh Chandra Tewari (Supra) has been followed by this court in writ petition Nos. 30288 of 1993 "Uma Shanker Yadav and Ors. v. State of U.P. and Ors." decided on September 26, 1995 and 29727 of 1992 "Ravindra Kumar and Ors. v. State of U.P. and Ors." decided on December, 1, 1994 and in other similar cases.

7. It is also evident from the record that a large number of similar part-time Tube-well operators approached the Labour Courts and obtained the awards in their favour. The State of Uttar Pradesh being aggrieved and dissatisfied, filed a large number of special leave petitions before the Supreme Court, e.g. State of U.P. and Ors. v. Mangre Prasad Verma and Ors.. The Apex Court dismissed all the special leave petitions, filed by the State of Uttar Pradesh, vide its order dated

March 22, 1995. The review petition against the said order had also been rejected by the Apex Court vide its order dated October 19, 1995.

8. In the case of Vijay Kumar and others Vs. State of Punjab and others, the Supreme Court after considering the factual matrix of the case came to the conclusion that the part-time teachers were entitled for similar pay scale as regular teachers as they were also working for same period. The Apex Court considered the case of Surinder Kumar (Supra) and held as under:-

"That decision is of no assistance wherein the question of absorption or regularisation is not in issue in such a situation during the period such an employment subsists, the employer is bound to pay to such an employee according to the minimum of the pay scale prescribed for the post the duties of which such an employee is discharging."

9. Reference/reliance may also be placed on the judgment of Babu Lal, Convenor and another Vs. New Delhi Municipal Committee and another, and Kshatrapal Sharma and Ors. v. Lt. Governor and Ors. 1993 Supp. (3) SCC 206.

10. In the case of State of W.B. and Others Vs. Hari Narayan Bhowal and Others, the Supreme Court observed as under. ;

".....the principle of "equal pay for equal work" can be enforced only after the persons claiming satisfy the Court that not only the nature of work is identical but in all respects they belong to the same class and there is no apparent reason to treat equals as unequals unless a very clear case is made out and the Court is satisfied that the scales provided to a group of persons on the basis of material produced before it amounts to discrimination without there being any justification, the Court should not take upon itself the responsibility of fixation of scales of pay."

11. In view of the above, the only inescapable view, one is bound to take is that the members of the petitioner's Sangh are entitled to get the same allowances in the same scale of pay in which other regularly appointed Tube-well operators are being paid. Reasoning given by this Court in other connected cases is adopted as further explanation of the same would amount repetition.

12. In the last it was pointed out that during pendency of the instant petition, the Government has changed the nomenclature of the part-time Tube-well operators as Tube-well assistants by issuing a notification dated February, 20, 1992. As the Chandra Tewari (Supra), it would not have any adverse effect on the petitioner's Sangh's members.

13. Thus the instant writ petition is allowed accordingly and the respondents are directed to pay the members of the petitioner's Sangh equal pay scale of full-time Tube-well operators.