

(2011) 09 MP CK 0042

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4466 of 2010 (S)

Surendra Saraf

APPELLANT

Vs

Dr. Hari Singh Gaur Vishwavidyalaya

RESPONDENT

Date of Decision : 26-09-2011

Acts Referred:

Central Universities Act, 2009 — Section 4
Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Section 23, 24
Minimum Wages Act, 1948 — Section 12, 12(1A)

Citation : (2011) ILR (MP) 3037

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajendra Menon, J.—As common questions of law and facts are involved in all these petitions and as the relief claimed are also common, all these petitions are being decided by this common order.

2. For the sake of convenience the documents available and the pleadings in the record of W.P.No.4466/2010(s)-Surendra Saraf Vs. Dr. Hari Singh Gaur Vishwavidyalaya, Sagar is being referred to in this order.

3. Each of the petitioner herein is working as a daily wages employee in Dr. Hari Singh Gaur Vishwavidyalaya at Sagar and they claim the benefit of pay in the minimum of the pay scale as is applicable to the post of which the duties are being performed by the petitioners. Some of the petitioners contend that they are working as L.D.C. and other posts in the Grade III category and some are working in the posts in Grade IV category. For example, the petitioner Shri Surendra Saraf claims to be working as an L.D.C. Certain other petitioners are working as Lab Technicians, Book Lifters, Peons, Gardners etc. However, the main relief claimed by each of the petitioners are that they should be paid the minimum of the pay scale attached to the pay scale against which they are discharging the duties. It is stated that even though for some time the said

benefit were granted but the same is now withdrawn. Initially Dr. Hari Singh Gaur Vishwavidyalaya was established under the M.P. Vishwavidhyalaya Adhiniyam, 1973 (hereinafter referred to as "Adhiniyam of 1973"). It is a University established by the State of M.P. but after the Central University Act, 2009 was brought into force w.e.f. 20th March 2009, the said University became a Central University under the said Act of 2009 w.e.f. 20th March 2009. It is the case of each of the petitioners that they were appointed as daily wages employees in the respondents establishment prior to the Act of 2009 came into force on 20th March, 2009. For example, petitioner Surendra Saraf in W.P. No.4466/2010(s) claims to have been appointed as L.D.C. on 3.10.1998 in the Department of Applied Microbiology & Biotechnology. He has continued to work ever since then. Same is the case with each of the petitioners herein. According to the petitioners after their appointment they were granted the minimum wages as notified by the Collector of the District concerned. However, as they were working in various posts under Class III and Class IV category, they demanded payment of salary in accordance to the pay scale prescribed to the posts. Various representations were submitted and finally the entire matter was placed before the Executive Council of the University. The Executive Council of the University met on 1.5.2008 and vide resolution Annexure P/7 resolved that all daily wages and muster roll employees working in the University be granted the minimum of the pay scale and allowance against the post on which they are discharging the duties. However, it was resolved that they will not get any increment, housing allowance, medical allowance or other allowance. It was also decided that this resolution will not apply to Project employees. The resolution of the Executive Council dated 1.5.2008 reads as under:-

4. After the aforesaid resolution was passed the Central Act of 2009 came into force and when the Act came into force, it is a case of the petitioners that by virtue of Section 4(d) of the Act of 2009, their service conditions stands protected. Section 4(d) of the Act of 2009 reads as under :-

4(d) every person employed by Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya and Hemvati Nandan Bahuguna Garhwal University, immediately before the commencement of this Act shall hold his office or service in Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya and Hemvati Nandan Bahuguna Garhwal University, respectively, established under this Act by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and Privileges as to pension, leave, gratuity, provident fund and other matters as he would have held the same if this Act had not been enacted and shall continue to do so unless and until his employment is terminated or until such tenure, remuneration and terms and conditions are duly altered by the Statutes:

5. The petitioners therefore started claiming the said benefit and in the meanwhile, when the 6th pay scale recommendations were also implemented, they sought for benefit under the said recommendation. However, on 17.7.2009

the Vice Chancellor of the University passed an order granting minimum of the pay scale along with 1/30th of the Dearness Allowance to each of the petitioners. Subsequently, when this order was also withdrawn, petitioners have filed these writ petitions.

6. Taking me through the documents available on record and challenging the resolution of the Finance Committee and the Executive Committee of the University for withdrawing the benefit which was earlier granted, it is argued that petitioners are entitled to the minimum of the pay as has been resolved to be granted to them by the Executive Council of the University prior to 20th March, 2009. It is stated that the decision of the Executive Council taken on 1.5.2008 becomes the condition of service of the petitioners and in view of Section 4(d) of the Act of 2009, the same is protected. It is also submitted that once the University has taken a decision to grant the benefit to the petitioners and when the order was passed on 17.7.2009 vide Annexure P/9 the same cannot be withdrawn without hearing or granting opportunity of explanation to the petitioners. Finally, it is argued that according to the respondents the Minimum Wages Act 1948 is applicable to the establishment and if the Minimum Wages Act is applicable then as per Section 12(1-A) of the Minimum Wages Act 1948 and Clause 4 of the Notification issued under the Minimum Wages Act by the Government of M.P. on various dates petitioners are entitled to minimum of the pay scale. Clause 4 of the Notification issued under the Minimum Wages Act by the Government of M.P. in each and every occasion reads as under :-

7. Accordingly, learned counsels for each of the petitioners argued that the petitioners are entitled to minimum of the pay scale and same cannot be denied to them.

8. Taking note of certain objections raised by the respondents in the return, amendment was made in the writ petition and the resolution of the Executive Council and Finance Committee dated 10.4.2010 and 24.4.2010 Annexure P/18 A and P/18B were also challenged and it is argued that once the right to receive the benefit is protected in view of Section 4(d) of the Act of 2009 and the provisions of the Minimum Wages Act, the resolution to the contrary is illegal. It is also argued that under the Adhinyam of 1973 an Executive Council is constituted u/s 23 and the powers of the Executive Council is laid down in Section 24. The entire power to control, administrator the property and fund of the University is with the Executive Council. It is stated that power of Executive Council in the matter of administration, creation of post, granting and sanctioning of budget is uncontrolled. It does not require any further sanction or approval of the State Government and therefore, objection of the respondents that the resolution of the Executive Council dated 1.5.2008 is not approved by the State Government and therefore, cannot be resort is also unsustainable. Placing reliance on a judgment rendered by the Supreme Court in the case of U.P. Land Development Corporation and Another Vs. Mohd. Khursheed Anwar and Another, , learned counsel argued that petitioners are entitled to minimum of the

pay scale and the same cannot be denied to them. It is stated that petitioners are entitled to the said benefit under the principle of "Equal pay for Equal work".

9. Respondent - University has filed a reply and it is a case of the University that the resolution passed by the Executive Council of the University on 1.5.2008 was not approved by the State Government and therefore, it cannot be given effect to. Subsequently, after the University became Central University under the Act of 2009 initially mistaking the petitioners to be casual employees benefit applicable to the casual employees were granted by the University to the petitioners and order Annexure P/9 dated 17.7.2009 was passed by the Vice Chancellor of the University as a mistake. When the same was deducted, a Committee was constituted and the matter was placed before the Finance Committee and the Finance Committee by its resolution dated 10.4.2010 Annexure P/I 8A has not recommended for granting benefits to the petitioners. Recommendation of the Finance Committee is accepted by the Executive Council of the University on 24.4.2010 vide Annexure P/I 8B and therefore, it is stated that petitioners cannot claim any benefit. According to the respondents, petitioners are daily wages employees, they are not casual employees and therefore, benefit accruing to the casual employees for payment of minimum of the pay scale of Central Government will not apply to the petitioners. It is further stated in the return that the Minimum Wages Act 1948 is applicable and therefore, the petitioners are being paid the minimum wages as notified by the Collector under the Minimum Wages Act, 1948. In the return filed by the respondents specific averment in this regard is made in para 11.G wherein it is stated that the petitioners are being paid wages notified by the State Government as per the Minimum Wages Act 1948 and therefore, they are not entitled to any further benefit. Accordingly, in sum and substance objection of the respondent are that the resolution passed by the Executive Council on 1.5.2008 is not applicable as it has not received the approval of the State Government and therefore, as wages under the Minimum Wages Act is being paid, petitioners cannot have any grievance. It is also stated that casual employees of the Central Government receives certain benefit which is not applicable to the petitioners who are daily wages employees. It is stated that decision of the Executive Council taken on 1.5.2008 cannot be enforced without approval of the State Government and as the service condition of the petitioners are already protected u/s 4(d) of the Act of 2009, it is stated that petitioners cannot claim any further benefit. Accordingly, it is the case of the respondents that no further relief can be granted to the petitioners now in these writ petitions.

10. I have heard learned counsel for the parties at length and perused the record. Except from the fact that the nature of work performed by the petitioners are different factual assertions are identical in all the cases. Some of the petitioners are working against post classified under Category III and some are working under Category IV. However, all of them are daily wages employees. They are not in a regular establishment and are being paid wages as per the Minimum Wages Act 1948 and the rate notified by the State Government known

as Collectorate rate.

11. Petitioners claim the benefits on three counts: (1) In view of the resolution passed by the Executive Council of the University exercising powers u/s 24 of the Adhiniyam of 1973 on 1.5.2008; (2) On the ground that in view of Section 12(1A) and Clause 4 of the Notifications issued under the Minimum Wages Act, 1948 it is said they are entitled to minimum of the pay to the post against which they are discharging duties; and (3) on the principle of "Equal Pay for Equal Work".

12. As far as first ground is concerned under the Adhiniyam of 1973 an Executive Council is constituted u/s 23 and the powers of the Executive Council are prescribed u/s 24. The Executive Council is given wide power which includes the entire power to control and administer the property and funds of the University, the power of preparing annual financial estimate of the University, powers for appointment, creation of posts, prospecting the salary etc.. There is nothing in the Adhiniyam of 1973 which warrants that a decision taken by the Executive Council has to be approved by the State Government. Except for contending in the return that the decision of the Executive Council taken on 1.5.2008 has not been approved by the State Government and therefore, cannot be given effect to, respondents are unable to demonstrate before this Court from the statutory provision i.e. Adhiniyam of 1973 or any other provision as to how and under what provision of law the resolution of the Executive Council warrants approval of the State Government. When the provision of Section 24 of the Adhiniyam of 1973 gives wide power to the Executive Council to take a decision, the decision taken by the Executive Council becomes final and applicable on the date it is taken and for the said purpose no further approval or sanction of the State Government is necessary. Once the Executive Council took a decision on 1.5.2008 for granting benefit to the petitioners, the same becomes a service condition of the petitioners and by virtue of Section 4(d) of the Act of 2009 the terms and conditions of appointment which were existing on 1.5.2009 i.e. prior to 20th March 2009 could not be changed. When the resolution was passed by the Executive Council of the University on 1.5.2008 it became a service condition for the petitioners and a right, legal and vested in nature accrued to the petitioner, it became the terms and condition for the contract of service and once the service condition/contract was laid down by the Executive Council of the University under the Adhiniyam of 1973 by virtue of right available to the petitioners u/s 4(d) of the Act of 2009 the service condition could not be changed. The University which came into existence after 20th March, 2009, under law was duty bound to protect the right of the petitioners which accrued to them by virtue of decision taken by the Executive Council on 1.5.2008 and therefore, in refusing to granting the aforesaid benefit, respondents have committed an error and to that effect benefit can be granted to the petitioners.

13. That apart, if the respondents themselves contended in their reply that petitioners are entitled to payment of salary as notified by the Collector under

the Minimum Wages Act, 1948, then in view of the provisions of Section 12(1-A) and Clause 4 of the Minimum Wages Notification issued from time to time, petitioners are entitled to the minimum of the pay scale of the post on which they are discharging their duties. Payment of minimum rates of wages is provided in Section 12 of the Minimum Wages Act and a sub section i.e. Section 1(A) has been incorporated in the State of M.P. by Amendment Act 23 of 1961 w.e.f. 23.6.1961. The said amended provision is applicable in the State of Madhya Pradesh reads as under :-

(1-A) Where immediately before the issue of a notification u/s 5 fixing or revising the minimum rates of wages in respect of any scheduled employment, wages at a rate higher than the rate so fixed or revised, were payable under this Act, or under any law or award or agreement or custom or usage for the time being in force, then, notwithstanding anything contained in this Act, wages at such higher rate shall be payable to the employees in such scheduled employment and the wages so payable shall be deemed to be the minimum wages for the purposes of this Act.

Clause 4 of the Notification issued are in view of the aforesaid provision. The right to claim the benefit accrue to the petitioners by virtue of statutory provision of Minimum Wages Act is admitted, it is the case of the respondents themselves that Minimum Wages Act is applicable and they are paying salary as per Minimum Wages Act. Under the provisions of the Minimum Wages Act itself the condition is that if in any establishment the prescribed pay scale is more than that minimum wages notified under the Notification more beneficial pay shall be made applicable and in the case of respondent's establishment as the pay scale applicable to various posts is more than the one as provided under the of the Minimum Wages respondents are duty bound to grant benefit to the petitioners which is more beneficial. If the reply filed by the respondent-University is considered they have categorically stated in the return as under :-

5. That the persons who has/have been engaged on daily wages has/have been paid as per Collector rate in terms of Minimum Wages Rules 1948.

Similarly, in para 11.G also it is so stated :

11. G... He may be paid wages notified by the State Government as per the Minimum Wages Act, 1948, which is being paid to him.

It is therefore clear that the respondents themselves admitted that the Minimum wages Act as notified of the State Government is payable. That being so, respondents cannot deny the benefit to the petitioners merely because the Finance Committee of the Executive Council have taken a decision in the matter as indicated in the return. Right accruing to the petitioners by virtue of the resolution of the Executive Council on 1.5.2008 and the Minimum Wages Act, 1948 are statutory legal rights available to the petitioners as per law and the same has to be enforced. Once the mandate of law entitles the petitioners to receive the benefit as claimed for, there is no reason as to why the same cannot

be granted to the petitioners. Resolution passed by the Executive Council and Finance Committee Annexure P/18A and P/18B on 10.4.2010 and 24.4.2010 are contrary to statutory provisions as indicated herein above and therefore, cannot be enforced.

14. As far as the third ground is concerned respondents have only stated that petitioners are not casual employees and therefore, they are not entitled to the benefit granted to the casual employee in their establishment. No where in the return have the respondents brought to the notice of this Court as to what is the difference between a casual employee and a daily wages employee. In W.P. No.4466/2010(s) petitioner has placed on record a Circular issued by the Government of India i.e. Government of India, Department of personnel and training OM No.49014/2/86 dated 7th June 1988 and Ministry of Labour OM No.53202/16/86-W.C.(M.W.) dated 23.8.88. These Circulars have been issued after a judgment was delivered by the Supreme Court on 17.1.1986 in the case of Surendra Singh Vs. Union of India laying down certain principles for payment of "equal pay for equal work". In these circulars certain guide lines have been laid down and petitioners have filed the said guide lines vide Annexure P/18A along with their amendment application. The aforesaid Circular contemplates that persons on daily wages should not be recruited for work of regular nature. Recruitment of daily wages should be made for work which is only casual or seasonal or intermittent in nature or work which is not full time in nature for which regular post cannot be sanctioned. If the aforesaid provisions applicable to the daily wages employee is taken note of it would be seen that if an employee is working against a regular post in a regular nature of work and is a full time employee not engaged for any particular season or intermittently, he will not be a daily wages employee but would come in the category of casual employee. If the petitioners work are assessed, it would be seen that the petitioners are working continuously for the last more than 5 to 10 years, their work is of regular nature, they are not engaged intermittently nor are they part time employees. Infact, they are all working against work of a regular post but they are termed as "daily wages employees". Even in the note sheets and the pay bills prepared by the respondents as are available on record, it is seen that the petitioners are shown to be working against regular post. For example, in W.P. No.4466/2010 (s) certain documents have been filed, signed and verified by the Head of the Department with regard to payments to be made to the petitioners like Shri Surendra Saraf. The same is available at page 49 of the paper book and in the said document, Head of the Department has noted as under:-

Nature of work of above employees is similar to regular employees.

Similar notes are put up in the pay sheet and pay bill of most of the petitioners. It is therefore, clear that even though petitioners are categorized as "daily wages employees" but in view of the Circulars issued by the Government of India, as is indicated herein above, the nature of work done by the petitioners is that of casual employees and when the casual employees are being paid salary at

minimum of the pay scale along with dearness allowance at 1/30th of the regular pay scale, on the principle of "equal pay for equal work", there is no reason for denying benefit to the petitioners. That being so, even on the principle of "equal pay for equal work", petitioners are entitled to the benefit claimed for, i.e. at par with other casual employees who are paid minimum of the pay scale along with 1/30th of the D.A. and respondents are denying the same to the petitioners by creating an artificial differentiation between the petitioners and casual employees by treating the petitioners differently. In fact, petitioners are nothing but casual employees and the respondents by arbitrarily treating them as a "daily wages employee" cannot discriminate with them.

15. Keeping in view the aforesaid, all these petitions are allowed. Respondents are directed to pay to the petitioners minimum of the pay in the scale of pay notified for the posts against which the petitioners are discharging duties. The said benefit be paid to the petitioners with effect from the date the order was passed on 16/17.9.2009 vide Annexure P/9. The benefit be paid retrospectively with all arrears within a period of three months from the date of receipt of certified copy of this order. The benefit shall be granted to each of the petitioners keeping in view the nature of work/posts hold by them and the pay scale sanctioned for the same as is applicable in the respondents' establishment.

16. With the aforesaid all these petitions are allowed and disposed of.