

(2010) 11 J&K CK 0013

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1023 of 2007

Tej Krishan Bhat and Others

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 04-11-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2011) 2 JKJ 784

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sunil Hali, J.—The Petitioner No. 1 was appointed as a Sweeper in the year 1990 on the recommendations of District Development

Commissioner, Udhampur, confirmed/endorsed by Respondent No. 2-Director School Education, Jammu vide Order dated 15.11.1990 on the

consolidated salary of Rs. 300/- per month which was enhanced to Rs. 500/- per month. Similarly Petitioners 2 and 3 who were appointed as

Chowkidar and Sweeper on a consolidated salary of Rs. 600/- and 300/- per month respectively vide order dated 30.05.1995. Ever since their

appointments, they have been continuously working on the said posts. Their grievance is that they are being asked to work on a very meager

amount of Rs. 600/- per month, which is contrary to the provisions of Minimum Wages Act. It is further contended that the Petitioners are

continuously working, as such, are required to be regularized against the said posts.

2. Despite various opportunities, objections have not been filed. However, looking to the nature of controversy, this petition is admitted to hearing

and taken up for final disposal.

3. Two sets of prayers have been made in this petition. One relating to Minimum Wages Act and another relating to regularization of the Petitioners.

4. In respect of first prayer, it be noted that Division Bench of this Court in case titled as *Zoona Bibi v. State and Ors.* reported in 2000 SLJ 352

held that Minimum Wages Act as applicable in the State of Jammu and Kashmir should be made applicable to the Petitioner also. Regarding

second prayer for regularization, the Division Bench of this Court held that State should formulate a scheme or any formula for regularization of these employees.

5. The following directions have been issued by the Division Bench at para No. 7 of the judgment:

7. Needless to say the right to life as enshrined in Article 14 of the Constitution has been interpreted by the Supreme Court as to live with dignity

and honour and not mere living. The appropriate Government may examine this aspect of the matter and consider for framing appropriate scheme

or any formula so that they can survive by affording at least two coarse meals a day. Till such time the scheme or a formula is framed by the

appropriate Government, the case of the Appellant may be considered to be paid at the rate of Minimum Wages Act as applicable in the State of

Jammu and Kashmir. This direction is, however, subject to the condition that the engagement is full time and not part time. We are also of the view

that till the Government formulate a scheme or any other formula, such contingent engagement subject to the quantum of work may be made for the

full job so that they can get the daily wages at the rate of Minimum Wages Act framed for the purpose.

It seems that a co-ordinate Bench of this Court vide order dated 10.09.2009, directed the Respondents to consider the claim of the Petitioners for

Class-IV on the touch stone of clause VIII of Schedule II-A appended to the Rules called the Jammu and Kashmir School Education

(Subordinate) Service Recruitment Rules, 2008 which inter alia provides 50% selection from Middle Pass contingent/local fund paid employees.

6. View from this fact, direction is required to be issued to the Respondents to accord consideration for regularization of the Petitioners in terms of

the rules mentioned hereinabove. Accordingly, I allow this writ petition and direct the Respondents to pay minimum wages to the Petitioners in

terms of Minimum Wages Act as applicable to the State of Jammu and Kashmir and consider their cases for regularization under Clause VII of

Schedule II-A appended to the Rules called the Jammu and Kashmir School Education (Subordinate) Service Recruitment Rules, 2008 within a

period of three months from today.

Disposed of along with connected CMP(s).