

(2010) 05 P&H CK 0279
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4500 of 1991

Ved Parkash and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 05-05-2010

Acts Referred:

Citation : (2010) 05 P&H CK 0279

Hon'ble Judges : Ranjit Singh, J;R.L. Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ranjit Singh, J.—More than one thousand Petitioners, 1127 to be precise, who were work charge employees, have filed this writ petition seeking a writ of mandamus or any appropriate writ or direction for granting them allowances and benefits like House Rent Allowance, Rural Allowance, Project Allowance, Earned Leave, Medical Leave and other service benefits at par with regular government employees. Plea is that the Petitioners are performing the identical duties and are also drawing equal pay but are being denied the allowances as aforementioned.

2. All the Petitioners were employed in the Irrigation Department prior to 1.4.1979. Some of them were appointed as far as back as 1.11.1966. It is submitted that they are entitled to the pay 2 scale as were revised in the corresponding categories of regular employees of the State of Haryana. Mention is also made to the policy instructions issued by the Government of Haryana that after completion of 4 years of service in the department all the work charge employees would be entitled to be brought at par with the regular employees.

3. It appears that the services of the Petitioners have been regularized but they were not paid the benefit like Earned leave, Medical allowance, Rural allowance etc. at par with the regular employee being work charge employee. It is stated that the Petitioners are not governed by the Punjab Civil Service Rules as

applicable in the State of Haryana.

4. The Petitioners would refer to the fact that Writ Petition No. 6044 of 1983 was filed by some of the similarly placed employees, which was allowed by this Court on 2.6.1989. The Respondent-State had then allowed the revised pay scale to the said Petitioners in this writ petition. As per the averment, another Writ Petition No. 2260 of 1991 is pending before this Court for adjudication.

5. In response to notice issued, State has filed reply. By way of preliminary objection, it was mentioned that Writ Petition No. 6044 of 1983 was decided by holding that the work charge employee was not entitled to revised pay scale w.e.f. 1.2.1969. It is also stated that the writ petition is belated and suffer from latches as the revised pay scale is being claimed w.e.f. 1.4.1979 onwards and so also the House Rent Allowance, Medical Allowance and Earned leave etc. While replying to the averments on merit, in para 4 of the reply, 3 somewhat contradictory plea is raised. In this para, it is admitted by the State that Writ Petition No. 6044 of 1983 was allowed by this Court on 2.6.1989 and that the order has already been implemented qua the Petitioners in the said writ petition. CWP No. 2260 of 1991 is pending as per the reply also.

6. Mr. R.L. Sharma would submit that the work charge employees are performing same duties and identical functions. They are being paid in the same scale as compared to regular employees. Accordingly, the counsel submits that the decision not to grant them the benefits like earned leave, medical leave, House Rent Allowance or Rural allowance is totally discriminatory and arbitrary besides being in violation of the principle of "Equal Pay for Equal Work". The counsel further submits that once the writ petition by similarly placed employees has been allowed by this Court and has been implemented, there is reason to deny the relief to the Petitioners.

7. In contrast, Mr. Nehra, Sr. DAG, would submit that the Petitioners, who were work charge employee cannot be equated with the regular employees. As per the counsel, they may be getting the similar pay but for the purpose of allowance there has to be a distinction between the work charge employees and the regular employees. The counsel would point out that the allowances and perks are for the post, which is only occupied by the regular employees. Work charge employees are not working against any regular post for which the allowances can be allowed. He would also say that the principle of "Equal pay for Equal Work" would not be application, in view the latest pronouncement of this Court as well as of the Hon"ble Supreme Court. In this regard the counsel has 4 referred to The Punjab State Tubewell Corporation Workers Union v. The State of Punjab and Ors. 2008 (5) SLR 684 where it was held that the work charge employee cannot be treated at par with regular employees. While taking this view, the Division Bench in the case of Tubewell Corporation (supra) has made reference to number of judgments. The ratio that would emerge is that neither adhoc nor work charge employee is in a regular service cadre. Observation of the Hon"ble Supreme Court in State of Maharashtra Vs. Purshottam and Others, can be referred when

it is noticed that the work charge establishment is an establishment of which expenses including wages and allowances of the staff are chargeable to work. Employees are temporary employees for specified work. Their services come to an end on completion of work and their services cannot be taken into account for seniority and regular establishment.

8. Somewhat similar issue came for consideration before the Hon''ble Supreme Court in the case of State of Gujarat and Another Vs. Karshanbhai K. Rabari and Others, . The Hon''ble Supreme Court was considering the case of daily wagers temporarily appointed under State Government for transitory work on work-charge basis, who had rendered services for a long period to see whether they are entitled to all the benefits available to permanent government servants which was answered in the affirmative by the Division Bench of Gujarat High Court. This view was set aside and the matter remitted to the High Court for fresh consideration. This was so done by making reference to the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, .

9. To further appreciate the difference between the work charge employee and the permanent one, reference can be made to State of Punjab and others Vs. Jit Singh, . It was observed that the work charge employee as per the regulations has been not entitled to any pension, Leave Travel Allowance etc. Such employees are liable to be terminated under the Punjab Public Works Deptt. Code by giving 10 days notice as required in Clause (7) of Rule 1.129 of the Code. It was accordingly held that such employees are not the government servants. The difference between the employees thus is clear and was approved by the Hon''ble Supreme Court.

10. The Division Bench of this Court in the case of State of Haryana v. Jasmer Singh 2005 (1) STC 125 have also held that the writ of mandamus cannot be issued for fixation of pay in the regular scale by invoking the principle of equal pay for equal work, even if such persons are engaged against a vacant post. The Petitioners in this case were engaged on contract basis for a fixed period on consolidated salary without any advertisement, without sending any requisition to the employment exchange and without selection. They thus were given back door entry appointments. This Court thus observed that the appointments have to be treated as violative of doctrine of equality and the writ in the nature of mandamus cannot be issued.

11. Reference can also be made to the case of State of Haryana Vs. Jasmer Singh and others, . In this case, the Hon''ble Supreme Court reversed the order passed by this Court where directions were given for payment of regular pay scale to daily wage employees. It is held as under:

The Respondents, therefore, in the present appeals who are employed on daily wages cannot be treated as on a par with persons in regular service of the State of Haryana holding similar posts. Daily-rated workers are not required to possess the qualifications prescribed for regular workers, nor do they have to fulfill the

requirement relating to age at the time of recruitment. They are not selected in the manner in which regular employees are selected. In other words the requirements for selection are not as rigorous. There are also other provisions relating to regular service such as the liability of a member of the service to be transferred, and his being subject to the disciplinary jurisdiction of the authorities as prescribed, which the daily-rated workmen are not subjected to. They cannot, therefore, be equated with regular workmen for the purposes for their wages. Nor can they claim the minimum of the regular pay-scale of the regularly employed.

12. The principles of law laid down in Jasmer Singh's case (supra) were reiterated by the Hon"ble Supreme Court in State of Orissa and Ors. v. Balram Sahu and Ors. 2002 (6) SLR 542 In this case, it was held as under:

On a careful consideration of the materials placed on record, we are of the view that the principles firmly laid 7 down in the well considered decision of Jasmer Singh (supra) squarely applied in all the four cases on hand and the Respondents-workers would be entitled to only, apart from the regularization ordered for which the Appellants have had no serious objections, the payment of minimum wage prescribed for such workers if it is more than what they were being paid the same salary and allowances as were being paid to the regular employees holding similar 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.

13. In State of Haryana v. Tilak Raj 2003 (4) STC 485 (SC) , it was held that the principle of "Equal Pay for Equal Work" is not always easy to apply. There are inherent difficulties in comparing and evaluating the work done by different persons in different organizations or even in the same organization. It was also observed that a scale of pay is attached as a definite post and in case of daily wager, he holds no posts. The Petitioners work charge employees cannot be held to hold any post to claim even any comparison with the regular and permanent staff for any or all purposes including a claim for equal pay and allowances.

14. On the face of these authoritative pronouncements by the Hon"ble Supreme Court, it would be difficult to hold that the work charge employee are to be treated at par with the regular employee. Concededly, the Petitioners are being given the scale equivalent to the regular employee. It is only the question of certain benefits which 8 have not been paid to them. It is obvious that after having been regularised the Petitioners must be receiving all these benefits. In my view, no case for grant of prayer made in the writ petition is made out. The same is accordingly dismissed.