
(2020) 01 UK CK 0054
In the Uttarakhand High Court
Case No : Special Appeal No. 19 Of 2020

Vinod Kumar

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 10-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 01 UK CK 0054

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Amar Murti Shukla, J.C. Pandey

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. Heard Sri Amar Murti Shukla, learned counsel for the appellant, and Sri J.C. Pandey, learned Brief Holder appearing for the State Government,

and, with their consent, the Special Appeal is disposed of at the stage of admission.

2. The appellant herein filed Writ Petition (S/S) No. 1501 of 2018 seeking a writ of certiorari to quash the rejection order impugned in the writ petition;

and for a mandamus commanding the respondents to consider the appellant-writ petitioner's name for regularization against the vacant post of

Sweeper as per the Daily Wage, Work Charge, Contract, Consolidated Wage, Part Time and Ad hoc Employees Regularisation Rules 2013.

3. Facts, as stated in the writ petition, are that the appellant-writ petitioner was working as a part-time Sweeper in the office of the 4th respondent

ever since his appointment on 06.09.2006, effective from 01.07.2006, on a consolidated wage of Rs. 500/- per month. The appellant-writ petitioner

claims that he was fully qualified to be appointed as a Sweeper (a Class IV post) in the Irrigation Department, as he had passed Junior High School

prior to his appointment as against the prescribed qualification, of 5th Class pass, for appointment as a Sweeper in the Department. The appellant-writ

petitioner has referred to the letter of the Superintending Engineer dated 10.07.2015 recommending his case for regularization on the ground that he

was discharging duties in a regular post. He has also placed reliance on the letters of the Chief Engineer dated 20.07.2015 and 30.07.2015 to contend

that, even in these letters, it is stated that he is discharging the duties of a regular employee. He invoked the jurisdiction of this Court claiming the

benefit of regularization of service, besides being extended the benefits of 'equal pay for equal work'.

4. During the hearing of the writ petition, the relief sought, for regularization, was not pressed, and the learned Single Judge has, in the order under

appeal, permitted the appellant-writ petitioner to withdraw relief nos. 1 and 2 with liberty to file a writ petition for the same relief in future, if the cause

of action arises. The learned Single Judge, thereafter, noted the submission, made on behalf of the appellant-writ petitioner, that he was working eight

hours a day in the Department, and was paid Rs. 500/- per month as a consolidated pay. The Court observed that the respondents were exploiting the

appellant-writ petitioner by not paying him the minimum wages. Considering the fact that the appellant-writ petitioner was neither a temporary nor a

regular appointee, and was working in the Department on an ad-hoc basis, the learned Single Judge disposed of the writ petition directing the second-

respondent to pay the minimum of wages to the appellant-writ petitioner fixed by the State Government, and also to pay the arrears of the minimum

wages from the date the same was applicable to the appellant-writ petitioner. Aggrieved thereby, the present Special Appeal.

5. When we asked Sri Amar Murti Shukla, learned counsel for the appellant-writ petitioner, as to how the appellant-writ petitioner was aggrieved by

the order when the learned Single Judge had, in fact, granted him the benefit of minimum wages, learned counsel would state that what he had sought,

on application of the doctrine of 'equal pay for equal work', is for being extended the minimum scale of pay applicable to the regular posts

similar to the one in which he was working; the direction to pay minimum wages would result in the appellant-writ petitioner getting far lesser salary

than the minimum scale of pay given to those working in regular posts; and, since the letters referred to hereinabove of the Superintending Engineer

and the Chief Engineer show that the appellant-writ petitioner was working in a regular post, he is entitled to be granted the minimum scale of pay.

6. While we find force in the submission urged on behalf of the appellant, we must however bear in mind that this Court, in the exercise of its

jurisdiction under Article 226 of the Constitution of India, would not undertake the exercise of determining whether or not the appellant-writ petitioner

was working in a regular post, and whether or not he was discharging the duties of a regular employee in a Class-IV post.

7. While the plea of "equal pay for equal work" has no doubt been raised in the writ petition, the appellant-writ petitioner has specifically not

sought for the relief of being granted the minimum scale of pay.

8. Reliance is placed on behalf of the appellant-writ petitioner on a Division Bench judgment of this Court in Special Appeal No. 302 of 2019 dated

20.05.2019, wherein the Division Bench had directed the authorities to consider the claim of such employees, in the light of the law declared by the

Supreme Court in *The State of Punjab Vs. Joginder Singh* : AIR 1963 SC 913, *Zabar Singh and others Vs. The State of Haryana and others* : (1972) 2

SCC 275, *State of Bihar and others Vs. The Bihar Secondary Teachers Struggle Committee, Munger and others* (Order in Civil Appeal No. 4862 of

2019 dated 10.05.2019), and *State of Punjab and others Vs. Jagjit Singh and others* : (2017) 1 SCC 148, for being extended the minimum of the regular

pay scales applicable to persons holding regular posts.

9. Since the appellant-writ petitioner claims that the certificates issued both by the Superintending Engineer and the Chief Engineer would establish

that he has, in fact, been discharging duties akin to those discharged by regular Class-IV employees, suffice it to modify the order of the learned Single

Judge, and permit the appellant-writ petitioner to make a representation to the second respondent, enclosing thereto the said letters in support of his

claim to be extended regular scale of pay. The second respondent shall, on receipt of such a representation, examine whether or not the appellant-writ

petitioner has been discharging the duties of a regular Class-IV employee. In case, he is found to be discharging the duties, which are being

discharged by a regular Class-IV employee, the second respondent shall consider

extending him the benefit of the minimum scale of pay applicable to

Class-IV employees. The entire exercise shall be completed by the second respondent within two months from the date of receipt of the appellant-

writ petitioner's representation.

10. With the aforesaid observations, the Special Appeal is disposed of.

No costs.

11. Let a certified copy of this order be furnished to the learned counsel for the parties, on payment of the prescribed charges, today itself.