

**(2011) 11 AHC CK 0447**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 65067 of 2011

Vishnu Prasad and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 23-11-2011

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 39

**Citation :** (2012) 2 ADJ 150 : (2012) 133 FLR 102

**Hon'ble Judges :** Arun Tandon, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## **Judgement**

Hon"ble Arun Tandon, J.—Petitioners who are 53 in number seeks a writ of mandamus directing the state authorities to ensure payment of monthly salary to the petitioners on regular pay scale applicable to the post held by them on month to month basis. A further mandamus is prayed for a scheme being framed for regularization/absorption of the petitioners against substantively vacant post of Assistant Teacher (L.T. Grade)/as Lecturer, in a time bound manner.

2. Facts in short giving rise to the present writ petition are as follows :

Social Welfare Department of the State of U.P. runs institutions which are known as Ashram Paddhati Schools. These institutions are meant for socially backward students. According to the petitioners certain posts were created for these institutions which have been extended from time to time. In the year 2008, an Advertisement was published in all the districts of the State of U.P. for appointment of Assistant Teacher (L.T. Grade) and Lecturers in such institutions. The petitioners applied and have been appointed as such. It is not disputed that with the end of the academic session 2008-09, the appointment of the petitioners came to an end. On re-opening of the institutions, fresh advertisement was published for making appointment on the same terms and conditions which has been challenged by means of Civil Misc. Writ Petition No.

46464 of 2009 wherein an interim stay order has been granted. Other writ petitions have also been filed for the same purpose which have been connected. Some of the petitioners are stated to have been appointed in pursuance to the advertisement which was published in the year 2009-10. A Government order has been issued on 20.7.2010 whereunder the posts for the academic session 2010-11 were directed to be filled with the condition that the Selection Committee shall keep in mind the interim order which has been granted in favour of particular person in the writ petitions including those referred to above.

3. According to the petitioners they have since been continued. Each of the petitioner claims that they have been paid a consolidated salary of Rs. 12,000/- per month as on date. The petitioners contended that there is no justification for making payment of salary on consolidated basis, they discharge same duties and responsibilities like any other teacher. The petitioners are possessed of the prescribed minimum qualification and they have been appointed after following the procedure prescribed. Reliance has been placed upon the judgment of this Court in the case of Renu Tewari v. State of U.P. and others, for the reliefs as prayed. It is pointed out that in another writ petition namely writ petition No. 19129 of 2011 practically for the same relief, the High Court has called for a counter-affidavit from the respondents.

4. I have heard learned counsel for the parties and have gone through the records of the present writ petition.

5. From the Government Order dated 20.12.2005 creating additional post of teachers in Ashram Paddhati Schools, it is apparently clear that the posts were created for the period up to 2008. The term of post was further extended up to 28.2.2009 under the Government Order dated 3.2.2008. Under the Government Order dated 30.7.2009 permission was granted " to make contractual appointment against these posts for a period up to 31.5.2010 i.e. for 11 months through a Selection Committee. To similar effect is the Government Order dated 1.8.2009. Under the Government Order dated 1.8.2009 it was clarified that for making such contractual appointment, an advertisement shall be published in a prescribed proforma enclosed alongwith the Government Order. That under the Government Order dated 20.7.2010, the permission to make contractual appointment up to 31.5.2011 or till regular appointments are made whichever is earlier was granted. A copy of the Advertisement published in the year 2008-09 has been brought on record and it is not disputed by the counsel for the petitioners that the advertisement specifically mentioned that applications are being invited for contractual appointment on fixed pay for the period mentioned in the advertisement. After selection, appointment letter was issued in favour of the petitioners, copy of one such appointment letter is enclosed as Annexure-7 to the writ petition which records that the petitioner was being appointed on a fixed pay of Rs. 7500/- for a period up to 31.5.2009 or till regular appointment is made whichever is earlier. A further specific condition was added to the letter of appointment that the candidate concerned shall not claim any right to be offered

regular appointment (Reference page 92 of the present writ petition). Not only this, the candidate concerned was required to submit an affidavit on non-judicial stamp paper worth Rs. 100/- categorically stating that he will not claim any right for regularization and further that he will not claim any money other than that mentioned in the appointment letter nor shall claim any other right. To similar effect is the affidavit on page 99 and 100 to the present writ petition.

6. From the aforesaid facts which are undisputed what follows is that the petitioners were offered appointment on the conditions mentioned in the Government Order and the advertisement which they accepted with open eyes namely the appointment was time bound on fixed pay. The appointment was only till regularly selected candidates join or the period of appointment expires by efflux of time. Petitioners have given an undertaking on stamp paper that they shall not claim anything over and above the fixed honorarium nor they shall claim any right for regularization. Having accepted the terms and conditions of appointment, the petitioners cannot be permitted to wriggle out of the same and claim before this Court a right to be paid regular salary as is admissible to the regular employees and further for a scheme being framed for their regularization.

7. The legal proposition in that regard has been settled under the judgment of the Hon'ble Supreme Court in the case of State of Haryana and Others Vs. Jasmer Singh and Others, , the Hon'ble Supreme Court considered the provisions of Articles 39 (d), 14 and 16 of the Constitution and held that the principle of "equal pay for equal work" is not always easy to apply. The Court further observed as under :

The respondents, 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 the 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 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.

8. In Gujarat Agricultural University Vs. Rathod Labhu Bechar and Others, , the Hon'ble Supreme Court considered a similar issue of pay parity to the daily-rated workers working since long considering large number of its earlier judgments including Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others, ; Ghaziabad Development Authority and others Vs. Sri Vikram Chaudhary and others, ; Basudev Pati Vs. State of Orissa and Another, ; State of Haryana and others Vs. Piara Singh and others etc. etc., ; Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, ; and held that for their absorption etc. the

University may frame the Scheme for regularization and as regularisation cannot be directed in absence of regular post and such employees can be entitled for minimum wages under the Statute, if any, or the prevailing wages in the locality but the question of claiming the minimum of the pay scale of a regular employee would not arise.

9. In *State of Karnataka and Others Vs. KGSD Canteen Employees Welfare Association and Others*, , after considering very large number of its earlier judgments and considering the provisions of Articles 14, 16 and 39(d) of the Constitution of India, the Hon"ble Supreme Court held that daily wagers cannot claim pay scale as that of Government employees. The Court again reiterated the law laid down by it in its earlier judgment in *Mahendra L. Jain and Others Vs. Indore Development Authority and Others*, , wherein it has been held that the daily wagers do not hold the post, therefore, they were not the employees of the State. Salary of a regular scale of pay, it is trite, is payable to an employee only when he holds a status.

10. In view of the above, the law can be summarized that daily wagers do not hold the post. They cannot claim parity with those who are working in the regular cadre as they earned a status, therefore, the question of parity with them would not arise. The pay scale may depend upon large number of factors including seniority, experience, educational qualification, mode of selection and it cannot be claimed by the persons unless they establish complete equality with those who are working in regular cadre. The daily wagers are entitled only for minimum of the wages fixed by the State Government or the wages prevailing in the locality.

11. Further the Apex Court in the case of *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, , has held that regularization cannot be directed in absence of statutory provisions or statutory rules nor there should be any attempt to induct the persons into service permanently through back door. The Hon"ble Supreme Court has clarified that in Government service appointment should be made through regular process prescribed by law. In the facts of the present case. There can be no direction for any scheme being framed for regularization of the petitioners. This Court finds no good ground to issue any mandamus as has been prayed for in the present writ petition.

12. Mere calling for a counter-affidavit in another writ petition is not a binding precedent specifically when this Court has decided the present writ petition on merits.

13. Writ petition is dismissed.

14. Interim order, if any, stands discharged.