Court No. - 20

Case :- WRIT - A No. - 8191 of 2023

Petitioner :- Mohd. Nafees
Respondent :- The State Of U.P. Thru. Prin. Secy. Forest Deptt. And 2 Others
Counsel for Petitioner :- Shivam Sharma
Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard learned counsel for petitioner and learned State Counsel for opposite parties.

2. Petition has been filed challenging order dated 04.09.2023 whereby petitioner's representation for grant of minimum of the pay scale has been rejected.

3. Further prayer for a direction to opposite parties for payment of minimum of the pay scale of a Class IV post including arrears has been sought.

4. It has been submitted that petitioner was engaged on Class IV post in the Department in September, 2009 and he is continuously working as such till date. It is submitted that since petitioner was performing the same duties and functions as regular employees but was not being paid minimum of the pay scale, he had earlier filed a writ petition before this Court which was disposed of directing opposite parties to consider petitioner's representation with regard to his grievance. It is submitted that the impugned order has been passed in pursuance thereof rejecting petitioner's representation only on the ground that since petitioner is not entitled for regularization in terms of the relevant rules of 2016 and since there is no such provision in the aforesaid rules for grant of minimum of the pay scale, he would not be entitled for such benefit.

5. Learned counsel for petitioner has placed reliance on judgment rendered in the case of **Sabha Shankar Dube Vs. Divisional Forest Officer and Others**, Civil Appeal No. 10956 of 2018 to submit that since petitioners have admittedly been engaged by the department on daily wage basis and continuing as such, they are entitled for the benefit of minimum of the pay scale.

6. Learned State Counsel has refuted submissions advanced by

learned counsel for petitioner with the submission that since petitioners are not entitled for regularization as has already been indicated in the impugned order, there would be no occasion for them to be granted minimum of the pay scale.

7. Upon consideration of submissions advanced by learned counsel for opposite parties and perusal of material on record, particularly the impugned order, it is evident that opposite parties have admitted the fact that petitioner was initially engaged on a Class IV post on daily wage basis and is continuing as such till date. It is not the case of opposite parties that petitioners are not performing the same duties and functions as are being performed by a regularly appointed persons on the same post.

8. Hon'ble the Supreme Court in the case of **Sabha Shanker Dube versus Divisional Forest Officer and others** passed in Civil Appeal No.10956 of 2018 has held as follows:

"9. On a comprehensive consideration of the entire law on the subject of parity of pay scales on the principle of equal pay for equal work, this Court in Jagjit Singh (supra) held as follows: "58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to work at a lesser wage does not do so voluntarily. He does so to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows that his dependants would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situate constitutes an act of exploitative enslavement, emerging out of a domineering position, Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation?

10. The issue that was considered by this Court in Jagjit Singh (supra) is whether temporary employees (daily wage employees, ad hoc appointees, employees appointed on casual basis, contractual employees and likewise) are entitled to the minimum of the regular pay scales on account of their performing the same duties which are discharged by those engaged on regular basis against the sanctioned posts. After considering several judgments including the judgments of this Court in Tilak Raj (supra) and Surjit Singh (supra), this Court held that temporary employees are entitled to draw wages at the minimum of the pay scales which are applicable to the regular employees holding the same post.

11. In view of the judgment in Jagjit Singh (supra), we are unable to uphold the view of the High Court that the Appellants-herein are not entitled to be paid the minimum of the pay sales. We are not called upon to adjudicate on the rights of the Appellants relating to the regularization of their services. We are concerned only with the principle laid down by this Court initially in Putti Lal (supra) relating to persons who are similarly situated to the Appellants and later affirmed in Jagjit Singh (supra) that temporary employees are entitled to minimum of the pay scales as long as

they continue in service.

12. We express no opinion on the contention of the State Government that the Appellants are not entitled to the reliefs as they are not working on Group "D" posts and that some of them worked for short periods in projects.

13. For the aforementioned reasons, we allow these Appeals and set aside the judgments of the High Court holding that the Appellants are entitled to be paid the minimum of the pay scales applicable to regular employees working on the same posts. The State of Uttar Pradesh is directed to make payment of the minimum of pay scales to the Appellants with effect from 1st December, 2018."

The principles laid down by the Hon'ble Apex Court in State of U.P. & Others Vs. Putti Lal reported in 2006 (9) SCC 337 and State of Punjab and Others Vs. Jagjit Singh and Others reported in 2017 (1) SCC 148 have been specifically reiterated and re-enforced."

The said aspect of matter has also been considered by Hon'ble the Supreme Court in the case of State of Punjab & others vs. Jagjit Singh & others reported in 2016 (3) LBESR 5665 Supreme Court in which minimum of pay-scale has been directed on the principle of equal pay for equal work and for providing dignity of service to daily wage employee."

9. Considering aforesaid judgments of Hon'ble Supreme which are clearly applicable in the present facts and circumstances of the case, rejection of petitioner's representation only on the ground that he is not entitled for regularization does not hold good ground once opposite parties themselves have admitted that he is continuing as a daily wage employee ever since the date of initial engagement in service and particularly since there is no denial of the fact that he is performing the same duties and functions as that of regular of employees on the same post.

10. In view of the aforesaid, the impugned order dated 04.09.2023 is quashed by issuance of writ in the nature of certiorari. Further writ in the nature of mandamus is issued commanding the opposite parties to ensure payment of minimum of the pay scale as applicable to regular employees working on equivalent posts.

11. Learned counsel for opposite parties shall ensure compliance forthwith.

12. Consequently the petition succeeds and is **allowed**. Parties to bear their own cost.

Order Date :- 19.10.2023
Satish

Digitally signed by :-
SATISH KUMAR BHARATI
High Court of Judicature at Allahabad,
Lucknow Bench