



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WA/13/2018

THE NORTH EASTERN REGIONAL INSTITUTE OF SCIENCE AND
TECHNOLOGY NERIST
NIRJULI, AP, REPRESENTED BY ITS REGISTRAR 2: THE BOARD OF
MANAGEMENT

Age:
Occupation

VERSUS

SMT. GITESH TIWARI
W/O SHRI S.K TIWARI, PRESENTLY SERVING AS CASUAL LABOUR
TEMPORARY STATUS HINDI TYPIST UNDER NORTH EASTERN REGIONAL
INSTITUTE OF SCIENCE AND TECHNOLOGY NERIST NIRJULI, AP.
2:THE UNION OF INDIA

Age: 0
Occupation

Advocate for the Petitioner : MR.K Lollen

Advocate for the Respondent :

BEFORE
HONBLE MR. JUSTICE KALYAN RAI SURANA
HONBLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Judgment & Order (Oral)

Date : 22.05.2024
(N. Unni Krishnan Nair: J)

Heard Mr. K. Lollen, learned counsel for the appellant. Also heard Mr.

H. Lampu, learned counsel for the respondent no. 1/writ petitioner and Mr. M. Kato, learned DSGI appearing for the performa respondent no. 2.

2. The North Eastern Regional Institute of Science and Technology (NERIST) (herein after referred to as the appellant Institute) as appellant has instituted the present intra-Court appeal presenting a challenge to the judgment and order, dated 28.11.2017, passed by the learned Single Judge allowing the WP(C) No. 326(AP)/2015, instituted by the respondent no. 1/writ petitioner herein.

3. The facts leading to the institution of WP(C)/326(AP)/2015, is briefly noticed herein under:-

(i) The respondent no. 1 was initially engaged as a Lower Divisional Clerk (LDC) on contingent basis at a consolidated wages of Rs. 930/- p.m., by the appellant Institute vide a communication dated 24.11.1995 for a period of 89 days w.e.f. 27.11.1995. The petitioner was given extensions from time to time till 25.04.1998. It is to be mentioned that although the petitioner was initially engaged for the work of the post of LDC, subsequently, she was engaged as a Hindi Typist in the appellant Institute.

(ii) The services of the petitioner on contingent basis was terminated by the appellant Institute on 26.04.1998, which led to the institution of Civil Rule No. 2349/98 by the respondent no. 1/writ petitioner before the Principal Seat of this Court. The said writ application was subsequently transferred to this Bench and re-numbered as WP(C) No. 378(AP)/2001. The said writ

petition was given a final consideration and this Court, vide order dated 20.12.2002, proceeded to dispose of the said writ petition with a direction to the authorities of the appellant Institute to consider the case of the petitioner for regularization of her services as and when such exercise is undertaken for persons similarly situated and working in the said appellant Institute. It was further provided that till the time the petitioners' case is considered for regularization, she be allowed to remain in services and shall not be replaced by any other adhoc employee. Basing on the said direction as passed by the learned Single Judge in the matter, in the said writ petition, the appellant Institute vide order dated 20.01.2003, proceeded to allow the respondent no. 1 herein to continue as a Hindi Typist on contingent basis at a consolidated wages of Rs. 1499/- p.m. w.e.f. from 23.12.2002, until further orders. The period w.e.f. the date of her termination till her reinstatement i.e. w.e.f. 24.06.1998 to 22.12.2002, she was held to be not entitled for any wages, inasmuch, she was not in the rolls of the appellant Institute during that period.

(iii) The respondent no. 1 after being so reinstated in her services, had noticed that she was being paid her wages at a lower rate than that paid to persons projected to be similarly situated like her and accordingly, she approached the authorities by way of a representation dated 27.03.2003, for enhancement of her wages. The appellant Institute thereafter, considered the case of the petitioner in the light of the Government of India decision holding the field in this connection and it was ultimately decided that the petitioner would be entitled to 1/30th of the minimum basic pay of LDC along with DA as applicable for the period of the services rendered by her as a contingent Hindi Typist w.e.f. 23.12.2002. The said enhancement of pay of

the petitioner was so effected vide order dated 13.04.2006, issued by the Registrar of the appellant Institute. It is to be noticed that in the said order it was mentioned that the petitioner having not completed 240 days of continuous service in the Institute before 01.09.1993, she was being authorized daily wage @ 1/30th of minimum basic pay of LDC along with the applicable DA.

(iv) The petitioner thereafter, vide her representation dated 23.05.2013, proceeded to make a prayer before the authorities of the appellant Institute for considering her case for conversion from that of a 1/30th pay status employee to that of the Temporary Status employee. The said prayer of the petitioner was given its consideration and accordingly, vide order dated 15.05.2013 in terms of the resolution already adopted by the Board of Management of the Institute, in its meeting held on 09.04.2013, proceeded to effect conversion of the respondent no. 1 herein from that of a 1/30th pay status employee to that of a Temporary Status employee w.e.f. 09.04.2013. The pay of the respondent no. 1 was so fixed in PB-1 with GP Rs. 1800/-.

(v) The order dated 15.05.2013, came to be modified vide an order dated 29.08.2013, and vide the same, the scale of pay as applicable to the respondent no. 1 was disclosed as Rs. 5200-20000 along with Grade pay (GP) of Rs.1800/- while other stipulations as made in the order dated 15.05.2013 continued to hold the field.

(vi) The respondent no. 1 being aggrieved by the GP as authorized to her i.e. Rs. 1800/- and claiming that her GP ought to be fixed @ Rs. 1900/-

p.m., which she contends to be the GP as authorized to the post of LDC, approached the authorities praying for effecting necessary rectifications in the orders dated 15.05.2013 read with the order dated 29.08.2013. The said representation of the respondent no. 1 herein was given its due consideration and vide the communication dated 14.11.2013, the said prayer of the petitioner, on consideration, came to be rejected. The petitioner thereafter, did not approach the authorities any further till 09.03.2015 when the petitioner submitted a representation reiterating her prayer for being authorized her pay in the PB-1 of Rs. 5200-20,000 along with GP of Rs. 1900/-.

(vii) The said prayer of the petitioner not having been entertained by the respondent authorities, she approached this Court by way of instituting WP(C) No. 326(AP)/2015. The said writ petition being WP(C) No. 326(AP)/2015 was taken up for final consideration and the learned Single Judge, vide judgment and order dated 28.11.2017, proceeded to dispose of the same, directing the respondent authorities to fix the pay of the petitioner at the same scale of pay as that of LDC as per the recommendation of the 6th CPC.

Being aggrieved, the appellant Institute has instituted the present appeal.

4. The learned counsel for the appellant has submitted that the authorization of daily wage of 1/30th of the minimum pay scale of the post of LDC+DA as was authorized to the petitioner, vide the communication dated 13.04.2006 was on account of an error occasioning in the matter, inasmuch as, the petitioner being a contingent employee was only entitled to receive

her wages in terms of the policy of the Central Government, applicable in the matter and adopted by the appellate Institute, in the minimum of the pay scale of a Group-D employee. In this connection, the learned counsel for the appellant has drawn the attention of this Court to the decision of the Board as available in the matter and annexed to the writ appeal as Annexure-4, to contend that the decision of the Board was to pay daily wages to casual workers, who were working on continuous basis at 1/30th of the minimum pay scale of the regular Group-D post along with the applicable DA. However, the respondent no. 1 on account of an error/oversight came to be authorized her daily wages of pay @ 1/30th of the minimum pay scale as drawn by a regular incumbent in the post of LDC. The learned counsel for the appellant has further submitted that adopting the decision of the Government of India in the matter, the Board Management proceeded to adopt a resolution in its meeting held on 09.04.2013 to give temporary status to the employees of the Institute, who had completed 240 days of continuous service as on 01.09.1993 and also on consideration of the category of casual workers who were being paid their daily wages at the 1/30th status, the Board resolved to convert the eligible persons in the 1/30th pay status to that of Temporary Status employee. However, it was recorded in the said resolution that the same would not be treated as a precedent.

5. The learned counsel for the appellant has further submitted that the said resolution of the Board was implemented in the case of the respondent no. 1 herein, and on her conversion to that of a temporary status employee, she was given her pay in PB-1 with GP-1800/- w.e.f. 09.04.2013, vide an order dated 15.05.2023. In support of his submission that the respondent no. 1 is not entitled to draw the pay scale of the post of LDC, has relied upon

an OM dated 23.01.2012, issued by the Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training, Govt.of India) wherein, it was decided that persons who have been granted temporary status would be now authorised their pay in PB-1 with GP of Rs. 1800/- w.e.f. 01.01.2006, provided that they are matriculate. The learned counsel has further submitted that the prayer as made by the petitioner for enhancement of her Grade pay was rejected by the Institute authorities vide a communication dated 14.11.2013 and the petitioner had accepted such conversion of her status to that of a Temporary Status employee, with the Pay band attached to it. Thereafter, after lapse of around 3(three) years, the petitioner has instituted the writ petition no. WP(C)/326(AP)/2015, raising the said grievance.

6. Mr. K. Lollen, learned counsel for the appellant by referring to the judgment and order of the learned Single Judge, dated 28.11.2017, has submitted that the learned Single Judge in his said judgment had noticed the contention of the appellant Institute that the petitioner had no grievance with regard to the up-gradation of her service status but, was only aggrieved by the fixation of her pay and authorization of her GP @ Rs. 1800/- p.m. However, in spite of noticing the said contention, the learned Single Judge by placing reliance on the decision of the Hon'ble Supreme Court of India in the case of *State of Punjab & Ors. Vs. Jagjit Singh & Ors.*, reported in 2017(1) GLT (SC) 47, had proceeded to conclude that the petitioner, initially having been granted her daily wages at 1/30th of the basic pay of LDC along with the applicable DA, the petitioner is required to be continued to be paid in the same scale of pay i.e. of the post of LDC on her conversion to that of a Temporary Status employee. It is contended that the learned Single Judge

had misread the decision of the Hon'ble Apex Court in the case of *Jagjit Singh (supra)*, inasmuch as, the said case has got no application to the case of the petitioner as the same only pertains to the wages that a casual worker would be entitled to draw, whereas in the case of the petitioner, she was authorized a scale of pay, strictly, in accordance with the decisions of the Government of India in this connection, more particularly, the decision as contained in the OM dated 23.01.2012. Accordingly, it is contended that in the Institute, there being no post of Hindi Typist created in the status and pay scale of LDC, the petitioner cannot demand that she is to be paid her remuneration in the scale of pay of LDC. It was contended that the directions as passed by the learned Single Judge has the effect of creation of a post by the Court in the matter, which admittedly, was contended to be not permissible.

7. In the above premises, the learned counsel for the appellant has prayed that this Court would be pleased to interfere with the judgment and order, dated 28.11.2017, passed by the learned Single Judge in WP(C) No. 326(AP) of 2015.

8. Per contra, Mr. H. Lampu, learned counsel for the respondent no. 1 has at the outset submitted that the conclusions as reached in the impugned judgment and order, dated 28.11.2017, being so reached by the learned Single Judge, basing on the materials available on record, which has been contended to be undisputable, has prayed that the same requires no interference from this Court.

9. The learned counsel for the respondent no. 1 has submitted that the appellant Institute on its own motion having determined the equivalence of the works done by the petitioner as a Hindi Typist to that of the post of LDC, and she having been authorized enhanced daily wages @ of 1/30th of the minimum pay scale of the post of LDC along with the applicable DA, the appellant Institute cannot be permitted to change its stand in the matter while upgrading the service status of the petitioner from that of a contingent worker to that of Temporary Status employee, inasmuch as, she had continued to discharge the same nature of duties, like before, even after being granted the Temporary Status.

10. The learned counsel has further submitted that the Institute authorities, on her re-instatement in services, in pursuance to the directions passed by this Court, had authorized to her, wages @ 1/30th of that of the minimum of the scale of pay authorised to the post of LDC, by determining the nature of her duties to be similar to that of LDC. It is further contended by Mr. Lampu that such determination of equivalence being so made in terms of the decision of the Hon'ble Apex Court in the case of *Jagjit Singh (supra)*, the subsequent authorization by the authorities of her salaries as a Temporary Status employee in PB-1 with GP of Rs. 1800/- being lower than that authorized to the post of LDC, the learned Single Judge, appreciating the said fact having directed the enhancement of the scale of pay as authorized to her to that of the post of LDC, it was contended that the direction of the learned Single Judge being supported by materials available on record, does not call for any interference.

11. We have considered the submissions as advanced by the learned counsel appearing for the parties and also perused the materials brought on record.

12. It is not disputed that the respondent no. 1 herein, was initially recruited on contingent basis in the appellant Institute for the works related to LDC and thereafter, given the necessity as arising, she was engaged as a Hindi Typist in the Institute. The services of the respondent no. 1 having been terminated, she had instituted WP(C) No. 378(AP)/2001 before this Court and this Court, vide order dated 20.12.2002, had directed that till her case for regularization is so considered, shall be permitted to remain in services and shall not be replaced by another adhoc employee. In terms of the directions passed by this Court, the petitioner was vide order dated 20.01.2003, allowed by the authorities of the appellant Institute to continue on contingent basis as a Hindi Typist. The Board of the appellant Institute had thereafter, resolved to pay daily wages to casual workers who were working regularly in the Institute @ 1/30th of the pay of the minimum pay scale of Group-D post along with the applicable DA. Such resolution was so adopted in the light of the decision of the Government of India available in the matter. However, while extending the said decision of the Board to the case of the respondent no. 1 herein vide the order dated 13.04.2006, the said prescription as made in the Boards' resolution was not applied and the respondent no. 1 herein, was authorized her daily wages @ 1/30th of the minimum basic pay of the LDC along with the applicable DA. The said wages of the petitioner were so authorized to her w.e.f. 23.12.2002.

13. Thereafter, it is seen that the Board had proceeded to adopt a resolution for conversion of the employees now working at 1/30th of the minimum pay to that of Temporary Status employees. In terms of the said decision of the Board, the authorities of the said Institute vide order dated 15.05.2013, proceeded to convert the status of the petitioner from that of a 1/30th pay status employee to that of a Temporary Status employee w.e.f. 09.04.2013. The petitioner vide the order dated 15.05.2013 was authorized her wages in PB-1 with GP of 1800/-. The petitioner accepted the said up-gradation of her service status to that of a Temporary Status employee, however, being aggrieved by the pay as authorized to her, proceeded to submit representations in the matter. The representations as submitted by the petitioner in the matter was rejected by the authorities vide the order dated 14.11.2013.

14. A perusal of the prayers made by the respondent no. 1, herein, in WP(C)/326(AP)2015, reveals that the petitioner had neither challenged the order dated 15.05.2013 read with the order dated 29.08.2013, nor, the rejection of her said representations as made vide the order dated 14.11.2013 and the petitioner had only prayed for re-fixation of her pay in terms of the CCS (Revised Pay) Rules, 2008 at the stage of Rs. 5800+1900 in the revised pay band of Rs. 5200 as 20,000+1900 GP, which was contended to be corresponding to the 5th CPC pay scale applied in her case i.e. the scale of pay of Rs. 3050-4590.

15. At this stage, it is to be noted that the appellant Institute had categorically contended before the learned Single Judge that in the appellant

Institute, there is no post of Hindi Typist created at the status of LDC and accordingly, the pay of the petitioner was held to be not permissible to be enhanced to that of GP of Rs. 1900/-. The Government of India, vide OM dated 23.01.2012 had stipulated that the wages of employees granted Temporary Status as of 01.01.2006 be fixed in the PB-1 with GP of Rs. 1800/- provided that they are matriculate. The grievance as raised by the petitioner in the matter, relates to the manner in which her pay was fixed upon grant of Temporary Status to her and has claimed that such fixation has to be done in the manner her wages were fixed while granting to her the status of @ 1/30th status employee, wherein her such pay was so fixed comparing it with that of the post of LDC. It is to be noted that the said exercise was categorically admitted by the appellant Institute to be an error. In addition to the above facts, the decision as arrived at in the matter by the Board and available on record, demonstrates that the Board had resolved that the payment of daily wages to casual workers who are in regular service of the appellate Institute would be @ 1/30th of the pay of minimum pay scale of Group-D along with applicable DA. However, the said decision of the Board was not complied with by the sub-ordinate authorities of the appellate Institute while extending the said benefit to the petitioner. The petitioner at this stage, cannot be permitted to take advantage of the apparent error as committed by the appellate Institute in the matter in authorizing to her the minimum of the wages as fixed against the post of LDC, because, she was only entitled to be so authorized her wages @ of 1/30th of pay at the minimum scale of pay as authorized against a Group-D post in the appellant Institute.

16. The reliance placed by the respondent no. 1 before the learned Single

Judge, on the decision of the Hon'ble Supreme Court of India in the case of *Jagjit Singh (supra)*, in our considered view, would not advance the cause of the respondent no. 1 herein, inasmuch as, the same would have no application to the facts as involved in her case. The service status of the respondent no. 1 on being upgraded from that of a 1/30th status employee to that of a Temporary Status employee, the same has to comply with the decisions of the Government of India, adopted by the Board of the appellate Institute in the matter, and the said decision and the adoption of resolution as made in the matter being to authorize such Temporary Status employee, the pay scale as authorized to a Group-D post, the petitioner cannot be permitted to claim to be authorized a scale of pay which is higher than that as decided to be applied in case of Temporary Status employee. The said decision in the case of *Jagjit Singh (supra)* would have no application to the issue pertaining to the authorization of scale of pay to the petitioner on her being granted Temporary Status.

17. We would also like to note at this stage that the respondent no. 1 herein had not made any endeavor in the writ proceedings or, in the present proceedings to establish the equivalence between the post of a Hindi Typist and that of the post of LDC. The entire writ petition was structured on the plea that she having been granted wages @ of 1/30th in comparison to that of the scale of pay authorized to the post of LDC, on up-gradation of her status to that of a Temporary Status employee, she must be continued to be extended the similar benefit. Unfortunately, the said contention of the respondent no. 1 herein cannot be accepted in view of the policy as existing in the matter and also the fact that in the appellant Institute, undisputedly, there is no post created of Hindi Typist equivalent to that of an LDC.

18. In view of the above discussions, we are of the considered view that no rights of the petitioner came to be infringed in the matter in authorizing to her pay in PB-1 with GP of Rs. 1800/- and the same having been found to be in consonance with the decisions arrived at in the matter by the Board of the appellant Institute, which again was so arrived at by adopting the decisions of the Government of India in the matter, does not call for any interference by way of a judicial review of the same.

19. In view of the foregoing discussions, it being apparent that the learned Single Judge, had not appreciated the contentions as made in this connection, by the appellant Institute as well as materials available on record in this connection, the decisions as arrived at in the matter by the learned Single Judge, vide the order dated 28.11.2017 in WP(C) No. 326(AP)/2015, calls for an interference by this Court and accordingly, the said judgment and order dated 28.11.2017 stands set aside.

20. In view of the above conclusions, the present writ appeal stands allowed in the above terms. The writ petition as filed by the petitioner accordingly, stands dismissed.

JUDGE

JUDGE

Comparing Assistant