

GAHC020003942023



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

Case No. : WP(C)/158/2023

SMTI. IRANGRWALE@IRANGWALE
SWEEPE (FIXED),
DISTRICT HORTICULTURE OFFICE,
PEREN, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 5 ORS
THROUGH THE CHIEF SECRETARY TO THE GOVERNMENT OF NAGALAND,
KOHIMA

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
NAGALAND
PERSONNEL AND ADMINISTRATIVE REFORMS DEPARTMENT
NAGALAND
KOHIMA

3:THE FINANCIAL COMMISSIONER
TO THE GOVERNMENT OF NAGALAND
NAGALAND
KOHIMA

4:THE SECRETARY
TO TE GOVERNMENT OF NAGALAND
DEPARTMENT OF HORTICULTURE
NAGALAND
KOHIMA

5:THE DIRECTOR
DIRECTORATE OF HORTICULTURE
NAGALAND
KOHIMA

6:THE DISTRICT HORTICULTURE OFFICER
PEREN
NAGALAND

Advocate for the Petitioner : KEKHRIESENULO

Advocate for the Respondent : GOVT ADV NL

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

ORDER

27.02.2024

Heard Ms. Kekhreisenuo, learned counsel appearing on behalf of the petitioner and Mr. Veto V. Zhimomi, learned Government Advocate appearing for the State respondents.

The instant writ petition has been filed by the petitioner seeking a direction upon the respondent authorities for payment of the minimum scale of pay in terms with the latest Revision of Pay adopted from time to time with arrears thereon. From the materials on record it reveals that the petitioner was appointed on 26.11.2008, to the post of Sweeper on Casual basis under the establishment of the District Horticulture Officer, Peren. The petitioner, on the basis of his appointment was being paid an amount of Rs. 5,205/- (rupees five thousand two hundred and five) per month. It is the specific case of the petitioner that the petitioner is discharging duties as those of the regular Grade-IV employees and hence, the petitioner deserves to be treated similarly while granting benefits as those of the regular Grade-IV

employees. On the basis of that the petitioner had submitted a representation on 21.06.2022 to the Director, Directorate of Horticulture, Nagaland, Kohima, requesting the said authority to grant the minimum scale of pay in terms with the latest ROP as given to the regular employees in his grade. The entire edifice of the case of the petitioner hinges upon the judgment of the Supreme Court in the case of ***State of Punjab & Others vs. Jagjit Singh***, reported in ***(2017) 1 SCC 148***. Taking into account that the representation of the petitioner has not been considered the petitioner has approached this Court by filing the present writ petition on 14.08.2023.

2. The record reveals that this Court, by an Order dated 17.08.2023 had issued notice. The respondents, inspite of availing various adjournments have not filed their affidavit-in-opposition.

3. Today, Mr. Veto V. Zhimomi, learned Government Advocate had submitted that similarly situated persons like the petitioner have been granted the minimum scale of pay in terms with the judgment in the case of ***Jagjit Singh*** (supra) by the Division Bench of this Court, however, an SLP has been preferred before the Supreme Court being SLP 35341-42-45-48/2023.

4. This Court had specifically enquired with the learned counsel appearing on behalf of the respondents as to whether the Supreme Court had stayed the judgment of the learned Division Bench of this Court. The learned Government Advocate with all fairness submits that as far as his knowledge goes there is no stay to the said judgment.

5. On the above backdrop this Court has heard the learned counsels appearing on behalf of the petitioner as well as the respondents and had given anxious consideration to the contentions so forwarded.

6. The Hon'ble Supreme Court in the case of **Jagjit Singh** (supra) while dealing with the claim of temporary employees had observed that the principle of "equal pay for equal work" has to be extended to the temporary employees (differently described as work-charged, daily wage, casual, *ad hoc*, contractual and the like). It was further observed that an employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities and certainly not in a welfare State. It was categorically observed that such an action besides being demeaning strikes at the very foundation of human dignity. It was observed, taking into account the facts involved therein, that there was no room for any doubt that the duties and responsibilities discharged by the temporary employees therein were the same as were being discharged by the regular employees. On the basis thereof the Supreme Court had categorically observed that all the temporary employees concerned in the batch of cases before the Hon'ble Supreme Court would be entitled to draw wages at a minimum of the scale of pay (at the lowest grade in the regular pay scale) extended to regular employees holding the same post. Paragraphs 57,58,60 & 61 of the said judgment being relevant is quoted herein below:

"57. There is no room for any doubt, that the principle of 'equal pay for equal work' has emerged from an

interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India, under Article 141 of the Constitution of India. The parameters of the principle, have been summarized by us in paragraph 42 hereinabove. The principle of 'equal pay for equal work' has also been extended to temporary employees (differently described as work-charge, daily-wage, casual, ad-hoc, contractual, and the like). The legal position, relating to temporary employees, has been summarized by us, in paragraph 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us, yet again.

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. Any one, 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 dependents 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.

60. Having traversed the legal parameters with reference to the application of the principle of 'equal pay for equal work', in relation to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and

responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of 'equal pay for equal work' summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State, that any of the temporary employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post.

61. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding, that all the concerned temporary employees, in the present bunch of cases, would be entitled to draw wages at the minimum of the pay-scale (- at the lowest

grade, in the regular pay- scale), extended to regular employees, holding the same post.”

7. In the instant case, it is seen that the petitioner claims that she has been appointed as Sweeper on Casual basis and she had rendered service for 16 (sixteen) years as on today. It is the specific case of the petitioner that the petitioner is also discharging duties as those of the regular Grade-IV employees. Further to that it is also the case of the petitioner that the petitioner's qualification is the same to that of Grade-IV employees. In that view of the matter, this Court is of the opinion that the law laid down by the Supreme Court in the case of **Jagjit Singh** (supra) and more particularly referring to the paragraphs above quoted would apply to the facts of the instant case.

8. This Court has also taken note of that the petitioner herein claims that she has been discharging the same duties as that of the regular Grade-IV employees as well as also that the petitioner has the same qualification to that of the Grade-IV employees. If that be so, the petitioner, in the opinion of this Court would be entitled to the minimum of pay scale (at the lowest grade in the regular pay scale) extended to the regular employees holding the same post.

9. This Court cannot also be unmindful of the fact that inspite of notice being issued to the respondents, the respondents have not cared to file their affidavit-in-opposition dealing with the averments made in the writ petition, more particularly as to whether the petitioner is rendering similar service to that of the regular employees and as to whether the

petitioner's qualification is one and the same to that of regular Grade-IV employees. This Court, however, is not inclined to pass, at this stage, directions for granting the petitioner the minimum of the pay scale (at the lowest grade in the regular pay scale) on the ground of doctrine of *non-traverse* without verification as to whether the petitioner discharges similar duties and has the same qualification of regular Grade-IV employees. This Court has duly taken note that there is a representation so submitted by the petitioner on 21.06.2022 which is presently pending. This Court, therefore, disposes of the instant writ petition with a direction to the respondent authorities and more particularly the respondent Nos. 3 & 6 to consider the representation of the petitioner on the basis of the observations made herein above and more particularly to the paragraphs quoted of **Jagjit Singh** (supra), and the said respondent authorities, upon verification finds that the petitioner herein performs/discharges similar work with that of Grade-IV employees and also has similar qualification, the petitioner be granted the minimum of the pay scale (at the lowest grade in the regular pay scale) extended to the regular employees holding the same post. The said exercise be completed within a period of 6 (six) weeks from the date a certified copy of this Order is served upon the respondent No. 6.

Sd/-
JUDGE

Comparing Assistant