

A.F.R.

Neutral Citation No. - 2024:AHC-LKO:30254

Court No. - 6**Case :-** WRIT - A No. - 4827 of 2022**Petitioner :-** Chhavi Ram**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Social Welfare Deptt. Lko And Another**Counsel for Petitioner :-** Avinash Tiwari, Anuj Kumar Mishra**Counsel for Respondent :-** C.S.C.**Hon'ble Abdul Moin, J.**

1. Heard learned counsel for the petitioner and Shri Saharsh Shrivastav, learned Additional Chief Standing Counsel for the respondents no. 1 and 2.
2. The instant writ petition has been filed praying for the following main relief(s):

"(i) issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 19.05.2022 passed by opp-party no.2 with all consequential benefits, as is contained in annexure no. 1 respectively to this writ petition.

(ii) issue a writ, order or direction in the nature of mandamus commanding the opposite parties to provide the regular pay scale of class IV post with yearly increments on the period of 22.07.1990 to 25.02.2002, with all other consequential benefits of service, within time as directed by this Hon'ble Court.

(iii) issue a writ, order or direction in the nature of mandamus commanding the opposite parties to refix the salary and post retirement benefits and pension of petitioner after providing regular pay scale of class IV post with yearly increments on the period of 22.07.1990 to 25.02.2002, within time as directed by this Hon'ble Court.

(iv) issue a writ, order or direction in the nature of mandamus commanding the opposite parties to grant and pay all retirement benefit of petitioner after counting his entire services for the purpose of qualifying service for retirement benefit."

3. The case set forth by the petitioner is that the petitioner had been appointed on daily wage basis on 22.07.1990 under the respondents. As the petitioner was not being paid the minimum pay scale he was constrained to approach this Court by filing Writ A No. 2023 of 1997 in re: Chhavi Ram vs State of U.P. and others praying for following reliefs:

"(i) issue a writ, order or direction in the nature of mandamus commanding the opposite parties to give regular scale of pay to the petitioner that is Rs.750-940 which is being given to the other counter-parts of the petitioner;

(ii) issue a writ, order or direction in the nature of mandamus commanding the opposite parties to regularise the services of the petitioner from the date of initial appointment that is 22.07.1990 in Class IV establishment and further.

(iii) issue a writ, order or direction in the nature of mandamus commanding the opposite parties to give all consequential benefits such as seniority in Class IV establishment from the date of initial appointment i.e. 22.7.1990, arrears of difference of pay and other benefits arising thereof."

4. During pendency of the aforesaid writ petition the service of the petitioner was regularised vide order dated 25.02.2002, a copy of which is annexure 2 to the petition. The petitioner was regularised on a class IV post in the pay scale of Rs 2550-55-2660-60-3200. The petitioner also retired on attaining the age of superannuation on 31.07.2021. Subsequent to his retirement, the writ petition filed by the petitioner has been decided vide judgement and order dated 12.04.2022, a copy of which is annexure 3 to the petition, whereby the writ court has permitted to the petitioner to file a fresh representation to the respondent no. 2 with respect of his grievance and the respondent no. 2 was directed to consider the same and pass a reasoned and speaking order. In pursuance thereof the claim of the petitioner for grant of minimum pay scale and increments has been rejected primarily on the ground that the petitioner has been regularized vide the order dated 25.02.2002 and other persons who have been granted a minimum pay scale

have been granted the same in pursuance to the order passed by the writ court.

5. Raising a challenge to the said order the instant writ petition has been filed with the reliefs as aforesaid.

6. The argument of learned counsel for the petitioner is that grant of minimum pay scale to daily wagers is no longer res-integra having been settled by Hon'ble Apex Court in the case of **Sabha Shanker Dube vs Divisional Forest Officer and others, 2019 (12) SCC 297** wherein Hon'ble Apex Court, after considering various other judgements, has held that temporary employees are entitled to draw wages at minimum of pay scales which are applicable to regular employees holding the said post. The contention is that when the petitioner was appointed on daily wages basis way back in the year 1990 and staked his claim for being given minimum pay scale in the year 1997 as such the petitioner is entitled for being given the minimum of pay scale of a class IV post with effect from the date of appointment till his regularization on 25.02.2002 with all attendant benefits including yearly increments.

7. With regard to claim for grant of yearly increments reliance has been placed on a judgement of this Court in the case of **Gyan Prakash Srivastava and others vs State of U.P. and others** passed in **Writ Petition No. 5923 (SS) of 1996** decided on **18.10.2016**, a copy of which is annexure 7 to the petition which judgement has held that daily wagers who have been given a regular pay scale would be entitled to annual increment.

8. On the other hand, learned Standing Counsel on the basis of averments contained in the counter affidavit argues that as the petitioner already stands regularised in service on 25.02.2002 and now stands retired on 31.07.2021 consequently there cannot be any occasion for grant of minimum pay scale to the petitioner.

9. So far as grant of increments to petitioner is concerned on the basis of judgement of this Court in the case of **Gyan Prakash Srivastava (supra)**,

reliance has been placed on judgement of Hon'ble Apex Court passed in the case of **State of U.P. & others vs Puttilal, 2006 (9) SCC 337** to contend that Hon'ble Apex Court has held that grant of minimum pay scale to a daily wager would not entail grant of any increment or any other allowance and thus the petitioner is not entitled for any increment on payment of minimum pay scale or other allowances.

10. Heard learned counsels for the parties and perused the records.

11. From perusal of record it emerges that the petitioner was initially appointed on daily wages in July 1990. As he was not being paid the minimum of pay scale, he staked his claim for being given minimum pay scale by filing Writ A No. 2023 of 1997 praying for being granted the regular scale of pay of Rs 750-940 and to regularise his services. During pendency of writ petition the service of the petitioner was regularised on 25.02.2002. The petitioner has retired from service on attaining the age of superannuation on 31.07.2021. Subsequent to the petitioners regularisation and retirement from service, the writ petition filed by the petitioner for grant of minimum pay scale has been decided vide the judgement and order dated 12.04.2022 leaving it open to the petitioner to submit a representation and the respondents were required to decide the said representation in accordance with law. The said representation and the claim of the petitioner for grant of minimum pay scale has been rejected vide the order impugned dated 19.05.2022 primarily on the ground that as the petitioner now stands regularised on 25.02.2002 as such he would not be entitled for grant of minimum pay scale apart from the fact that various other persons who have been granted minimum of pay scale have been granted the same in pursuance to the order of this Court.

12. The grant of minimum pay scale to a person working on daily wage basis is no longer res-integra having been settled by Hon'ble Apex Court in the case of **Sabha Shanker Dube (supra)** wherein Hon'ble Apex Court has held as under:

"9. The daily-wagers relied upon a judgment of this Court in *Putti Lal [State of U.P. v. Putti Lal, (2006) 9 SCC 337 : 2006 SCC (L&S) 1819]* and submitted that the same relief may be extended to them. It is relevant to note that the judgment in *Putti Lal [State of U.P. v. Putti Lal, (2006) 9 SCC 337 : 2006 SCC (L&S) 1819]* relates to a dispute similar to that involved in this case. Daily-rated wage earners in the Forest Department in the State of Uttar Pradesh approached the High Court for regularisation of their services. The Division Bench of the High Court of Allahabad directed the State Government to constitute the Committee as directed in order to frame the scheme for regularisation. The judgment of the High Court that the daily-rated wage workers shall be paid at the minimum of the pay scales was affirmed by this Court on the principle of equal pay for equal work. The Division Bench of the High Court while deciding *State of U.P. v. Chhiddi [State of U.P. v. Chhiddi, 2015 SCC OnLine All 9087 : (2016) 1 All LJ 226]* referred to the judgment in *Putti Lal [State of U.P. v. Putti Lal, (2006) 9 SCC 337 : 2006 SCC (L&S) 1819]* but placed reliance on a later judgment of this Court in *Tilak Raj [State of Haryana v. Tilak Raj, (2003) 6 SCC 123 : 2003 SCC (L&S) 828]*. The Division Bench of the High Court also cited *Surjit Singh [State of Punjab v. Surjit Singh, (2009) 9 SCC 514 : (2009) 2 SCC (L&S) 696]* to hold that the daily-wagers cannot seek the benefit of the judgment of *Putti Lal* case [*State of U.P. v. Putti Lal, (2006) 9 SCC 337 : 2006 SCC (L&S) 1819]* in view of the subsequent decisions of this Court wherein, according to the High Court, it was held that daily-wage employees were not entitled to the minimum of the pay scales.

10. 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 [State of Punjab v. Jagjit Singh, (2017) 1 SCC 148 : (2017) 1 SCC (L&S) 1]* held as follows: (SCC p. 223, para 58)

"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."

11. The issue that was considered by this Court in *Jagjit Singh [State of Punjab v. Jagjit Singh, (2017) 1 SCC 148 : (2017) 1 SCC (L&S) 1]* 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 [State of Haryana v. Tilak Raj, (2003) 6 SCC 123 : 2003 SCC (L&S) 828]* and *Surjit Singh [State of Punjab v. Surjit Singh, (2009) 9 SCC 514 : (2009) 2 SCC (L&S) 696]*, **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.**

12 In view of the judgment in *Jagjit Singh [State of Punjab v. Jagjit Singh, (2017) 1 SCC 148 : (2017) 1 SCC (L&S) 1]*, 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 scales. We are not called upon to adjudicate on the rights of the appellants relating to the regularisation of their services. We are concerned only with the principle laid down by this Court initially in *Putti Lal [State of U.P. v. Putti Lal, (2006) 9 SCC 337 : 2006 SCC (L&S) 1819]* relating to persons who are similarly situated to the appellants and later affirmed in *Jagjit Singh [State of Punjab v. Jagjit Singh, (2017) 1 SCC 148 : (2017) 1*

SCC (L&S) 1] that temporary employees are entitled to minimum of the pay scales as long as they continue in service.

*14. 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 1-12-2018."*

(emphasis by the Court)

13. From a perusal of the judgment of Hon'ble Apex Court in the case of **Sabha Shanker Dube (supra)** it emerges that Hon'ble Apex Court after considering its earlier judgements in the case of **Tilak Raj (supra)** and **Jagjit Singh (supra)** has held that temporary employees are entitled to minimum of pay scales which are applicable to regular employees holding the same post. Once admittedly the petitioner was working as a temporary employee / daily wager right since the year 1990 and he staked his claim for being granted the minimum pay scale in the year 1997 and Hon'ble Apex Court has also held that a temporary employee would be entitled to draw wages at minimum of pay scales which are applicable to the regular employees holding the same post consequently, there cannot be any occasion for non grant of minimum pay scale to the petitioner as are applicable to regular employees holding the same post and accordingly the petitioner is entitled for grant of minimum of pay scale for a period from three years prior to filing of writ petition in the year 1997 i.e. since the year 1994 with arrears of pay till his regularisation on 25.02.2002.

14. So far as the relief of grant of increments is concerned, the sheet anchor of the claim of the petitioner is the judgement of this Court in the case of **Gyan Prakash Srivastava (supra)** wherein this Court has held as under:

"Since petitioners had been appointed in the years 1982, 1983 and 1984 as Junior Clerk on daily wage basis against the sanctioned post of Junior Clerks and their services have been regularized and they have been given pay scale of regular

Junior Clerk from the date of their initial appointment, there appears no reason not to provide annual increments to them from the date of their initial appointment. The stand taken by the opposite parties for not providing annual increments to petitioners from the date of initial appointments being not in accordance with law, rather being without any basis and justification, the order dated 15th may 1996 of the State Government denying annual increments to petitioners from the date of their initial appointment is not sustainable in the eyes of law. The order is, therefore, quashed and opposite parties are directed to provide annual increments to petitioners from the date of their initial appointment within a period of three months from the date of production of certified copy of this order."

15. However Hon'ble Apex Court in the case of **Puttilal (supra)** has held as under: paragraph 5 dalna hai

*"5. In several cases, this Court, applying the principle of equal pay for equal work has held that a daily-wager, if he is discharging the similar duties as those in the regular employment of the Government, should at least be entitled to receive the minimum of the pay-scale though he might not be entitled to any increment or any other allowance that is permissible to his counterpart in the Government. In our opinion, that would be the correct position and we, therefore, direct that these daily-wagers would be entitled to draw at the minimum of the pay-scale being received by their counter-part in the Government and **would not be entitled to any other allowances or increment so long as they continue as daily-wager**. The question of their regular absorption will obviously be dealt with in accordance with the statutory rule already referred to."*

(emphasis by the Court)

16. From perusal of judgement of Hon'ble Apex Court in the case of **Puttilal (supra)** it clearly emerges that though daily wagers would be entitled for grant of minimum pay scale yet would not be entitled to draw any allowances or any increments while drawing the minimum pay scale.

17. Perusal of the judgement of **Gyan Prakash Srivastava (supra)** would indicate that the said judgement has been passed by Hon'ble Single Judge of this Court. However while passing the said judgement, the writ court has failed to consider the judgement of Hon'ble Apex Court in the case of **Puttilal (supra)** wherein the Apex Court has categorically held that though the daily wagers are entitled for grant of minimum pay scale yet they would not be entitled to draw any increments.

18. Thus the single bench judgement of this Court in the case of **Gyan Prakash Srivastava (supra)** would have to give way to the judgment Hon'ble Apex Court in the case of **Puttilal (supra)**. Accordingly, the petitioner would not be entitled to draw any increments on the minimum pay scale which would be payable to him.

19. As regards the prayer of counting entire service rendered by petitioner as daily wager for the purpose of qualifying service for retirement benefits, though no arguments have been advanced by both learned counsel for the petitioner and learned Additional Chief Standing Counsel on the said prayer yet what the Court finds is that keeping in view the promulgation of the Uttar Pradesh Qualifying Service for Pension and Validation Act, 2021 (hereinafter referred to as the Act, 2021) which defines qualifying service as the services rendered by an officer appointed on a temporary or permanent post in accordance with the provisions of the service rules prescribed by the Government for the post and the fact that a full bench of this Court in a bunch of writ petitions leading being **Writ Petition No. 25955 (SS) of 2017 in re: Ram Das Yadav vs State of U.P. and others** decided on 08.11.2021 after considering the judgement of Hon'ble Apex Court in the case of **Habib Khan vs State of Uttarakhand** passed in **Civil Appeal No. 10806 of 2017** decided on 23.08.2017 and considering Regulations 370 of the U.P. Civil Service Regulations as well as judgement of Hon'ble Apex Court in the case of **Prem Singh vs State of U.P. and others, 2019 (10) SCC 516** has held that with promulgation of Act, 2021 defining qualifying services for pension which Act has been given retrospective effect from 01.04.1961 and the

validity of the Act has been challenged in a bunch of petitions the leading being Writ Petition No. 25955 (SS) of 2017 as such the relief prayed for by the petitioner may not survive as the same will depend on the result of the petitioner challenging the vires of the Act, 2021. Accordingly, considering the full bench judgement in the case of **Ram Das Yadav (supra)** the petitioner, if so advised, may challenge the vires of the Act, 2021.

20. Considering the aforesaid discussion, the writ petition is **partly allowed**. The order impugned dated 19.05.2022, a copy of which is annexure 1 to the petition, is quashed. The respondents are directed to pay the minimum of pay scale to the petitioner as was applicable to regular employees working on the same post. The pay scale shall be payable along with arrears with effect from 3 years prior to filing of Writ A No. 2023 of 1997 till the date of regularization of the petitioner i.e. till 25.02.2002.

21. Let the compliance be made within a period of three months from the date of production of a certified copy of this order.

Order Date :- 16.4.2024

J. K. Dinkar