

Court No. - 4

Case :- WRIT - A No. - 35454 of 2018

Petitioner :- Sant Kumar

Respondent :- State Of U.P.Throu.Prin.Secy.Horticulture And Food Lko.And Ors.

Counsel for Petitioner :- Anurag Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Rajesh Singh Chauhan,J.

1. Heard Sri Anurag Kumar, learned counsel for the petitioner and Sri Ashwani Kumar Singh Rathore, learned Standing Counsel for the State.

2. By means of this writ petition, the petitioner has prayed for the following reliefs:-

"(i) to issue a writ, order or direction in the nature of certiorari thereby quashing the impugned order dated 25.10.2018 passed by the opposite party No.2, as contained in Annexure No.17 to the writ petition.

(ii) to issue a writ, order or direction in the nature of mandamus thereby commanding the opposite parties to pay the minimum wages/ minimum of the pay scale to the petitioner while discharging the duties on the post of Computer Operator/ Junior Clerk in the office of the District Horticulture Officer, Jalaun at Orai which comes under the Fool & Horticulture Department of State of U.P. forthwith."

3. Learned counsel for the petitioner has stated that the impugned order dated 25.10.2018 is passed by the opposite party No.2 only on the alleged basis that the petitioner has not been engaged against any substantive post, rather, he is working on daily wages basis in the department and further no post of Computer Operator in the substantive nature is available. The above said alleged basis as mentioned in the impugned order is wholly fallacious and misleading in view of the fact that the grievance of the petitioner is to get the minimum wages while discharging his duties on daily wages basis in view of the directions issued by the State Government dated 17.03.2011 and the regularization.

4. Learned counsel for the petitioner has further submitted that the issue in question is no more *res integra* inasmuch as vide judgment and order dated 25.01.2019 passed in Writ Petition (S/S) No.16326 of 2017; Ramesh Kumar Yadav vs. State of U.P. & others; this Court allowed the writ petition directing the

opposite parties to make payment of minimum of the pay-scale to those petitioners in the same manner as is being paid to the regular employees. For convenience, the order dated 25.01.2019 reads as under:-

"Heard learned counsel for the petitioner and learned Standing Counsel.

The present petition has been filed seeking the following reliefs:-

"(i) To issue a writ order or direction in the nature of certiorari thereby quashing the impugned order dated 03.03.2017 passed by the opposite party No.2 as contained in Annexure -9 to the writ petition;

(ii) To issue a writ order or direction in the nature of mandamus thereby commanding the opposite parties to pay the minimum of the pay scale discharging the duties on the post of Driver belonging to Class-III category in Raj Bhawan Udyan, Lucknow forthwith;

(iii) To issue any other writ order or direction which this Hon'ble Court may deem just and proper in the nature and circumstances of the case;

(iv) To award the cost of this writ petition."

Contention of the learned counsel for the petitioner is that petitioner was engaged on the post of Driver on daily wage basis under the control of Superintendent, Raj Bhawan Udyan, Department of Horticulture & Food Processing, Lucknow on 01.10.2005. Initially, he was getting a sum of Rs.58/- per day and at present he is getting a sum of Rs.161/- per day. It is further submitted that petitioner prayed for minimum pay scale equivalent to similarly situated employees, but his claim was not considered. Therefore, Writ Petition No. 6255 (S/S) of 2015 (Ramesh Kumar Yadav Vs. State of U.P. & others) was filed before this Court, which was disposed of vide order dated 29.10.2015. The order dated 29.10.2015 reads as under:-

"Heard learned counsel for the parties.

The petitioner claims to be working on daily wage basis in the Raj Bhawan Udyan, Lucknow. He claims the minimum of the pay scale on class-IV post on the ground that the persons appointed subsequent to him have been granted the said benefit vide order dated 15.09.2015 contained in Annexure No.6 to the writ petition. He also places reliance upon the judgment of this Court dated 19.12.2012 passed in Writ Petition No.6419 (SS) of 2009 (Mata Prasad and others vs. State of U.P. and others) wherein relying upon the dictum of the Supreme Court in the case of State of U.P. and others vs. Putti Lal reported in [(2002) 2 UPLBEC 12595] and Secretary, State of Karnataka and others vs. Umadevi(3) and others reported in (2006) 4 SCC 1, wherein this Court had issued direction for payment of minimum of the pay-scale admissible to class-IV employees without any increment and other allowances.

Considering the facts of the case, the writ petition is disposed of with a direction to opposite party no.2 to consider and decide the representation of the petitioner dated 26.09.2015 contained in Annexure No.4 to the writ petition keeping in mind the aforesaid assertion/observation within a period of six weeks from the date a certified copy of this order along with

the aforesaid judgment is produced before him.

Subject to aforesaid directions, the writ petition is disposed of."

By way of above extracted order, a direction was given to the Director, Horticulture & Food Processing, U.P. Lucknow, to consider and decide the representation of petitioner dated 26.09.2015 within a period of six weeks from the date of certified copy of the order.

Learned counsel for the petitioner has further pointed out that order dated 29.10.2015 was corrected vide order dated 20.07.2016. The order dated 20.07.2016 passed in Writ Petition No. 6255 (S/S) of 2015 reads as under:-

"(C. M. Application No. 127454 of 2015)

This is an application for correction of the order dated 29.10.2015 supported with affidavit.

The application is allowed.

In the third line of second paragraph of the order dated 29.10.2015 instead of the words 'on class-IV post' it should be read as 'on the post of Driver in the Department of Horticulture'.

The order dated 29.10.2015 is corrected accordingly."

In compliance of the above-mentioned directions, opposite party No. 2 considered the claim of petitioner and rejected the same vide impugned order dated 03.03.2017 (Annexure-9 to the writ petition), hence, the present petition has been filed.

It is evident from the record that petitioner was engaged as a daily wager to assist the Gardener (Mali). It is also admitted fact that presently he is working as a driver and driving the Government vehicle. It is also evident that no sanctioned post of driver is existing under the control of Superintendent, Raj Bhawan Udyan, Department of Horticulture & Food Processing, Lucknow.

Counter affidavit filed by Shri Dhirendra Kumar Mishra, Superintendent, Raj Bhawan Udyan, Department of Horticulture & Food Processing, Lucknow, is on the record. Paragraph 7 of the counter affidavit reads as under:-

"That in reply to the contents of paragraphs 5 and 6 of the writ petition, it is submitted that the petitioner in the month of October, 2005 had been engaged as Daily Wager (untrained) in the Rajbhawan Udyan for assisting the Mali and the Government vehicle which had been provided by the Directorate, Horticulture and Food Processing, U.P. to the Rajbhawan Udyan in the year 2012, the work of driving the said government vehicle was taken from the petitioner since the month of November, 2012."

It is, thus, admitted in the counter affidavit that petitioner was engaged as untrained daily wager in October, 2005 in the Raj Bhawan Udyan to assist the Gardener (Mali). The work of driving the Government vehicle is

assigned to him in November, 2012 and since then, he is performing his duties as a driver but as there is no such provision in Rules/Government order to give minimum pay scale to such workers, therefore, his claim was rejected.

It is undisputed that the petitioner is performing the duties of driver since November, 2012 satisfactorily under the control of Superintendent, Raj Bhawan Udyan, Department of Horticulture & Food Processing, Lucknow.

Hon'ble Supreme Court in a recent judgment dated 14.11.2018 passed in the case of **Sabha Shanker Dube Vs. Divisional Forest Officer & Ors.**, Civil Appeal No. 10956 of 2018, while considering the issue as to whether such persons are entitled for salary in the minimum of pay scale or not, held as under:-

"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.

In view of the facts mentioned in the writ petition and in the counter affidavit, the impugned order dated 03.03.2017 (Annexure-9) passed by opposite party No. 2 cannot be sustained and is hereby quashed.

The writ petition is **allowed**.

The petitioner is entitled to be paid minimum of the pay scale applicable to regular employees working on the same post. The opposite party No. 2 (Director, Horticulture & Food Processing Department, Lucknow) is directed to make payment of the minimum of pay scales to the petitioner forthwith."

5. The aforesaid order has been assailed by the State by filing the special appeal bearing **Special Appeal No.338 (Defective) of 2019; State of U.P. & others vs. Ramesh Kumar Yadav**; and the special appeal of the State was rejected by a speaking order vide judgment and order dated 18.09.2019, which reads as under:-

"Heard Shri Anand Singh, learned Counsel for the appellant-State and Shri Navneet Awasthi holding brief of Shri Anurag Srivastava, learned counsel for the respondent.

This special appeal has been filed against the judgment and order dated 25.01.2019 by which the learned writ court allowed the prayer and held that the respondent-petitioner is entitled to be paid minimum of the pay scale applicable to regular employees working on the said post and directed the appellant no.2 (Director, Horticulture & Food Processing Department, Lucknow) to make payment of the minimum of pay scales to him forthwith.

The brief facts of the case are that the respondent- writ petitioner was engaged on the post of Driver on daily wage basis under the control of Superintendent, Raj Bhwan Udyan, Department of Horticulture & Food Processing, Lucknow on 01.10.2005. Initially, he was getting a sum of Rs.58/- per day and at the time of filing writ petition he was getting a sum of Rs.161/- per day. He prayed for minimum pay scale equivalent to similarly situated employees, but his claim was not considered. Therefore,

Writ Petition No.6255 (S/S) of 2015 was filed before this Court, which was disposed of vide order dated 29.10.2015 with a direction to the opposite party no.2 to consider and decide the representation of the petitioner dated 26.09.2015 keeping in mind the aforesaid assertion/observation within a period of six weeks from the date of filing a certified copy of this order before him. On 03.03.2017, the claim of the respondent-writ petition was rejected. The respondent-writ petition challenged the said order by filing the writ petition on the ground that he was engaged as a daily wager to assist the Gardener (Mali) and present he was working as a Driver and driving the Government vehicle and prayed that he is entitled to the minimum pay scale of the Driver.

A detailed counter-affidavit was filed before the writ court. Paragraph-7 of the counter-affidavit reads as under:-

"That in reply to the contents of paragraphs 5 and 6 of the writ petition, it is submitted that the petitioner in the month of October, 2005 had been engaged as Daily Wager (untrained) in the Rajbhawan Udyan for assisting the Mali and the Government vehicle which had been provided by the Directorate, Horticulture and Food Processing U.P. to the Rajbhawan Udyan in the year 2012, the work of driving the said government vehicle was taken from the petitioner since the month of November, 2012."

It is, thus, admitted in the aforesaid para that the respondent-writ petitioner was engaged as untrained daily wager in October, 2005 in the Raj Bhawan Udyan to assist the Gardener (Mali). The work of driving the Government vehicle is assigned to him in November, 2012 and since then, he is performing his duties as a Driver.

Considering the aforesaid admission made by the State in para-7 of the counter-affidavit, the writ court has observed that the respondent-writ petition is performing the duties of driver since November, 2012 satisfactorily under the control of Superintendent, Raj Bhawan Udyan, Department of Horticulture & Food Processing, Lucknow and relying on the decision of the Apex Court in the case of Sabha Shanker Dubey Vs. Divisional Forest Officer & others, Civil Appeal No.10956 of 2018 decided on 14.11.2018, quashed the order dated 03.03.2017 and directed the appellant to pay minimum of the pay scale applicable to the regular employee working on the said post.

Learned counsel for the appellant has drawn our attention towards the decision of the Apex Court in the case of **State of Punjab and others Vs. Jagjit Singh and others** reported in **2017 (1) SCC 148** and averments made in the writ petition and submitted that in the writ petition there is no averments regarding to the fact that since November 2012 he was working as Driver and driving the government vehicle and therefore he is not entitled the relief granted by the writ court.

His next submission is that in the earlier round of litigation, he prayed for minimum of the pay scale of Class-IV post on the ground that the persons appointed subsequent to him have been granted as daily wage in 2018 but his representation for grant of said relief is pending and therefore the same may be decided on merit or minimum of the pay scale admissible to Class-IV employee. Learned writ court on 26.09.2015 disposed of the writ petition with a direction to decide the representation of the respondent-

writ petitioner.

After rejection of the representation, he filed the subsequent writ petition and wherein though the writ petition was not very happily worded but in the grounds he had taken the said plea for grant of minimum pay scale to the post on which he was working and thus we are not inclined to interfere in this special appeal. Moreover, the decision in the case of Jagjit Singh (supra), was considered in the year 2018 by the Hon'ble Apex Court in the case of Sabha Shanker Dubey (supra) and the learned writ court relying upon the aforesaid decision has passed the impugned judgment and order.

After considering the material on record, we find that there is no illegality in the order of the writ court and the special appeal filed by the appellant has no merit and is accordingly dismissed."

6. Challenging the aforesaid order, the State of U.P. has filed a special leave petition before the Hon'ble Supreme Court bearing Special Leave to Appeal (C) No.(s) 26625 of 2019; State of U.P. & others vs. Ramesh Kumar Yadav and the Hon'ble Supreme Court vide order dated 22.11.2019 dismissed the aforesaid special leave to appeal. Thereafter, the compliance order has been passed by the Competent Authority in favour of those petitioners.

7. Therefore, Sri Anurag Srivastava, has stated that the present issue in question is identical with the aforesaid matter, therefore, similar benefits may be directed to be provided to the present petitioner.

8. Sri Ashwani Kumar Singh Rathore, learned Standing Counsel has tried to justify the impugned order dated 25.10.2018 but could not dispute the aforesaid fact that the identical issue has been settled by the Apex Court . The learned Standing Counsel could not dispute the fact that the Apex Court in the case in re: **Shabha Shanker Dubey vs. Divisional Forest Officer & Ors., Civil Appeal No. 10956 of 2018** has passed the favourable order in favour of the employees of the Forest Department for making payment of minimum of the pay-scale applicable to the regular employees working on the said post.

9. Having heard learned counsel for the parties and having perused the material available on record as well as the orders passed by the learned Single Judge, Hon'ble Division Bench of this Court and the order of the Apex Court in identical matters and the dictum of Apex Court rendered in the case in re: **Shabha Shanker Dubey** (supra), the present writ petition is **allowed.**

10. The impugned order dated 25.10.2018 passed by the Director, Horticulture and Food Processing Department, U.P., Lucknow (Annexure No.17) is hereby quashed.

11. The opposite parties are directed to make payment of minimum of the pay-scales to the petitioner till he continues to discharge the duties on the post of Computer Operator/ Junior Clerk on daily wages basis.

12. No order as to the cost.

[Rajesh Singh Chauhan,J.]

Order Date :- 6.8.2024
Suresh/