

Court No. - 4

Case :- WRIT - A No. - 7323 of 2024

Petitioner :- Lekh Ram And 2 Others

Respondent :- State Of U.P. Thru. Its Prin. Secy. Forest Deptt.
Lko And Another

Counsel for Petitioner :- Prem Chandra Chauhan, Mahima
Dwivedi

Counsel for Respondent :- C.S.C.

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Sri Prem Chandra Chauhan, learned counsel for the petitioners and Sri Aniruddh Singh, learned Standing Counsel for the State-opposite parties.

2. By means of this petition, the petitioners have prayed following main reliefs:-

"(i) issue a writ order or direction in the nature of mandamus commanding the opposite parties to pay the minimum of the pay scale as has been given to similarly situated person namely Pawan Kumar Singh vide order dated 16.1.2023 till their regularization on group "D" posts.

(ii) issue a writ order or direction in the nature of mandamus commanding the opposite party No.2 provide the benefit of Government letter No. writ-105/81-3-2023-300(12)/2009, dated 22.2.2023 issued by the Chief Conservator of Forest and Head of Department."

3. Attention has been drawn towards Annexure No.9 of the writ petition, which is a judgment and order dated 02.08.2024 passed in Writ-A No.3601 of 2024, Narendra Kumar and Others Vs. State of U.P. and Others, which reads as under:-

"1. Heard Sri Balram Yadava, learned counsel for the petitioners, Sri R.P.S Chauhan, learned Additional Chief Standing Counsel for the State-respondent nos. 1 and 2 and Sri Pritish Kumar, learned Standing Counsel for the respondent nos. 3, 4 and 5.

2. By means of this petition, the petitioner has prayed the following relief(s):-

"(i) Issue a writ, order or direction in the nature of mandamus, commanding the opposite parties to make payment of salary in the minimum of the pay scale of Class-IV post(Zoo Keeper, Mali and Driver); i.e Rs. 18,000/- to 28,000/- to the petitioners.

(ii) Issue a writ, order or direction in the nature of mandamus, commanding the opposite parties to regularize the services of the

petitioners on a Class IV post (Zoo Keeper, Mali and Driver) in the pay scale of Rs. 18,000/- to 28,000/- on which the petitioners are working and to pay the regular pay scale with all consequential and promotion, etc. from the date of the initial appointment."

3. The admitted position of this case at the bar is that the petitioners are workers of Class IV- post i.e. Zoo Keeper, Mali and Driver as daily wagers since 2013 but they have not been paid the minimum of pay scale despite the controversy in question has been settled by the Apex Court in catena of cases including the case of Sabha Shanker Dube Vs. Divisional Forest Officer and others; 2019 12 SCC 297 (Annexed as Annexure No.14 of the petition).

4. This Court has passed various orders time to time, for the convenience, orders dated 09.05.2024, 23.05.2024 and 30.05.2024 are being reproduced herein below:-

Order dated 09.05.2024

"1. Heard.

2. The contention of learned counsel for the petitioners is that the petitioners have been working on the post of Zoo Keeper, Mali & Driver on daily wages since 2013 in the Forest Department.

3. Reliance has been placed on the judgment of the Apex Court in the case of Sabha Shanker Dube vs. Divisional Forest Officer and others- (2019) 12 SCC 297, to contend that the Hon'ble Apex Court in the aforesaid judgment has categorically held that the temporary employees are entitled to minimum of the pay scale as long as they continue in service.

4. Reliance has also been placed on an interim order of this Court dated 09.11.2023 in Writ-A No.9383 of 2023 in re: Vijay Kumar Srivastava vs. State of U.P. and 2 others, wherein a direction has been issued by this Court at Allahabad that all the petitioners and other similarly situated workers/employees would be paid minimum of basic pay @ Rs.18,000/- in compliance of the judgment of Hon'ble Supreme Court in the case of until their claim for regularisation is disposed of by framing guidelines.

5. The contention is that once the petitioners are working on daily wages since the year 2013 and are continuously working as per specific averment made in paragraph 3 of the petition consequently the petitioners would be entitled for the benefit of the interim order of this Court dated 09.11.2023 passed in the case of Vijay Kumar Srivastava (supra) as well as the judgments of the Apex Court in the case of Sabha Shanker Dube (supra) and Putti Lal (supra).

6. Learned Standing Counsel prays for and is granted a week's time to seek instructions in the matter as to why the petitioners be not given the benefit of the judgments of the Apex Court in the case of Sabha Shanker Dube (supra) and Putti Lal (supra) as well as the interim order of this Court in the case of Vijay Kumar Srivastava (supra). List in the next week as fresh. "

Order dated 23.05.2024

"Power filed today in Court by Sri Prithish Kumar, Advocate, on behalf of respondents no. 3 to 5 is taken on record.

He prays for and is granted a week's time to seek instructions as to whether the petitioners are working on daily wage basis under the respondents and if so, as to why benefit of judgment of the Apex Court in the case of Sabha Shanker Dube vs. Divisional Forest Officer and others- (2019) 12 SCC 297 be not extended to the petitioners. List next week as fresh indicating the name of Sri Prithish Kumar, learned counsel, in the cause list from the side of the respondents."

Order dated 30.05.2024

"Shri Prithish Kumar, learned counsel for the respondent no. 3 prays for and is granted a weeks time to seek instructions in the matter.

As the matter is prima facie squarely covered by the judgement of Hon'ble Supreme Court in the case of Sabha Shanker Dube vs Divisional Forest Officer and others, 2019 (12) SCC 297 as such list this case in the first week of July, 2024 as fresh."

5. Learned Standing Counsel tried to defend in action of the opposite parties by submitting that since the service of the petitioners have not been regularized therefore, they are not entitled for minimum of the pay scale. He further submitted that in view of the Government Order dated 06.12.2023 for providing minimum of the pay scale the required services should be at least 20 years.

6. Having heard the learned counsel for the parties and having perused the material available on record, I am of the considered opinion that any Government Order if issued in derogation of the judgments of Apex Court would be nullity in the eyes of law and the implication thereof may not adversely affect the employees who are covered with the settled principles of law of the Apex Court. The Hon'ble Apex Court in the case of Sabha Shanker Dube (supra) has clarified the possession considering various judgments of the Apex Court right from the case of State of U.P. and others vs. Putti Lal; 1997 SCC OnLine All 864 till State of Punjab vs. Jagjit Singh; (2017) 1 SCC 148, has observed that the daily rated workers employed in Group-D posts if served for substantial period and their regularization could not be considered, atleast they are entitled to minimum pay scale applicable to the regular employees, for the convenience, para 11 and para 12 of the case i.e Sabha Shanker Dube (supra) reads as under:-

"11. 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.

12. 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."

7. Therefore, the present petitioners who are continuously discharging their duties w.e.f 2013 i.e more than ten years are entitled for the minimum of the pay scale as long as they continue in service.

8. Accordingly, the writ petition is partly allowed and the opposite parties are directed to make a payment of minimum of pay scale to the petitioners as long as they continue in service.

9. So far as the prayer no. 2 is concerned, it is needless to say that there is a mechanism to regularize the services of the employees, for that the rules and relevant government orders have been issued by the competent authority time to time therefore, the regularization of the petitioners may be considered by the competent authority strictly as per rules and their government orders for that no direction is issued in this writ petition.

10. It is further directed that in compliance of the aforesaid order, the competent authority shall pass orders with expedition, preferably within a period of four weeks from the production of certified copy of this order, making payment of minimum of the pay scale to the employees.

11. There shall be no order as to costs."

4. Learned counsel for the petitioners has stated that the issue of the present petitioners may be adjudicated/ decided in the light of aforesaid judgment.

5. Therefore, without entering into merits of the issue, liberty is given to the petitioners to prefer a fresh representation to opposite party no.2 i.e. Divisional Director of Forest, Social Forestry Division, Sitapur taking all pleas and grounds, which are necessary for disposal of the representation and also enclosing the earlier representation, if any, alongwith certified copy of this order within a period of ten days from today. If such representation is preferred by the petitioners within the aforesaid stipulated time, the authority concerned shall consider and dispose of the aforesaid representation of the petitioners by speaking and reasoned order, strictly in accordance with law, and also in the light of judgment and order passed by this Court in re; **Narendra Kumar & Others** (Supra) verifying its applicability in the issue in question, with expedition, say within a period of six weeks from the date of receipt of the representation and thereafter communicate the decision thereof to the petitioners forthwith.

6. With the aforesaid direction, the writ petition is **disposed of** finally.

[Rajesh Singh Chauhan,J.]

Order Date :- 3.9.2024
RBS/-