

Court No. - 6

Case :- WRIT - A No. - 12055 of 2024

Petitioner :- Hira Lal @ Hira Lal Pal

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Forest Lko. And 5 Others

Counsel for Petitioner :- Hanumant Lal Yadav, Shailendra Singh Chauhan

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur, J.

1. Heard learned counsel for the petitioner and learned Standing Counsel for the State.
2. With the consent of the learned counsel for the parties, the present writ petition is decided finally at the admission stage.
3. The present writ petition has been preferred for quashing of the impugned order dated 04.05.2023 passed by respondent no. 5/Divisional Forest Officer, Social Forestry, Forest Range, Sultanpur, whereby the claim for minimum of the pay-scale has been denied to the petitioner and with a further prayer to direct the respondent no. 5 to forthwith grant the minimum of the pay-scale of Rs. 18,000/- as per 7th Pay Commission along with arrears since March 2018 to the petitioners on Class IV post, in terms of the judgment dated 17.11.2018 passed by this Court in Writ A No. 11964 of 2018 (Mohan Swaroop and Another v. State of U.P. and Ors.)
4. Learned counsel for the petitioner has submitted that petitioners were initially appointed on the post of Mali in the year 2013 and since then, he is continuously functioning on the said post. It is further submitted that the claim of the minimum of the pay-scale has been denied by the respondent no. 5 only on the ground that since petitioner is not entitled for regularization in terms of the relevant Rules of 2016 and since there is no such provision in the aforesaid Rules for grant of minimum of the pay-scale, he would not be entitled for such benefit.
5. It is further submitted that the said reason assigned in the impugned order rejecting the claim of the petitioner is against the law settled by the Hon'ble Supreme Court in the case of **Sabha Shankar Dube vs. Divisional Forest Officer and Ors.** in **Civil Appeal No. 10956 of 2018** and the same has been followed by this Court in the judgment/order dated 17.11.2018 passed in Writ A No. 11964 of 2018 along with several other

judgments/orders passed by this Court which are enclosed as Annexure nos. 4 to 11 of the writ petition, against which no appeal has been preferred and prays for parity of the said judgment which has been passed on placing reliance on the judgment of Hon'ble Supreme Court in the case of **Sabha Shankar Dube (supra)**. For convenience, the judgment/order dated 17.11.2018 passed in Writ A No. 11964 of 2018 is quoted hereinbelow:-

"Heard learned counsel for the petitioners and Shri Neeraj Tripathi, learned Additional Advocate General assisted by Shri R.P. Dubey, learned Additional Chief Standing Counsel for the State – respondents.

This petition, along with the connected petitions, raises a claim by petitioners, who are all working in the Forest Department of the State for the last many many years for being paid salary in minimum of pay scale admissible for the post, against which they are working. It appears that benefit of minimum of pay scale was granted to the petitioners without any allowances in light of the observations made in various previous adjudications of this Court, but, all of a sudden, a Government Order has been issued on 08.03.2018, which states that benefit of minimum of pay scale as per 7th Pay Commission report would be made available only to those who are regular employees and not to those who are engaged on temporary basis/casual/daily wage basis. This Court, after hearing counsel for the parties, had passed a detailed order on 16.08.2018 holding as under:-

"Once the entitlement of the petitioners, to be paid minimum of pay scale admissible to a Class - IV employee, has been acknowledged by the respondents, it would be difficult to accept the contention of the respondents that minimum of pay scale, which is applicable now, would not be extended to them (the petitioners). What is relevant is the minimum of pay scale and not the Pay Commission reports; in as much as, Pay Commission reports are enforced for different periods depending upon the price index, etc. It is not in dispute that 7th Pay Commission report has been enforced in the State. The minimum of pay scale, as on date, would be the minimum of pay scale which is admissible to other similarly placed employees of the State carving out distinction for persons who are receiving salary in the minimum of pay scale, so as to deny them minimum of pay scale admissible to a similarly placed Government servant as on date, only on the ground that they are treated as daily wager, would be wholly irrational and violate Article 14 of the Constitution of India, apart from being violative of the directions issued by the Apex Court.

Prima facie, the State would not be justified in denying

minimum of pay scale to the petitioners at par with other similarly placed Government employee (except allowances, etc.) only because there is no specific order granting minimum of pay scale to the daily wagers. The denial of minimum of wages on the strength of Government Order dated 08.03.2018 is also found to be unsustainable in law. This interpretation, on part of the respondents, appears to be inconsistent with and in teeth of the directions issued by the Apex Court from time to time. Although learned Additional Chief Standing Counsel has referred to various orders passed by the Apex Court, but those judgments, apparently, will have no applicability in the facts of the present case; in as much as, a specific direction of the Hon'ble Supreme Court, with regard to employees of Forest Department (which has already been implemented by them), would continue to be applicable upon them, particularly, when the latest order of the Hon'ble Supreme Court, inter se, parties arising out of the same contempt proceedings, reiterates the direction issued by the Apex Court in Putti Lal (supra).

In view of the above, it would be appropriate to extend one more opportunity to the respondents to examine their stand and to call upon the Additional Chief Secretary, Forest Department of the State of U.P. to clarify as to how the benefit of minimum of pay scale, which has been extended to these persons under the orders of the Apex Court, referred to above, could be withdrawn unilaterally by the State pursuant to the Government Orders impugned. The Officer shall also explain as to why the direction of Apex Court dated 02.02.2016 to deny salary to him and the Principal Chief Conservator of Forest be not enforced.

The Officer concerned, before filing his reply, is expected to be conscious of the fact that the direction issued by the Hon'ble Supreme Court is, otherwise, binding upon all the authorities by virtue of Article 141 of the Constitution of India.

Let the required affidavit be filed by 31st of August, 2018. Put up this case, in the additional cause list, on 31.08.2018."

Affidavits have been filed on behalf of the respondents disputing the continuance of the petitioner no. 1 (Shri Mohan Swaroop) since 1991. It is, however, not in issue that payment of salary in minimum of pay scale was granted to him in the year 2013 and he was receiving such benefit till the order impugned has been passed.

The issue, as to whether such persons are entitled to payment of salary in minimum of pay scale or not, has been examined by the Apex Court in a recent judgment dated 14.11.2018 delivered in Civil Appeal No. 10956 of 2018 (Sabha Shanker Dube Vs. Divisional Forest Officer and Others); wherein, following observations have been made by the Apex Court:-

"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 situated 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 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 that view of the matter, denial of minimum of pay scale to the petitioner, pursuant to the order impugned dated 08.03.2018, cannot be sustained. The writ petition, consequently, succeeds and is allowed. The Government Order dated 08.03.2018 stands quashed in so far as it relates to the petitioners in the present bunch of petitions are concerned.

The petitioners, who were granted benefit of minimum of pay scale under 6th Pay Commission, would be entitled to benefit of minimum of pay scale, as is presently enforced after introduction of 7th Pay Commission report. They will also be entitled to arrears, which would be computed and paid to them within a period of three months from the date of presentation of a certified copy of this order; however, without any allowances.."

6. On the other hand, learned Standing Counsel is unable to distinguish the judgment of Hon'ble Supreme Court in the case of **Sabha Shankar Dube (supra)** passed after considering the judgment in the case of **State of Punjab and Ors. vs. Jagjit Singh and Ors. [(2017) 1 SCC 148]**.

7. Considering aforesaid judgments of Hon'ble Supreme which are clearly applicable in the present facts and circumstances of the case, rejection of petitioners' representation only on the ground that he is not entitled for regularization does not hold a good ground once opposite parties themselves have admitted that he is continuing as a daily wage employee ever since the date of initial engagement in service and particularly since there is no denial in the impugned order of the fact that he is performing the same duties and functions as that of regular of employees. The learned Standing Counsel is unable to distinguish the judgment of Hon'ble Supreme Court mentioned above and the judgment passed by this Court which is quoted above, following these decisions the present writ petition is **allowed**.

8. In view of the aforesaid, the impugned order dated 04.05.2023 passed by respondent no. 5/Divisional Forest

Officer, Social Forestry, Forest Range, Sultanpur is quashed by issuance of writ in the nature of certiorari. Further writ in the nature of mandamus is issued commanding the opposite parties to ensure payment of minimum of the pay scale as applicable to regular employees working on equivalent posts.

9. Learned counsel for respondents shall ensure compliance within a period of six weeks from the date of certified copy of this order is served.

Order Date :- 18.12.2024

A. Verma

(Alok Mathur, J.)