

Court No. - 6

Case :- WRIT - A No. - 12375 of 2024

Petitioner :- Ashish Kumar

Respondent :- State Of U.P. Thru. Prin. Secy. Horticulture U.P. Lko. And 2 Others

Counsel for Petitioner :- Mohd. Ateeq Khan

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Mohd. Ateeq Khan, learned counsel for petitioner as well as learned Standing Counsel for respondents.
2. With the consent of learned counsel for parties, the writ petition being being heard and decided at the admission stage itself.
3. By means of present writ petition, the petitioner has challenged the order dated 05.12.2024 passed by Director Horticulture, Uttar Pradesh thereby rejecting the representation of the petitioner wherein he had claimed for grant of minimum of the pay scale as is applicable to Class IV employees.
4. It has been submitted by learned counsel for petitioner that the petitioner is appointed as a daily-wager in the year 2012 under the District Horticulture Officer, Etawah and he was being given Rs. 5980/- per month wherein daily wager appointed after the appointment of the petitioner are getting Rs. 18,000/- per month. To demonstrate his employment, the petitioner has annexed copy of Muster roll for July, 2013 and August, 2024. He has further submitted that similar placed employees are already getting minimum of the pay scale in terms of recommendation of 7th Pay Commission of Rs. 18,000/- per month including one Sri Rajesh Kumar Yadav.
5. It is in the aforesaid circumstances, the petitioner approached this Court on the previous occasion by filling a writ petition being Writ A No. 7994 of 2024 which was disposed of by means of order dated 18.09.2024 directing respondents to consider and decide the representation of by reasoned and speaking order within one month. It is in compliance of the direction of this Court dated 18.09.2024 that the impugned order dated 05.11.2024 has been passed rejecting the representation of the petitioner.

6. A perusal of the impugned order would clearly indicate that in paragraph No. 3, it has been stated that petitioner is a casual labourer whose services are taking from time to time but it is also admitted that he works in the Nursery maintained by the respondents and also at other times the work of cleaning of the offices is also undertaken by him. It is in the aforesaid circumstances, the respondents have taken pain to demonstrate that his services are not equivalent to a temporary or adhoc employee and a casual labourer like the petitioner would not be entitled to the benefit of minimum of pay scale.

7. Learned counsel for petitioner on the other hand has submitted that the impugned order itself demonstrate that he is in regular employment with the respondents. Paragraph No. 3 which has been noticed by this Court clearly indicates that the work from the petitioner is taken in the Nursery maintained by the respondents as well as in cleaning the offices. Accordingly, there is no dispute with regard to the employment of the petitioner with the respondents.

8. The next question arises is as to whether even if he works on casual basis in the Nursery maintained by the respondents as well as in the offices regularly would such a person be entitled to given minimum of pay scale.

9. Considering the aforesaid facts, this Court in similar circumstances, in the case of ***Santosh Kumar Vs. State of U.P. and others (Writ A No. 9722 of 2023)*** has held that such a person would be entitled to minimum of pay scale which is applicable to the regular employees working on the same post. The State being aggrieved by the order of Coordinate Bench of this Court had filed a special appeal being Special Appeal Defective No. 597 of 2024 which was rejected with the following observations:

"5. It may be noted that that work discharged by the helper in the filed like Mali are akin to the function of a mali and at best the classification of skilled or semiskilled may be drawn between such employees which as per the averments made in the counter affidavit has not been empirically drawn or projected by the State. The respondents, who are admittedly daily wage employees, are working. Therefore, there is no reason as to why the benefit of judgment rendered by this Court as has been placed reliance upon by the writ court may not be extended to the respondent in the present case. In absence of any perversity pointed out or illegality by which the impugned judgment may suffer from, we decline to interfere in the present special appeal."

10. Accordingly, the dispute in the present case as raised by the respondents is only with regard to nature of work taken from the petitioner and there is no dispute that he is regularly employed since 2012 and working as a Class-IV employee.

11. In light of the above, there is no reason for this Court to take a different view as to what has been taken by Division Bench of this Court in the case of Santosh Kumar. Accordingly, the writ petition stands **allowed**. The impugned order dated 05.12.2024 is quashed.

12. The petitioner shall be entitled to minimum of pay scale as applicable to the regular employees working on the said post. The respondent No. 2 is directed to pay the minimum of the pay scale to the petitioner forthwith.

(Alok Mathur, J.)

Order Date :- 19.12.2024
RKM.