

HON'BLE MR JUSTICE R. KANTHA RAO

Writ Petition No.24152 OF 2015

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ORDER:

This writ petition is filed by the petitioner under Article 226 of the Constitution of India seeking a writ of mandamus declaring the action of the respondents for not implementing the Revision of Pay Scales, 2013 which is being implemented from the salary of June, 2015 as illegal, unjust, discriminatory and in violation of Articles 14, 16 and 21 of the Constitution of India and consequently direct the respondents to implement the revision of pay scale of 2013 on par with other employees.

2. Heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondents-Corporation.

3. The petitioner was appointed as Office Boy in the Civil Engineering Department of the respondents-Corporation. He has been working continuously in the said post till today. However, his services were not regularised. The grievance of the petitioner is that he is only paid bare basic pay of Rs.5,670/- without any D.A., H.R.A., C.C.A. etc. The Revision of Pay Scales, 2013 were implemented in respect of other employees, but in case of petitioner, his basic pay is not fixed basing on the Revision of Pay Scales, 2013. According to him, from 01.04.2013 his basic pay has to be fixed basing on the Revision of Pay Scales, 2013. He submits that he was drawing the bare basic pay of Rs.5,670/- which was as per the Revision of Pay Scales, 2009. Therefore, he made a representation dated 07.07.2015 to the 4th respondent through proper channel of 3rd respondent. It is his version that the 4th respondent informed him that since the cases are pending before this Court, they are not able to implement the Revision of Pay Scales, 2013. The 4th respondent insisted upon for obtaining the opinion of the senior law officer. Thereafter, the petitioner made representation dated 15.07.2015 to the senior law officer but she refused to give opinion unless there is an order or

direction from the Court of law for payment of salary as per Revision of Pay Scales, 2013 on the ground that the petitioner was reinstated into service through Court order and the identity card was also issued to him only pursuant to the Court orders. It is further submitted that the action of the respondents is nothing but victimisation as well as taking vengeance against the petitioner for ventilating his grievance against the action of the respondents before the Court of law. Therefore, he filed the present writ petition.

The respondents filed counter-affidavit contending *inter alia* that the pay scales of the regular employees of the respondents-corporation have been revised with effect from 01.04.2013 and an agreement has been entered into by the recognised trade unions. It was agreed therein to add 44% fitment and to merge the dearness allowance being drawn by the regular employees as on 01.01.2013 which comes to 91.08%. It is contended by the respondents that since the petitioner is not regular employee of the respondents' corporation and he is not a party to the agreement related to the pay revision, he is not entitled for the minimum pay paid to him as directed by the learned single Judge in W.P.No.19319 of 2010 by order dated 20.06.2011 and the said direction cannot be applied to the pay scales fixed in the subsequent pay revisions. Thus, they contend that the petitioner is not entitled for the relief in the present writ petition unless his services are regularised which is the subject matter of W.P.No.19319 of 2010. However, the respondents submitted that the minimum wages of unskilled workers have been revised to Rs.7,688/- as notified vide circular dated 05.08.2015 issued by the respondents Corporation and the same can be allowed to the petitioner but not Rs.10,880/- as claimed by him basing on the Revision of Pay Scales, 2013.

To answer the issue involved in the present writ petition, the order passed by the Division Bench of this Court in W.A.No.1069 of 2011 requires to be gone into. The Division Bench of this Court in W.A.No.1069 of 2011 held as follows:

“Learned Standing Counsel appearing for the respondent-Corporation contended that as long as the services of the appellant are not regularized, he is entitled to only the minimum of the pay scale i.e.,Rs.5,670/- per month and that, as and when the minimum of the time scale is increased, he is entitled to other benefits, increments, etc., on par with the regularized employees.

We find force in the said contention of the learned counsel. As long as the appellant’s services are not regularized, he is entitled to the minimum of the time scale only but not the allowances attached to that pay. However, the issue relating to the entitlement of the appellant in seeking regularization on par with his colleagues and the other consequential benefits depends upon the final result of the Writ Petition.”

Perusal of the order passed by the Division Bench in writ appeal clearly shows that the petitioner is entitled to the minimum of the time scale only but not the allowances attached to the pay. From the order of the learned Division Bench, it has to be necessarily understood that the petitioner though is not entitled for any other allowances, is entitled for the basic pay as per the revised pay scales. There is no merit in the contention that the petitioner is entitled for the minimum basic pay in the pay scales fixed in the PRC-2009. The basic pay of the petitioner has to be increased basing on the subsequent pay revisions though he is not entitled for other benefits as long as his services are not regularised.

The petitioner is entitled for the basic pay of last grade service which was fixed in the Revision of Pay Scales, 2013 i.e. Rs.10,880/-. The respondents are directed to pay the petitioner the said amount from June, 2015 onwards. Accordingly, the writ petition is allowed. There shall be no order as to costs. The miscellaneous petitions, if any, pending in this writ petition shall stand closed.

R.KANTHA RAO, J

Date:29.09.2015
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