

THE HON'BLE SRI JUSTICE DILIP B.BHOSALE

AND

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT APPEAL No. 1269 of 2012

JUDGMENT: (per the Hon'ble Sri Justice A.Ramalingeswara Rao)

This writ appeal is directed against the order, dated 18.11.2010, passed in W.P.No.454 of 2004. Originally, the writ appeal was dismissed on 16.07.2013 and on the application filed by the appellants, being WAMP No.3169 of 2014, to review the said order, the same was allowed on 14.11.2014. Hence, this writ appeal is being disposed of afresh.

The writ petitioner, respondent No.1 in the present appeal, filed the writ petition seeking a direction to the appellants herein to pay regular time scale to him in the post as Teaching Assistant/P.E.T. in which he is working and discharging similar duties on par with the regular employees by applying the doctrine of equal pay for equal work, and by declaring the action of the appellants in not paying regular time scale to him as illegal and arbitrary.

As per the averments in the affidavit filed in support of the writ petition, respondent No.1 passed M.A. and is a Graduate Diploma Holder in Physical Education. He was appointed by appellant No.1 on 13.07.1995 as Teaching Assistant on *ad hoc* basis and his

services are being utilized in appellant No.2-School/Junior College.

He has been discharging his duties identical to the regular employees working in the post of Teaching Assistant for several years and in spite of the same, no regular time scale of pay was granted. In those circumstances, he filed the writ petition.

Counter-affidavit is filed on behalf of the appellants herein stating that regular vacancy in any cadre or category of post is filled by following the procedure laid down in G.O.Ms.No.1, Education Department, dated 01.01.1994. The persons, who were appointed against the regular vacancy, are alone entitled for the time scale of pay attached to that post. Respondent No.1 herein was appointed by the University only on *ad hoc* basis and not against any substantive post and his services have been hired by appellant No.2 on temporary basis to cope-up the urgency in day-to-day work in the school and as such, he is not entitled for regular time scale of pay. The services of respondent No.1 are hired for a period of 89 days to assist a regular Physical Education Teacher, who was entrusted with the additional duties pertaining to the SVU Junior College, Tirupathi. When there was a demand for filling up of existing vacancies to cope up the urgent work, a Committee was constituted to arrive at a uniform wage-structure to all the persons. The Committee after taking stock of the situation and also the financial viability of the University, formulated certain guidelines for payment of wages to all the persons whose services have been hired and the University has been following the guidelines for all these years.

Taking the rival submissions into account, the learned Single Judge of this Court partly allowed the writ petition on 18.11.2010 with the following observations:

“Whatever be the justification for the respondents in not filling up the posts on regular basis, they are not at all justified in denying him minimum of the pay scale to the petitioner. When the persons who are discharging the same functions are being paid not only the pay scale, but also allowances, which are in no way comparable to the partly emoluments paid to the petitioner, there is no reason why the petitioner should be denied at least the minimum scale of pay.

Hence, this writ petition is partly allowed directing that the respondents shall pay the minimum of the pay scale for the Physical Education Teacher as salary to the petitioner with effect from December, 2010.”

Learned counsel for the appellants, by placing reliance on the decision of the Supreme Court in **State of Haryana and others Vs. Charanjit Singh**^[1], contends that the persons like respondent No.1 are not entitled to the same pay as regular employees by claiming that they are discharging same duties. The relevant portion of the judgment reads as under:

“Where a person is employed under a contract, it is the contract which will govern the terms and conditions of service. In the case of State of Haryana Vs. Surinder Kumar and others reported in (1997) 3 SCC 633, persons employed on contract basis claimed equal pay as regular workers on the footing that their posts were interchangeable. It was held that these persons had no right to the regular posts until they are duly selected and appointed. It was held that they were not entitled to the same pay as regular employees by claiming that they are discharging same duties. It was held that the very object of selection is to test eligibility and then to make appointment in accordance with rules. It was held that the respondents had not been recruited in accordance with the rules prescribed for recruitment.”

In the affidavit filed in support of the application seeking interim stay, it is stated thus:

“I submit that it is most relevant that there are 346 Casual

Man/Woman Mazdoors for short CMM/CWM hired on temporary basis on a consolidated pay. During the pendency of the writ petition, as the temporary employees were agitating for the pay in the time scale the University administration evolved a scheme to allow minimum time scale of the entry level of Last grade and Ministerial Services from the self-generated University Development fund. The Executive Council pursuant to its decision taken on 25.09.2006, the recommendations of the finance committee and the State Council of Higher Education, resolved to pay the minimum of the time scales of RPS 2005 to the CMMs/CWMs who were appointed up to 25.11.1995 vide its resolution dated 16.11.2007 and consequential proceedings were issued vide No.El (5)/2007 (time scales), dated 01.12.2007.

The Act 2 of 1994 was implemented from 25.11.1993 but the date was erroneously mentioned as 25.11.1995 in the above said resolution. The teacher post in the high school is a vacation post. Respondent is engaged to work in the available ministerial job in the University during the vacations. His pay is fixed in the A-category as per E.C. Resolution, dated 16.11.2007 and Lr.No.El(5)/2007 (Time Scale), dated 01.12.2007 of the University which is equivalent to L.D.C. There is no Budget provision in the Block Grant sanctioned by the A.P. Government for the temporary posts and the expenditure for payment of remuneration to the temporary staff is being met from the Development Fund Account generated by the University. The University evolved a scheme for payment of uniform minimum of pay in the category of Ministerial, Record Assistant, Last Grade, Drivers and Technically qualified and D.A. thereon basing on the qualification. The pay fixed for various categories is as follows:

Category/Grade	Qualification	Minimum of the time scale	
		RPS 2005 pay scales	RPS 2010 pay scales + DA

A- Assistant	D e g r e e , Type writing Higher with computer knowledge	Rs.4825/-	Rs.8440+4406
B-Assistant	Degree Type Lower	Rs.4260/-	Rs.7740/-+3710
C-Office Subordinate	VII Class	Rs.3850/-	Rs.6700/-+3212
D-Drivers	IX Class with Heavy Driving Licence	Rs.4595/-	Rs.7960/-+3816
E-Technical	SSC,ITI, Diploma	Rs.4260/-	Rs.7740/-+3710

“

From the above, it is clear that by virtue of the orders of the learned Single Judge, respondent No.1 is being paid Rs.16,871/- p.m. instead of Rs.12,486/- p.m., which is admissible to him as per E.C. Resolution, dated 16.11.2007, and letter No.E.I(5)/2007 (Time Scale), dated 01.12.2007 of the University. Respondent No.1 as well as 346 other employees are being paid as per E.C. Resolution, dated 16.11.2007 only and no discrimination is shown to respondent No.1.

It is clear from the above facts that respondent No.1 is admittedly appointed on contract basis and there are other similarly situated persons working in the University. Now, the Executive Council took stock of the circumstances and framed a scheme for payment of wages payable to them and respondent No.1 is being paid as per the said scheme. Respondent No.1 cannot be equated with the regular employees and he cannot claim equal pay for equal work.

In view of the Scheme evolved by the Executive Council of the University for payment of the pay in respect of the persons similarly situated as that of respondent No.1, we hold that the direction issued by the learned Singe Judge is not warranted and accordingly, in the

facts and circumstances of the case, we modify the said order directing the University to pay respondent No.1 the pay as fixed for 'A' Category as per E.C. Resolution, dated 16.11.2007 and letter, dated 01.12.2007, of the University which is equivalent to the post of Assistant till regular appointment is made to the post held by respondent No.1 or till he retires from service, whichever is earlier.

Learned Counsel for the University fairly submitted that they are not going to recover the difference of pay paid pursuant to the order of the learned Single Judge till today and the order in the present writ appeal shall operate prospectively.

We record the said statement of the learned counsel for the appellants and direct the appellants not to recover the difference of pay paid to respondent No.1 till today pursuant to the orders of the learned Single Judge.

The order of the learned Single Judge is accordingly modified.

Writ appeal is allowed to the extent indicated above. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any, also stand disposed of.

DILIP B.BHOSALE,J

A.RAMALINGESWARA RAO,J

Dt:02.03.2015

kdl

[\[1\]](#) AIR 2006 Supreme Court 161 (1)