

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) CWP No. 8215 of 1996 (O&M)

Date of decision : 29.7.2015

...

State of Haryana through Executive Engineer PWD Public Health
Division No. 1, Karnal and another

.....Petitioners

vs.

Ramesh Kumar and another

.....Respondents

2) CWP No. 8216 of 1996 (O&M)

...

State of Haryana through Executive Engineer PWD Public Health
Division No. 1, Karnal and another

.....Petitioners

vs.

Krishan Dutt and another

.....Respondents

3) CWP No. 8217 of 1996 (O&M)

...

State of Haryana through Executive Engineer PWD Public Health
Division No. 1, Karnal and another

.....Petitioners

vs.

Narinder Singh and another

.....Respondents

4) CWP No. 8218 of 1996 (O&M)

...

State of Haryana through Executive Engineer PWD Public Health
Division No. 1, Karnal and another

.....Petitioners

vs.

Ram Kumar and another

.....Respondents

5)CWP No. 8219 of 1996 (O&M)

...

State of Haryana through Executive Engineer PWD Public Health
Division No. 1, Karnal and another

.....Petitioners

vs.

Suresh Kumar and another

.....Respondents

6)CWP No. 8220 of 1996 (O&M)

...

State of Haryana through Executive Engineer, PWD Public Health
Division No.1, Karnal and another

.....Petitioners

vs.

Satbir Singh and another

.....Respondents

7)CWP No. 8221 of 1996 (O&M)

...

State of Haryana through Executive Engineer PWD Public Health
Division No. 1, Karnal and another

.....Petitioners

vs.

Ragister Singh and another

.....Respondents

8) CWP No. 8222 of 1996 (O&M)
...
State of Haryana through Executive Engineer, PWD Public Health
Division No.1, Karnal and another
.....Petitioners

vs.

Rishi Pal and another
.....Respondents

9) CWP No. 8223 of 1996 (O&M)
...
State of Haryana through Executive Engineer PWD Public Health
Division No. 1, Karnal and another
.....Petitioners

vs.

Om Parkash and another
.....Respondents

Coram: Hon'ble Mr. Justice P.B. Bajanthri

Present: Sh. R.D. Sharma, Deputy Advocate General, Haryana

None for the respondents
...

1. *Whether Reporters of local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

P.B. Bajanthri, J.

This order will dispose of CWP Nos. 8215 of 1996, 8216 of 1996, 8217 of 1996, 8218 of 1996, 8219 of 1996, 8220 of 1996, 8221 of 1996, 8222 of 1996 and 8223 of 1996, as common questions of law and facts are involved in all these writ petitions and all can be

conveniently disposed of by a common order.

In these writ petitions, PWD Department questioned the validity of the awards passed by the various Labour Courts in favour of the private respondents in respective cases. Feeling aggrieved by the award dated 9.1.1995 and 17.1.1995, these writ petitions have been filed.

Brief facts of the case are that private respondents were appointed Mali-cum-Chowkidar/Assistant Pump Operator on daily wage basis. They have been paid a sum of Rs.962/- per month (DC rate) fixed upto 31.12.1992 (Mali-cum-Chowkidar) and a sum of Rs.1,075/- per month fixed upto 28.2.1993 (Assistant Pump Operator). The private respondents' grievance are that they are entitled to pay scale and other admissible allowances attached to the post of Mali-cum-Chowkidar/Assistant Pump Operator from the date of their initial appointment. The Labour Court awarded in favour of private respondents, while calculating the difference of amount and directed petitioners to pay the balance amount stated in the award. The Labour Court relied on the decision. Chart relating to Writ Petition No., date of appointment, post to which private respondents are appointed, pay drawn by each of them, pay scale attached to the post and the award amount, are reproduced hereunder:-

<i>CWP No.</i>	<i>Date of appointment</i>	<i>Post</i>	<i>Pay drawn & last date of drawn</i>	<i>Pay scale of regular post</i>	<i>Award amount & date</i>
8215 of 1996	01/08/88	Mali-cum-chowkidar	Rs.962/- p.m. (D.C. Rate) upto 31.12.1992.	Rs.1,428/- p.m. + 83% DA	Rs.24,632/- 9.1.1995

<i>CWP No.</i>	<i>Date of appointment</i>	<i>Post</i>	<i>Pay drawn & last date of drawn</i>	<i>Pay scale of regular post</i>	<i>Award amount & date</i>
8216 of 1996	01/10/89	-do-	Rs.962/- p.m. (D.C. Rate) upto 31.12.1992.	-do-	Rs.18,174/- 9.1.1995
8217 of 1996	01/04/92	-do-	Rs.962/- p.m. (D.C. Rate) upto 28.2.1993	-do-	Rs.5,126/- 17.1.1995
8218 of 1996	01/08/89	-do-	Rs.962/- p.m. (D.C. Rate) upto 31.12.1992	-do-	Rs.18,640/- 17.1.1995
8219 of 1996	01/12/91	-do-	Rs.962/- p.m. (D.C. Rate) upto 02/12/92	-do-	Rs.5,592/- 17.1.1995
8220 of 1996	01/05/90	-do-	Rs.962/- p.m. (D.C. Rate) upto 28.2.1993	-do-	Rs.15,844/- 9.1.1995
8221 of 1996	July, 1990	As Assistant Pump Operator at Sub Division	Rs.1,075/- fixed upto 28.2.1993	Rs.2,816/- + 83% DA	Rs.14,912/- 9.1.1995
8222 of 1996	01/12/89	Mali-cum-chowkidar	Rs.962/- p.m. fixed upto 31.12.1992.	Rs.1,428/- p.m. + 83% DA	Rs.17,176/- 17.1.1995
8223 of 1996	01/07/92	-do-	Rs.962/- p.m. fixed upto 31.03.1993.	-do-	Rs.4,194/- 17.1.1995

The crux of the matter is whether private respondents who were working on daily wage basis to the post of Mali-cum-Chowkidar/Assistant Pump Operator, are entitled to pay attached to the post and admissible allowances on par with the regular holder of the post or not.

It is to be noted that even though the private respondents were appointed on daily wage basis, they have not produced the necessary material to show that their appointment was after due

advertisement and against the sanctioned post. In the absence of the aforesaid material information the private respondents are not entitled for the pay scale attached to the post and admissible allowances on par with the regular holder of the post. The private respondents have been paid minimum pay of the post as is evident from the averments in the petitions. Consequently, they are not entitled for the pay scale attached to the post, since they were not recruited in accordance with the law governing the post of Mali-cum-Chowkidar and Assistant Pump Operator. The scale of pay is attached to a definite post and in case of temporary employee/daily wager, he is not holding the post. On the other hand, for exigency in the department he/she has been appointed on daily wage basis. Therefore, private respondent workers were not holding any post, so as to claim pay scale on par with regular and permanent staff. To claim a relief on the basis of equality, it is for the claimants to substantiate a clear cut basis of equivalency. In the absence of the same, the principle of equal pay for equal work is not applicable.

The Hon'ble Supreme Court in number of cases relating to equal pay for equal work principle, held that it is obligation vested in an employee seeking parity of pay under Article 39 (d) of the Constitution of India to prove and establish that he had been discriminated against. The question of parity is to be decided on consideration of various factual aspects read with statutory Rules etc. The doctrine of "equal pay for equal work" as enshrined under Article 39 (d) of the Constitution read with Article 14 thereof, cannot be

applied in a vacuum. The Constitutional scheme postulates equal pay for equal work for those who are equally placed in all respects, like the source and mode of recruitment/appointment, the qualification, the nature of work, the value thereof, responsibilities, reliability, experience etc. In other words, equality clause can be invoked in the matter of pay scales only when there is an identity in all respects between the holders of two identical posts. Ultimately, the evaluation of duties and responsibilities of two identical posts and determination of their pay scales vested in the Executive, only the Executive can analyze the various aspects stated above and then to decide whether pay scale can be extended or not on par with the identical post holder.

Pay scale of the post is governed by the pay Rules issued under Article 309 of the Constitution of India. Applicability clause in the pay Rules is for the regular holder of the post. Since private respondents were not regular holders of the posts, question of extending pay scale attached to the post of Mali-cum-Chowkidar/Assistant Pump Operator, does not arise. However, they are entitled only minimum pay of the post which has been granted to them. At this juncture it is relevant to quote pay Rule of State of Haryana vis. the Haryana Civil Services (Revised Pay) Rules, 1987, in particularly Rule 2 by which certain mode of appointment have been excluded. The private respondents are one among those categories.

“2. Category of Government servants to whom the rules

apply.-

(1) Save as otherwise provided by or under these rules these rules shall apply to persons to civil services and posts in connection with the affairs of the State of Haryana.

(2) These Rules shall not apply to:-

- (a) members of All India Services serving in connection with the affairs of the State of Haryana,
- (b) persons not in whole-time employment;
- (c) persons paid out of contingencies;
- (d) persons paid otherwise than on a monthly basis including those paid only on a piece rate basis.
- (e) persons employed on contract except where the contract provides otherwise;
- (f) persons re-employed in Government service after retirement except ex-military pensioners;
- (g) any other class or category of persons whom the Government may be order, specially exclude from the operation of all or any of the provisions contained in these rules, and
- (h) persons drawing pay under U.G.C. Pattern. In their case the dearness allowance sanctioned upto and including the instalment sanctioned with effect from the 1st day of January, 1986 i.e. upto 12 months Consumer Price Index 608 (1960=100), shall be

treated as 'Dearness Pay' for all purposes, except for grant of interim relief.”

The learned counsel for the petitioners heavily relied on the decision of the Full Bench of this Court, namely, **Avtar Singh vs. State of Punjab and others**, reported in 2012 (2) SCT 31. This Court extensively considered whether daily wagers, ad hoc or contractual appointees, those who are not working against sanctioned post, are entitled for pay attached to the post or not. An extract of the aforesaid decision is reproduced hereunder :-

“36. Thus, we do not approve the decision of Division Bench in LPA No.1024 of 2009 - **Rajinder Kumar's case** and overrule the same, whereas the decision of Division Bench in LPA No.337 of 2003 - **Rajinder Singh's case** is approved.

37. However, it is also noticed that certain daily wagers are permitted to continue for long number of years. Keeping in view the ratio of the aforesaid judgments, we hold that daily wagers, ad hoc or contractual appointees are not entitled to minimum of the regular pay scale from the date they were engaged merely for the reason that the physical activity carried out by the daily wager and the regular employee is similar, but such general principle shall be subject to the following exceptions:

(1) A daily wager, ad hoc or contractual appointee against the regular sanctioned posts, if appointed after

undergoing a selection process based upon fairness and equality of opportunity to all other eligible candidates, shall be entitled to minimum of the regular pay scale from the date of engagement.

(2) But if daily wagers, ad hoc or contractual appointees are not appointed against regular sanctioned posts and their services are availed continuously, with notional breaks, by the State Government or its instrumentalities for a sufficient long period i.e. for 10 years, such daily wagers, ad hoc or contractual appointees shall be entitled to minimum of the regular pay scale without any allowances on the assumption that work of perennial nature is available and having worked for such long period of time, an equitable right is created in such category of persons. Their claim for regularization, if any, may have to be considered separately in terms of legally permissible scheme.

(3) In the event, a claim is made for minimum pay scale after more than three years and two months of completion of 10 years of continuous working, a daily wager, ad hoc or contractual employee shall be entitled to arrears for a period of three years and two months.

Accordingly, the writ petitions be posted for hearing before an appropriate Bench for decision in view of the above opinion.”

In view of the various decisions of the Apex Court read with the decision of the Full Bench of this Court in **Avtar Singh's case (Supra)**, the private respondents who are daily wagers/ad hoc appointees, who are not working against a regular sanctioned post, who have not undergone selection process before their appointment, thus, they are entitled for minimum of regular pay scale and not the pay scale attached to the post. Consequently, awards passed by the Labour Court are hereby set aside and the writ petitions are allowed.

This order will not come in the way of considering private respondents for regularisation of their services with reference to the policies of the State Government, relating to regularisation of daily wagers/ad hoc employees.

Accordingly, the writ petitions are disposed of.

No order, as to costs.

July 29th, 2015
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(P.B. Bajanthri)
Judge