

THE HON'BLE THE ACTING CHIEF JUSTICE
RAMESH RANGANATHAN

&

THE HON'BLE SMT JUSTICE T. RAJANI

WRIT APPEAL No.823 of 2017

JUDGMENT: (Per Hon'ble the Acting Chief Justice Ramesh Ranganathan)

Heard the learned Advocate General (Telangana) and Sri P. Venkateswar Rao, learned counsel for the respondents-writ petitioners and, with their consent, the writ appeal is disposed of at the stage of admission.

The respondents-writ petitioners, drivers engaged on daily wage basis, seek payment of the minimum of the time scale of pay attached to the post of driver. In the order under appeal, the learned Single Judge relied on the judgment of a Division Bench of this Court in WA.No.736 of 2016 dated 06.12.2016, and the judgment of the Supreme Court in *STATE OF PUNJAB AND OTHERS v. JAGJIT SINGH AND OTHERS* (Civil Appeal No.213 of 2013 dated 26.10.2016), and directed the appellants herein to pay the minimum of the time scale of pay attached to the post of driver subject to the respondents-writ petitioners possessing the qualifications prescribed for the post of drivers, for the period their services were utilised by the respondent-Corporation.

Learned Advocate General for the State of Telangana would submit, not without justification, that the order of the Division Bench in WA.No.736 of 2016 dated 06.12.2016, related to employees who were engaged on contract basis, and not on daily wages; and the observations made in both the above referred judgments,

that outsourced employees should also be extended the benefit of equal pay for equal work in terms of Article 39(d) of the Constitution of India, would not apply to the respondents-writ petitioners who are daily wage employees.

Sri P. Venkateswar Rao, learned counsel for the respondents-writ petitioners would, however, submit that the petitioners were appointed initially on contract basis, pursuant to a notification issued by the Corporation; they were, thereafter, engaged on daily wages; and since employees, who were not even appointed pursuant to the notification and had entered as contract employees, through the backdoor, have been extended the benefit of minimum of the time scale of pay, the petitioners should be extended a similar benefit.

While the submission of Sri P. Venkateswar Rao, learned counsel for the respondents-writ petitioners, cannot be said to be without merit, the fact remains that the order under appeal does not disclose any of these contentions having been urged before the learned single Judge. While we were initially inclined to admit the appeal and grant stay, both the learned Advocate General and Sri P. Venkateswar Rao, would agree that, instead, the order under appeal be set aside, and the matter be remanded, to enable the learned single Judge to examine the contentions raised in the writ petition.

In the light of the submissions of the learned counsel on either side, the order under appeal is set aside. The writ petition is restored to file for orders to be passed afresh in accordance with law.

The writ appeal stands disposed of accordingly. Consequently, pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

RAMESH RANGANATHAN, HACJ

T. RAJANI, J

June 29, 2017
DSK

