

**212 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.24052 of 2011.

Date of Decision: 11.07.2018.

Chamkaur Singh and others

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Akshay Bhan, Sr. Advocate with
Mr. Abhishek Sanghi, Advocate,
for the petitioners.

Ms. Deepali Puri, Addl. AG, Punjab and
Ms. Harsimrat Rai, DAG, Punjab.

JITENDRA CHAUHAN.J.

Through the instant writ petition, the petitioners seek direction to the respondents to grant them minimum pay scale attached to Class-IV posts on which the petitioners have been performing identical duties to regular employees and further to make the payment through bank account every month and also to maintain a proper record of services rendered by them as daily wagers, duly signed from the competent designated officer.

The petitioners are working in the respondent-department. They were recruited as daily wagers between the years 1996 to 2006 as Cleaners and Beldars. They have been performing identical duties which are being performed by the regular Cleaners and Beldars working in the Animal Husbandry Farm, Nabha whereas, the

petitioners are being paid on daily wages as per the rate fixed by the Deputy Commissioner from time to time. The petitioners have been working with complete dedication and sincerity, however, they are not being given the minimum pay scale.

As per the reply filed on behalf of the respondents, the petitioners were never recruited by respondent No.4 on regular basis or on temporary basis, rather they have been working under a contractor. In accordance with the Director Animal Husbandry Department, Punjab, Chandigarh letter No. 22762 dated 19.08.1996, Annexure R-1, the office of respondent No.4 after seeking quotation from various contractors used to give contract for accomplishing various works at Nabha Farm. It was the contractor who deputed work force for completing the tasks. The office of respondent No.4 has not engaged any worker directly. The contractor deputed workers at his own level in which the office of respondent-department had no role to play. The payment to the contractor in lieu of the work done by him was made through treasury cheques at the rates fixed in the contract. However, subsequently, for the year 2011-12, it was decided that in view of rule 8(i) of Appendix-8 of Punjab Financial Rules Volume-I, such work should be got advertised in the press in a consolidated tender notice. Accordingly, tender notice was duly published in Chardikala newspaper on 01.06.2011 wherein sealed tenders were invited from registered firms/contractors for taking care of livestock, cutting of fodder and for supplying the same to the sheds of livestock and in

addition to it, for getting the agriculture and other works done at farm through labour. Contractors Sh. Ajaib Singh of Patiala and Sh. Harjit Singh Zakhmi of Nabha were found successful for various works. Thus, the question of present petitioners being appointed by the respondent department does not arise and holds no merit at all.

A similar controversy was raised in LPA No. 1024 of 2009 titled as “**State of Punjab and others vs. Rajinder Kumar and others**”. Paragraph No.11 of the judgment reads as under:-

“11.We have heard learned counsel for the parties at length and perused the paper books with their able assistance. We are of the considered view that the matter is no longer res integra. It may be true that the principle of ‘equal pay for equal work’ is not expressly declared by our Constitution to be a fundamental right. But it is certainly a constitutional goal. Article 39(d) of the Constitution proclaims “equal pay for equal work for both men and women” as a directive principle of State Policy. It has been well settled that to the vast majority of the people, the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them, the equality clauses will have some substance if equal work means equal pay. Their Lordships’ of Hon’ble the Supreme Court in the case of Mohd. Khursheed Anwar (supra) has come to the conclusion that the party who claims ‘equal pay for equal work’ has to make necessary averments and prove that all things are equal. Thus, before any direction can be issued by a Court, the Court must first see that there are necessary averments and there is a proof. In that case, the appellants were working on the consolidated salary of Rs. 2000/-

per month as Assistant Engineers. Despite the fact that there were two sanctioned posts for Assistant Engineers and one post of Junior Engineer was vacant, the decision of the U.P. Land Development Corporation to hire them on contract basis of Rs. 2000/- per month in order to effect the economy, has been held to be arbitrary and unjustified. No material was placed before the Court to show that there was any difference in nature of duty being performed by the Assistant Engineers engaged on contract basis and those connected appeals appointed on regular basis. Thus, a direction was given to the U.P. Land Development Corporation to pay minimum of the pay scale prescribed for the post of Assistant Engineer to the respondents in that case from the date of their appointment on the said post. Likewise, in the case of *State of Haryana v. Tilak Raj*, (2003) 6 SCC 123, Hon'ble the Supreme Court held that a scale of pay is attached to a definite post and in case of daily wagers they hold no post, therefore, they cannot establish a clear cut basis of equivalence and argue a hostile discrimination before becoming eligible to claim rights on a par with the other group who have been paid a regular pay scale. While making those observations, Hon'ble the Supreme Court still held that the State of Haryana was required to show that minimum of the pay scale, which is prescribed for such workers, is paid to them."

Further, in **State of Punjab and others vs. Jagjit**

Singh and others C.A.No.213 of 2013 decided on 26.10.2016 Hon'ble

the Supreme Court has held as under:-

"54. There is no room for any doubt, that the principle of 'equal pay for equal work' has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all

the courts in India, under Article 141 of the Constitution of India. The parameters of the principle, have been summarised by us in paragraph 42 herein above. The principle of 'equal pay for equal work' has also been extended to temporary employees (differently described as workcharge, daily-wage, casual, ad-hoc, contractual, and the like). The legal position, relating to temporary employees, has been summarized by us, in paragraph 44 herein above. The above legal position which has been repeatedly declared, is being reiterated by us, yet again.

55. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

56. We would also like to extract herein Article 7, of the International Covenant on Economic, Social and Cultural Rights, 1966. The same is reproduced below:-

"Article 7

The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays."

India is a signatory to the above covenant, having ratified the same on 10.4.1979. There is no escape from the above obligation, in view of different provisions of the Constitution referred to above, and in view of the law declared by this Court under Article 141 of the Constitution of India, the principle of 'equal pay for equal work' constitutes a clear and unambiguous right and is vested in every employee - whether engaged on regular or temporary basis.

57. Having traversed the legal parameters with reference to the application of the principle of 'equal pay for equal work', in relation to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of 'equal pay for equal work' summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State, that any of the temporary employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 herein above. There can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post.

58. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding, that all the concerned temporary employees, in the present bunch of cases, would be entitled to draw wages at the minimum of the

pay-scale (-at the lowest grade, in the regular pay-scale), extended to regular employees, holding the same post.”

A large number of the petitioners have been working as daily wagers since 1996 and last workman as per record joined in the year 2006. In the replication filed, it has been reiterated that there is no proof on record that the work was given to the contractor prior to the floating of the tender in the year 2011. Though, through Annexure R-5, list of contractors since 1996 has been given but details of payments to the contractors has not been given, therefore, list of contractors is of no consequence. Moreover, in view of Section 7 of the Contract Labour (Regulation and Abolition Act), 1970, the respondents cannot get the work done through contractor without applying to the Government, particularly, when the work is of perennial nature and sufficient to employ regular worker, the licence to get the work done through contractor cannot be given. It has also come on record that names given by the State in Annexure R-4 are fake as several contractors listed sworn affidavits that they were never contractors with the Government as is clear from Annexures A-4 to A-8. Some of the named contractors were employees of the State and could not have done contracting work. The list Annexure R-4 shorn off all the details is against the record.

As per the dictum of law laid down by Hon'ble the Supreme Court in **Jagit Singh's case(supra)** and by Hon'ble the Division Bench of this Court in **Rajinder Kumar's case (supra)** a daily wager is entitled to draw wages at the minimum of the pay scale (at the lowest

grade, in the regular pay scale) extended to regular employees, holding the same post.

In view of above, the present petition is allowed in terms of LPA No. 1024 of 2009 **“State of Punjab and others vs. Rajinder Kumar and others”**. However, the relief of minimum of pay scale with all allowances as revised from time to time shall be confined to three years preceding the filing of writ petition. The respondents are directed to do the needful within a period of three months from the date of receipt of copy of the judgment.

11.07.2018.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No