

HON'BLE THE ACTING CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

WRIT APPEAL No. 396 of 2019

JUDGMENT: *(per the Hon'ble the Acting Chief Justice Raghvendra Singh Chauhan)*

The appellants are aggrieved by the order dated 29.03.2019, passed by the learned Single Judge in I.A.No.2 of 2018 in W.P.No.5115 of 2018, whereby the learned Single Judge has dismissed the application for vacating the order dated 22.02.2018, in I.A.No.1 of 2018, and made the said order an absolute one.

The learned Government Pleader for Services appearing for the appellants submits that the respondents had filed a writ petition seeking the benefit of the minimum timescale of pay attached to the posts of class IV employees, as they were engaged as cooks and watchmen on a daily wage basis. According to the learned Government Pleader, despite the fact that it was brought to the notice of the learned Single Judge that the petitioners happen to discharge their duties only for a few hours in a day, the learned Single Judge, relied upon the case of the **State of Punjab and others vs. Jagjit Singh and others**¹, and directed the appellants to pay the respondent-petitioners the minimum timescale of pay attached to the posts of class IV employees

¹ (2017) 1 SCC 148

during the pendency of the writ petition. However, subsequently, the appellants had filed an application for vacating the said order. Despite the oral submission with regard to the duration of the work period, the same has not been recorded by the learned Single Judge. Hence, the learned Single Judge has erred in making the stay order an absolute one.

Secondly, since the respondents were not working against regular posts, they are disentitled from claiming the benefit of the lowest pay-scale applicable to the regular employees. Therefore, according to the learned Government Pleader, the impugned order deserves to be set aside by this Court.

On the other hand, the learned counsel for the respondents, Mr. S. Satyanarayana Rao, submits that in case an argument is not reflected in the impugned order, the correct remedy is to file a review petition. Hence, according to the learned counsel, this appeal is not even maintainable.

Secondly, it is not a post to which a person is appointed, but it is the nature of the work being discharged by the employee which is pertinent. Since the petitioners were discharging the same work as discharged by the regular employees, the learned Single Judge was justified in relying upon the case of **Jagjit**

Singh (supra), and in making the interim order absolute in favour of the respondents.

Heard the learned counsel for the parties, and we have perused the impugned order.

A perusal of the impugned order clearly reveals that no oral submission was made before the learned Single Judge with regard to “the duration of time for which the petitioners were discharging their duties”. In case the appellants had raised such a contention, and since the said contention is not reflected in the impugned order, the respondents are free to file a review petition before the learned Single Judge.

A bare perusal of the impugned order also clearly reveals that the thrust of the argument of the appellants was that the petitioners were not appointed in the regular vacancies. However, the learned Single Judge was justified in relying on the case of **Jagjit Singh** (supra) and in concluding that the material issue is not whether the employee has been appointed in an irregular vacancy, but the essential question is whether the employee continues to discharge the same set of duties as has been discharged by the regular employee or not? Admittedly, the petitioners are discharging the exact same duties as is being

discharged by the regular employees. Therefore, the learned Single Judge was certainly justified in relying on the case of **Jagjit Singh** (supra), and in concluding that the petitioners would be entitled to receive the lowest of the pay-scale of the regular employee.

Therefore, this Court does not find any illegality or perversity in the impugned order. This appeal being devoid of any merit; it is, hereby, dismissed. However, the appellants are free to file a review petition as mentioned hereinabove.

Pending miscellaneous petitions, if any, shall also stand dismissed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, ACJ

Date: 01.05.2019

A. RAJASHEKER REDDY, J

lur/kvni