

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

CWP-15751-2000(O&M)
Reserved on: 07.02.2025
Pronounced on: 14.02.2025

KAKA RAM

. . . .PETITIONER

Vs.

PUNJAB STATE CIVIL SUPPLIES CORPORATION LTD. (PUNSUP) AND ANOTHER

. . . . RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by:- Mr. Jimmy Singla, Advocate, for the petitioner.

Mr. Vikas Chatrath and Ms. Preetleen Kaur,
Advocates for the respondents.

DEEPAK GUPTA, J.

By way of this Civil Writ Petition filed under 226/227 of the
Constitution of India, petitioner prays for issuance of the following writs: -

- (i) Writ of mandamus by directing respondents to consider and regularise the services of the petitioner as per the instructions of the Punjab Government on the post of Chowkidar alongwith all the consequential benefits.
- (ii) To pay the petitioner regular pay scale as is being paid to regular employees with effect from the date of his initial appointment in January, 1983, when he joined as a daily wager chowkidar on the principal of "equal pay for equal work"
- (iii) Writ of mandamus by directing the respondents to promote the petitioner to the post of clerk under 15% quota of Class III (Clerks) from amongst class IV employee as per the instructions of the Punjab Government dated 27.10.1998 with all consequential benefits.

2.1 According to the petitioner, he has been working as Chowkidar on daily wages basis since January 1983 at the prescribed rate fixed by the Deputy Commissioner, Patiala with no adverse report against him. He is a matriculate of 1967 and had completed his graduation in 1988. His services along with some other junior employees were retrenched by the respondent-Corporation on 24.08.1988 illegally and without any notice. Petitioner challenged the said termination before the Labour Court, Patiala by way of reference under Section 10 of the Industrial Disputes Act. However, on the oral assurance of the respondent to reinstate him with continuity in service, the authorised representative of the petitioner did not press the reference and as such, the same was dismissed as withdrawn. Similarly placed junior employees namely Gurmail Singh and Gurdev Singh had also challenged their termination by seeking reference before the Labour Court, Patiala, which were decided in their favour and they were reinstated with continuity of service.

2.2 It is further contended by the petitioner that respondent Corporation follows the instructions and Rules issued by the Punjab Government from time to time in its day to day Administration. Punjab Government issued instructions dated 20.01.1995 *Annexure P-2*, as per which the daily wager employee is liable to be considered for regularization of service after putting in 10 years of service. Petitioner was taken into service vide appointment letter dated 19.09.1994 *Annexure P3* as daily wage chowkidar pursuant to the oral assurance as *ibid*. It is alleged that he was not given the benefit of continuity of service performed by him prior to his retrenchment as given to other employees junior to him.

2.3 Petitioner further submits that Punjab Government issued instructions dated 27.10.1998 *Annexure P-5* providing for enhancement of quota from 10% to 15% for filling up of the Class III posts (Clerks) by promotion from amongst Class-IV employees, who possessed minimum educational qualification as matriculation in Punjabi and minimum 5 years' experience as such. Petitioner claims that he is fully qualified as per the aforesaid instructions and entitled to promotion. Petitioner further claims regularization of his service

as well as granting him regular pay scale on the principle of 'equal pay for equal work'. Petitioner made repeated representations for claiming the abovesaid reliefs but with no result.

2.4 It is alleged that the action of the respondents in not regularizing the services of petitioner and not granting him regular pay scale on the principle of 'equal pay for equal work', is the violative of Articles of 14 & 16 of the Constitution of India and so liable to be struck down.

3.1 In reply to the petition, it is contended by the respondents that petitioner does not fulfill the condition of regularization as stipulated in the instructions dated 20.01.1995 (*Annexure P2*). It is pointed out that reference sought by the petitioner before Labour Court was withdrawn on the ground that there was some technical error in the same and he will file the fresh after rectifying the error. However, no fresh reference was sought. There was no assurance on the part of the respondents to reinstate him as is claimed by the petitioner. Respondents submits further that service of the petitioner was terminated after making payment of compensation vide letter dated 24.08.1988 and then he was issued fresh appointment letter on 19.09.1994. He joined on 31.10.1994 and thus, it is apparent that he does not fulfill the conditions for regularization as per the instructions dated 20.01.1995.

3.2 Respondents further submitted that petitioner is not entitled to be paid the pay scale of regular employee on the principle of 'equal pay for equal work' as is claimed by him. Reliance is placed on '**State of Haryana Vs. Jasmer Singh, 1997 (1) RSJ 445**'. Respondents also oppose the claim of the petitioner to promote him submitting that petitioner cannot be regularized as per the instructions issued by the Government, therefore, there is no question of promoting him as Class III on the basis of 15% quota. It is also submitted that Gurmail Singh and Gurdev Singh as named by the petitioner, were reinstated with continuity in service by the Labour Court and therefore, petitioner cannot claim parity with them.

3.3 With this stand and controverting all other averments, respondents prayed for dismissal of the petition.

4. During pendency of the present petition, counsel for the respondents placed on record copy of an order dated 31.05.2007, whereby services of the petitioner were regularized. Copy of another order dated 23.10.2018 was placed on record, as per which petitioner had retired on attaining the age of superannuation w.e.f. 31.10.2018.

5. Though counsel for the respondents contended that in view of the abovesaid circumstances, petition has become infructuous, but counsel for the petitioner claimed that petitioner deserved to be regularized w.e.f. the date of his initial appointment in January 1993, when he had joined as a daily wager.

6. Refuting this contention, Id. counsel for the respondents submits that after issuance of the letter dated 31.05.2007 regularizing the petitioner, he never got the petition amended, so as to challenge the said letter by claiming regularization from January 1983 and therefore, petitioner is no longer entitled for any relief in this regard.

7. This Court has considered submissions of both the sides and have appraised the record carefully.

8. It is not in dispute that after his initial appointment as daily wager chowkidar in January 1983, the services of the petitioner were retrenched in August 1988. The stand of the respondents to the effect that petitioner was paid retrenchment compensation vide letter dated 24.08.1988, has not been denied by the petitioner by filing any rejoinder. It is further not in dispute that petitioner, like other similarly placed employees, had assailed his retrenchment by seeking reference before the Labour Court. However, the order dated 15.11.1994 *Annexure P-1* passed by the Labour Court would reveal that petitioner had withdrawn his reference.

9. The contention of the petitioner that his representative had withdrawn the reference on the assurance given by the respondents to take

him back in the service, is absolutely not tenable, as there is nothing to this effect in the order dated 15.11.1994 (*Annexure P1*), operative portion of which reads as under: -

“This reference was taken up today. Sh. Karamjit Singh authorised representative of the workman has given statement in writing to the effect that he does not press the reference for the time being on account of technical error and he reserves the right to file fresh dispute after rectifying the error. The reference stands answered accordingly. No order as to costs.”

10. It is clear from the aforesaid order of the Labour Court that representatives of the petitioner had withdrawn the reference on the ground of some technical error and with liberty to file fresh reference. However, no such fresh reference was sought by the petitioner and thus, his earlier reference remained as dismissed as withdrawn on the ground of some technical error.

11. Some similarly placed employees, who were also retrenched in 1988 by the respondents, had also sought reference before the Labour Court. Those were decided in favour of the employees' and they were allowed to be reinstated with continuity in service. Petitioner cannot claim parity with them, as he was issued fresh appointment letter dated 19.09.1994 (*Annexure P3*) and he joined on 31.10.1994.

12. On perusal of letter dated 19.09.1994 (*Annexure P3*), it is evident that it was the fresh appointment letter with no continuity of service. In case the other employees, who were retrenched in 1988, were allowed to be reinstated with continuity in service by the orders of the Labour Court, petitioner cannot claim parity with those employees so as to claim that he should also be reinstated w.e.f. January 1983, when he had joined as daily wager. As such, the claim of the petitioner to regularize his service w.e.f. January 1983, when he had initially joined, is absolutely not tenable. The said relief claimed by the petitioner is hereby declined.

13. Proceeding further, as noticed earlier that services of the petitioner have already been regularized under the instructions dated 15.12.2006 after completion of 10 years of service as on 10.04.2006. Period of 10 years has been rightly taken from the date of his fresh appointment in August 1994. His regularization has been ordered vide order 31.05.2007 placed on record by the respondents.

14. The contention of the petitioner that he was liable to be regularized w.e.f. January 1983 is liable to be rejected not only for the reasons discussed above but also for another reason. As noticed above, petitioner has been regularized w.e.f. 31.05.2007 vide order 31.05.2007. This petition was filed in 2000. Petitioner never got his petition amended, so as to challenge the order dated 31.5.2017 and claim that he should be regularized w.e.f. January 1983 and not from subsequent date of 31.5.2007. Reliance in this regard can be placed upon ***Piare Lal vs. Union of India 1975 AIR Supreme Court 650***

“7. We do not think we can entertain these contentions urged on behalf of the appellant 'against the validity of the two orders dated 28th October, 1966, since there is no challenge to these two orders in the petition. The appellant could have very well amended the petition and challenged the validity of the two orders dated 28th October, 1966 before the petition was heard and disposed of by the High Court, but the appellant failed to do so. The appellant did not care to apply for amendment of the petition even after the appeal was preferred in this Court, and though the appeal remained pending in this Court for about seven years, no application for amendment to the petition was made on behalf of the appellant. It was only after the hearing of the appeal was concluded and when it was pointed out by us that the entire basis of the petition was knocked out by the making of the two orders dated 28th October, 1966 and no relief could be granted to the appellant unless those two orders were successfully impugned, that the appellant asked for time to move an application for amendment of the petition so as to include a challenge to the validity of those two orders. Obviously, we could not grant time for moving such an application for amendment at the stage at which it was sought to be moved. The two orders dated 28th October, 1966 could not be allowed to be challenged by an

amendment of the petition more than eight years after the date when they were made. It is not possible to believe that the appellant was not aware of the making of these two orders and that he came to know of them for the first time when the affidavit dated 2nd January, 1975 was filed by H.S. Sekhon on behalf of the State Government. The appellant could have amended the petition earlier, at any rate during the long period of seven years when the appeal was pending in this Court, but the appellant was either lax or negligent. We cannot now, after the lapse of such a long time and particularly after the hearing of the appeal is concluded, allow an amendment to the petition. It must follow a fortiori that, in the absence of challenge in the petition, we cannot examine the validity of the two orders dated 28th October, 1966 and strike them down. We must, therefore, hold the petition to have become infructuous by reason of the making of the two orders dated 28th October, 1966 and confirm the dismissal of the petition by the High Court, though for different reasons.”

15. In present case also, petitioner prayed for issuance of writ of mandamus to direct respondents to consider and regularise him as per the instructions of the Punjab Government on the post of Chowkidar. Said relief was granted to him by way of order dated 31.5.2007 placed on record by counsel for the respondents. Petitioner never got his petition amended, so as to challenge the order dated 31.5.2017 and claim that he should have been regularized w.e.f. January 1983 and not from subsequent date of 31.5.2007. As such, the petition to the extent of this relief of regularisation has become infructuous. It is held accordingly.

16. The other relief claimed by the petitioner is to promote him to Class-III post under the quota of 15% from Class-IV, as per the instructions dated 27.10.1998. As has already been noticed that it was a fresh appointment of the petitioner w.e.f. 19.9.1994 and by taking the said date, petitioner did not become eligible for being considered for his promotion from amongst the Class IV employees as per the instructions dated 27.10.1998. As such, the said claim of the petitioner is also hereby rejected.

17. The last relief claimed by the petitioner is to grant him pay scale of the regular employee on the basis of principle of 'equal pay for equal work'. Although petitioner claims the said benefit w.e.f. January 1983 i.e. the date of his initial appointment, but the said claim is rejected. Rather, it is held that petitioner will be entitled to the minimum pay scale of the regular employee on the principle of 'equal pay for equal work' only w.e.f. 31.10.1994, when he joined the services of the respondents on the basis of fresh appointment letter dated 19.09.1994. Petitioner is entitled to the said benefit of minimum pay scale of the regular employees on the principle of 'equal pay for equal work' in view of the authoritative pronouncement of Hon'ble Supreme Court in ***State of Punjab Vs. Jagjit Singh and others, 2016 (4) SCT 641***, wherein it was held as under: -

"56. We shall now deal with the claim of temporary employees before this Court.

57. 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 summarized by us in para 42 hereinabove. The principle of "equal pay for equal work" has also been extended to temporary employees (differently described as work-charge, daily wage, casual, ad hoc, contractual, and the like). The legal position, relating to temporary employees has been summarized by us, in para 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us yet again.

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60. 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 employees concerned (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” summarised by us in para 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 temporary employees concerned 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 summarised by us in para 42 hereinabove. There can be no doubt, that the principle of “equal pay for equal work” would be applicable to all the temporary employees concerned, so as to vest in them the right to claim wages on a par with the minimum of the pay scale of regularly engaged government employees holding the same post.

61. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding that all the temporary employees concerned, 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.”

18. The question as to whether minimum of pay scale would include dearness allowance and grade pay, has been subsequently clarified by Hon’ble Supreme Court in ***Bahadur Singh and Others v. Jaspreet Kaur Talwar and Others*** 2022 SCC OnLine SC 1077, wherein it was held that minimum of pay

would include dearness allowance as well as grade pay. The relevant extracts of the judgment read as:

“3. Paragraph 55 of the decision in **Jagjit Singh (supra)** was to the following effect:

*“55. In view of all our above conclusions, the decision rendered by the Full Bench of the High Court in **Avtar Singh v. State of Punjab [Avtar Singh v. State of Punjab, 2011 SCC OnLine P&H 15326]**, is liable to be set aside, and the same is hereby set aside. The decision rendered by the Division Bench of the High Court in **State of Punjab vs. Rajinder Singh [State of Punjab v. Rajinder Singh, 2009 SCC OnLine P&H 125]** is also liable to be set aside, and the same is also hereby set aside. We affirm the decision rendered in **State of Punjab v. Rajinder Kumar [State of Punjab v. Rajinder Kumar, 2010 SCC OnLine P&H 13009]**, with the modification that the employees concerned would be entitled to the minimum of the pay scale, of the category to which they belong, but would not be entitled to allowances attached to the posts held by them.”*

4. Notably, the expression “pay” was considered by this Court in **Contempt Petition (Civil) Nos. 699-700 of 2015, Tej Singh v. Sarvesh Kaushal**, arising out of decision dated 11.05.2015 in **Grah Rakshak, Home Guards Wel. Asso. v. State of H.P. and connected matters, Civil Appeal No. 2759 of 2015 etc.** In its order dated 04.05.2016 passed in said Contempt Petitions, this Court observed:

“After hearing learned counsel for the parties, we are of the opinion that the expression “minimum of the pay” mentioned in paragraph 22 is intended to mean not only the basic pay + grade pay, but also the dearness allowance that comes along with the basic pay and grade pay. This is in the context of the view expressed by this Court denying regular appointments to the petitioners, while taking into consideration the fact that the services of the Home Guards are used during an emergency and for other purposes and at the time of their duty they are empowered with the power of police personnel. Accordingly, we make it clear that the word “minimum of the pay” used in paragraph 22 of the judgment and order dated 11th March, 2015 means the basic pay + grade pay + dearness allowances + washing allowance.”

19. The claim of daily wage workers for minimum pay was also considered by Constitution Bench of Hon'ble Supreme Court in ***Secretary, State of Karnataka vs. Uma Devi (2006) 4 SCC 1***. The Division Bench of High Court had ordered for payment to daily wage workers equal to regular employees. The Supreme Court set aside the said direction and held that daily wage workers may be paid equal to the lowest grade of employees of their cadre. The relevant extracts of the judgment read as:

“55. In cases relating to service in the Commercial Taxes Department, the High Court has directed that those engaged on daily wages, be paid wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively appointed. The objection taken was to the direction for payment from the dates of engagement. We find that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called and were entitled to any other benefit. They had also been engaged in the teeth of directions not to do so. We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that is being paid to regular employees be paid to these daily-wage employees with effect from the date of its judgment. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily-wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court.”

20. In ***Union of India vs. Ilmo Devi (2021) 20 SCC 290***, Hon'ble Supreme Court held that part time employees are not entitled to pay equal to regular employees, as they work for 3-4 hours and so, cannot claim pay parity. The findings of the court are reproduced as below:

“18. Though, we are of the opinion that even the direction contained in para 23 for granting minimum basic pay of Group ‘D’ posts from a particular date to those, who have completed 20 years of part-time daily wage service also is unsustainable as the part-time wagers, who are working for four to five hours a day and cannot claim the parity with other Group ‘D’ posts. However, in view of the order passed by this Court dated 22-7-2016 [*Union of India v. Ilmo Devi, 2016 SCC OnLine SC 1933*] while issuing notice in the present appeals, we are not quashing and setting aside the directions contained in para 23 in the impugned judgment and order [*Union of India v. Ilmo Devi, 2015 SCC OnLine P&H 5144*] so far as the respondents' employees are concerned.

19. In view of the above and for the reasons stated above, both the appeals succeed. The impugned judgment and order [*Union of India v. Ilmo Devi, 2015 SCC OnLine P&H 5144*] passed by the High Court and, more particularly, the directions contained in paras 22 and 23 in the impugned judgment and order [*Union of India v. Ilmo Devi, 2015 SCC OnLine P&H 5144*] are hereby quashed and set aside. However, it is observed that quashing and setting aside the directions issued in terms of para 23 in the impugned judgment and order [*Union of India v. Ilmo Devi, 2015 SCC OnLine P&H 5144*] shall not affect the case of the respondents and they shall be entitled to the reliefs as per para 23 of the impugned judgment and order [*Union of India v. Ilmo Devi, 2015 SCC OnLine P&H 5144*] passed by the High Court.”

21. From the conjoint reading of judgments of Hon’ble Apex Court in *Jagjit Singh (supra)*, *Bahadur Singh (supra)*, *Uma Devi (supra)* and *Ilmo Devi (supra)*, it can be culled out that part time employees, who are working for few hours cannot claim pay parity. Daily wage workers, who work at par with regular employees, though cannot claim pay parity with regular employees yet they are entitled to minimum pay. The minimum pay includes dearness allowance and grade pay. Same view has been taken by co-ordinate bench of this High Court in *CWP-19238 of 2013 titled ‘Amrish Sharma & others vs. State of Punjab & others’* and various other connected matters decided on 26.2.2024.

22. Applying the above legal position to the facts of present case, the petitioner joined as daily wages chowkidar on 31.10.1994 on his fresh appointment vide order dated 19.9.1994 Annexure P-3. He has already been regularised from 31.05.2007. He deserves the minimum pay, which includes minimum of pay scale plus dearness allowance and grade pay, as was payable to regular employees during the abovesaid period.

23. Accordingly, this petition deserves to be allowed only to the extent that petitioner is entitled to ‘equal pay for equal work’ w.e.f. date of his rejoining i.e., 31.10.1994 till the date of his regularization i.e., 31.05.2007. Respondents are liable to pay minimum of pay scale plus dearness allowance and grade pay to the petitioner for the aforesaid. Ordered accordingly.

14.02.2025

Vivek

(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned?

Whether reportable?

Yes

Yes