

Court No. - 5

Case :- WRIT - A No. - 1505 of 2004

Petitioner :- Amar Singh

Respondent :- State Of U.P.Through Prin Secy Education And
3 Ors

Counsel for Petitioner :- Suresh Singh,Amitabh Kumar Rai

Counsel for Respondent :- C.S.C,Prashant Arora,Prashant
Chandra,S.S.Rajawat

Hon'ble Irshad Ali,J.

1. Heard Shri Suresh Singh, learned counsel for the petitioner and learned Standing Counsel for the respondent.

2. The petitioner has prayed for issuance of a writ in the nature of Mandamus commanding the opposite parties to pay the petitioner regular pay scale of Class IV employee with further prayer to issue a writ in the nature of Mandamus commanding the opposite parties to regularize the services of the petitioner on the post of Choukidar and to release all the consequential benefits to that post.

3. Factual matrix of the case is that the petitioner was issued appointment letter by the office of UP-Vidhyalaya Nirikshak Barabanki on 27.12.1992 and initially, the petitioner was getting Rs.30 per month. On 6.1.1992, in pursuance to the appointment letter, the petitioner joined on the post of Choukidar. The petitioner was working on the said post and getting only Rs.30 per month. The salary of the petitioner was increased from Rs.30 to 150 since 1998 which is evident from the Bank passbook itself.

The petitioner has completed more than 10 years without any break on the sanctioned post of Choukidar. The petitioner is working in the school hour daily since 10a.m. to 4p.m. like other employees since 1992. The petitioner is entitled minimum pay of scale admissible to Class IV employee since 1992 and regular pay scale after 3 years i.e. 1996.

Since no step was taken for regularization of the services of the petitioner on the post of Choukidar he made representation to the opposite party no.3 requesting therein that the petitioner has completed more than 10 years of regular service, therefore he may be paid the regular pay scale and his services may be regularized.

4. Learned counsel for the petitioner submits that the petitioner has rightly claimed as regard regularization on the post of Choukidar i.e. Class IV post since 1992 in view of the fact that the petitioner has been working on the said post for last more than 10 years. He next submits that non-payment of minimum pay scale of a regular class IV post to the petitioner is illegal, arbitrary, discriminatory and unconstitutional.

5. Learned counsel for the petitioner next submits that the work and conduct of the petitioner has always been found satisfactory. He next submits that in similar circumstances this Hon'ble Court has passed order for giving minimum pay scale and regularization of the service of the petitioner and petitioner's case is also covered with the said order.

6. Per contra, learned Standing Counsel submits that the appointment of the petitioner is on the basis of monthly allowance and not as class IV employee but it is part-time Choukidar on fixed allowance. He next submits that the petitioner cannot be paid a regular payscale for the reason as he is not class IV employee.

7. Learned Standing Counsel next submits that neither appointment of the petitioner is on Class IV employee nor it is in accordance to the rule and against the Government Order dated 20.2.1982 and on the same subject matter special appeal preferred at Allahabad has been dismissed and as such the petition is devoid of merit and deserves to be dismissed by this Court.

8. Having heard the rival submissions of learned counsel for the parties, I have perused the material available on record.

9. Perusal of the record shows that in pursuance to appointment letter dated 27.12.1992, the petitioner joined on the post of Choukidar on the fixed salary of Rs.30/- which was increased to 150 since 1998. The petitioner has completed more than 10 years without any break on the post. Petitioner is working in the school daily since 10a.m. to 4p.m. like other employees since 1992 and there is no complaint in regard to work and conduct of the petitioner.

10. From perusal of the the orders passed by the Court it is crystal clear that while considering the similar issue the Court gave direction that the respondents shall pay current wages equivalent to the minimum of pay scale admissible to Class IV amount with further direction to consider the regularization by the respondents.

11. The nature of the employment of the petitioner is to maintain security in the school. The nature of work involves regularity, responsibility and same, if not more working hours as regular employees. In case the State Government forces labour at such ridiculously low rate, on which no humane being can maintain himself or even exist, the exaction of work cannot be treated other than a exploitation of humane labour, violating basic human rights and right to work with dignity violating Article 21 of the Constitution of India. The employment under the State Government for a sum of Rs.150/- p.m. amounts to force labour which is not permissible in law.

12. Considering in totalities of facts and circumstances of the case, this writ petition is **disposed of** with a direction to the respondents to pay current wages equivalent to the minimum of pay scale admissible to Class IV employees within a period of six weeks from the date of production of a certified copy of this order.

13. It is however provided that the candidature of the petitioner shall also be considered for regularization by the respondents within the aforesaid period.

Order Date :- 24.8.2023

GK Sinha