

Allahabad HC Orders Minimum Pay At Par With Regular Employees For IV Class Contractual Employees Working Since 2005

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HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

ALOK MATHUR; J.

WRIT A No. 2516 of 2019; 11.11.2022

Sukh Vir Singh And Ors.

versus

State of U.P. Thru Prin. Secy. Law and Legal Remembrancer Andors

Counsel for Petitioner: - Amrendra Nath Tripathi, Manish Misra

Counsel for Respondent: - C.S.C., Deepanshu Dass, Niteesh Kumar

1. Heard Sri Manish Misra, learned counsel for the petitioner, Sri Niteesh Kumar for U.P. State Legal Services Authority, Lucknow- respondent No.4 as well as learned Standing counsel for the State-respondent No.1 to 3.

2. By means of the present petition the petitioners have assailed the order dated 12.9.2018 thereby rejecting the representation and claim of the petitioners seeking grant of minimum of pay scale.

3. It has been submitted that as there was urgent need in High Court Legal Services Cell at Lucknow, the U.P. State Legal Services Authority took decision in its meeting held on 7.8.1999 for sending proposal to the State Government for creating of additional posts of two posts of Clerk and two posts of Peons. The proposal of the Legal Services Authority remained pending with the State Government and no action was taken on it. The said posts were not created and consequently considering the requirement of the personnel on class IV post, the petitioners were appointed on contract basis by the order dated 14.9.2005 passed by Chairman, U.P. State Legal Services Authority. Subsequently according to the requirements various works has been taken from them and also they were attached with High Court Legal Services Sub Committee, Lucknow. It is undisputed that the petitioners are continuing since then without any break on the fixed salary of Rs.5,000/- per month. It has been submitted by learned counsel for the petitioner that now they are getting Rs.7500/- per month.

4. Learned counsel for the petitioners further contended that the action of the respondents itself is arbitrary as the petitioners are receiving salary which is below the minimum of wages fixed by the government in this regard. The petitioners had approached this Court earlier seeking some direction by filing writ petition No.6946 (S/S) of 2015 which was disposed of by this Court by means of order dated 21.2.2018 directing the respondents to decide the representation of the petitioner, expeditiously. It is in compliance of the orders of this Court dated 21.2.2018 that the impugned order has been passed rejecting the claim of the petitioner

5. This Court has noticed that while rejecting the claim of the petitioners the respondents have not even considered the case of the petitioner for grant of minimum of pay scale. The respondents, in fact, had considered granting of regular scale in light of the Government Order dated 30th August, 2013 which is regarding fixation of salary of the State Government employees for regular scale of pay as well as for contract workers. The case of the petitioner is not for grant of regular scale of pay but for grant of minimum of pay scale. It has been submitted that the petitioners have been continuing regularly since 2005 and after working for more than 13 years had claimed that he may be granted

minimum of pay scale as per the direction of Apex Court in the case of **State of Punjab Vs. Jagjeet Singh, (2017) 1 SCC 148**. The relevant portion of the judgment is quoted as under: -

"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 paragraph 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 paragraph 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us, yet again.

58. 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.....

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, adhoc 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 hereinabove. 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.

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

6. On the strength of the aforesaid facts and circumstances as well as the law laid down by Apex Court the petitioner claims to be entitled to minimum of pay scale and consequently has assailed the validity of the impugned order.
7. Learned Standing counsel, on the other hand, has submitted that there is no provision or any government order providing for minimum of pay scale and, hence the benefit of the same could not have been granted to the petitioner. He further submits that the petitioner was appointed de hors the rules and consequently according to the government orders regular scale of pay is not admissible to such persons.
8. I have heard learned counsel for the parties and perused the record.
9. It is noticed that the State Legal Services Authority had made repeated requests to the State Government for creation of two posts of Peons and two post of Clerks and when for a long length of time the posts were not created then considering the requirement and urgency of personnel the petitioners were appointed on contract basis on Rs.5000/- per month by means of order dated 14.9.2005. After their appointment they are working and the Legal Services Authority has been taking work from them in various places including in the Counseling and Conciliation Centre, Lucknow. It is noticed that in the aforesaid circumstances the Supreme Court in the case of ***State of Punjab Vs. Jagjeet Singh (Supra)*** has considered this aspect that the persons who have been appointed and are continuously discharging duties commensurate with regularly appointed persons, such persons are also entitled to be paid the same wages in accordance with the provisions of 'equal pay for equal work' and also considering that fact that the petitioners have been working for a substantially long length of time and are getting only Rs.7500/- per month which admittedly is below the minimum wages fixed by the State Government and accordingly, this Court is of the considered view that the petitioners are also entitled for being granted minimum of pay scale as is being granted to regular employees as the same services are being rendered by them.
10. In light of the above, the writ petition is **allowed**. The order dated 12.9.2018 passed by the State Government is quashed.
11. The respondents are directed to pass fresh orders granting minimum of pay scale to the petitioners, expeditiously say within four weeks from the date a certified copy of this order is placed before them.

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