

SUPREME COURT OF INDIA

Sabha Shanker Dube

Vs.

Divisional Forest Officer

C.A.No.10956 of 2018

(S.A.Bobde and L.Nageswara Rao,JJ.,)

14.11.2018

JUDGMENT

L.Nageswara Rao,J.,

SLP(Civil) No.1045 of 2016

1. Leave granted

2. These Appeals are filed against the judgment of the High Court of Allahabad dated 24th September, 2015 in Special Appeal No.1198 of 2006 and others by which the judgment of the learned Single Judge denying relief to the Appellants was affirmed.

3. The Appellants are daily rated workers employed in Group 'D' posts in the Forest Department in the State of Uttar Pradesh. They filed Writ Petitions before the High Court of Allahabad seeking regularization of their services, the minimum of the pay scales available to their counterparts working on regular posts and treating them as being in continued service while condoning the breaks in their service. The Writ Petitions were dismissed by a learned Single Judge by a judgment dated 28th April, 2004. Regularization of daily wagers was directed to be considered in accordance with the relevant rules by condoning the breaks in service if it is less than 03 months. It was held that a direction for regularization cannot be issued. The learned Single Judge rejected the claim of the Appellants regarding the minimum of the pay scales by holding that such a direction cannot be granted under Article 226 of the Constitution of India. The Special Appeals filed by the Appellants were dismissed by a Division Bench of the High Court of Allahabad by a judgment dated 24th September, 2015 by relying upon its earlier judgment in Special Appeal No.1530 of 2007.

4. Special Appeal No.1530 of 2007 was filed by the State of Uttar Pradesh against the judgment of the learned Single Judge dated 17th October, 2005 in Civil Misc. Writ Petition No.48322 of 2000 and others. The said Writ Petitions were filed by daily wagers working in Group 'C' and Group 'D' posts in the Forest Department of the State of Uttar Pradesh. Regularization of services and equal pay for equal work were the reliefs that were sought by

the Petitioners in those Writ Petitions. The learned Single Judge allowed the Writ Petitions by directing the State Government to re-consider the Petitioners-therein for regularization of their services, ignoring artificial breaks and by relaxing the minimum educational qualifications and the physical endurance requirements prescribed by the service rules. The Selection Committee was directed to re-consider candidature of all the Petitioners-therein for regularization. Such of those persons who were found eligible for regularization were directed to be regularized in the vacancies that may arise in the future in their respective divisions. There was a further direction that the Petitioners-therein shall be continued on daily wages till their regularization and be paid a minimum of the pay scales.

5. In the Appeal filed by the State of Uttar Pradesh, a Division Bench of the High Court set aside the directions issued in the Writ Petitions relating to the relaxation of minimum educational qualifications and physical endurance requirements as also the direction pertaining to the minimum of the pay scales to be paid to the daily wagers. The directions issued by the learned Single Judge to relax the conditions of the requisite minimum qualifications and physical endurance requirements were found to be unjustified by the Division Bench. Placing reliance on a judgment of this Court in *State of Haryana v. Tiak Raj' and State of Punjab v. Surjit Singh*², the Division Bench of the High Court held that the daily wagers are not entitled to the minimum of the pay scales.

5. We have heard Mr. B.H. Marlapalle and Mr. S.R. Singh, learned Senior Counsels for the Appellants and Ms. Aishwarya Bhati, learned Addl. Advocate General and Ms. Rachna Gupta, learned Advocate on-Record appearing for the Respondents. It was made clear by Mr. Marlapalle, learned Senior Advocate that the only point that requires consideration pertains to the entitlement of the Appellants to the minimum of the pay scales applicable to the regular employees in the Forest Department. It was submitted on behalf of the Appellants that the judgment of this Court in Civil Appeal No.3634 of 1998 in *State of U.P. & Ors. v. Putti La/* still holds the field and the Division Bench ought to have granted the relief sought by following the said judgment. The Appellants relied upon a judgment of this Court in *State of Punjab & Ors. v. Jagjit Singh & Ors*³. to submit that they are entitled to the minimum of the pay scales and the judgment of the Division Bench is liable to be set aside. The Appellants also draw support from the Civil Appeals that were heard by this Court against the orders passed in Contempt Applications filed for disobedience of the orders of payment of the minimum of the pay scales to the daily wage workers in the Forest Department. This Court took notice of an affidavit filed on behalf of the Principal Chief Conservator of Forests, State of Uttar Pradesh in which it was stated that the instructions were given to all the officers concerned to implement the directions issued by the High Court regarding payment of the minimum of pay scales to the daily wagers. A direction was given by this Court to the Principal Chief Conservator of Forests and the Principal Secretary to the Department of Forests, State of Uttar Pradesh to file separate affidavits in the High Court regarding the implementation of the directions. Mr. S.R. Singh, learned Senior Advocate appearing for some of the Appellants informed us that all the daily wagers were paid the minimum of the pay scales from 29th January, 2016 to 31st March, 2018 at the rate of Rs.18,000/- per month. After 31st March, 2018, the pay was revised to 7,000/- per month. He

submitted that according to the recommendations of the 7th Pay Commission, the minimum of the pay scale to which the Appellants are entitled to is Rs.18,000/-.

6. Ms. Aishwarya Bhati, learned Addl. Advocate General appearing for the State of Uttar Pradesh contended that the Appellants are working in projects after being employed as and when the necessity arises. There is no continuity of service and the employment of the Appellants is made periodically after long breaks. She submitted that the Appellants are not eligible for regularization in accordance with the rules and they are not working on sanctioned posts. She also submitted that any relief granted in favour of the Appellants will result in a heavy burden on the State exchequer.

7. It is necessary for us to refer to the judgment of the Division Bench of the High Court of Allahabad in Special Appeal No.1530 of 2007 as all the impugned Special Appeals were dismissed by following the said judgment. The directions issued by the learned Single Judge to reconsider the Writ Petitioners for regularization of their services by ignoring the minimum educational qualifications and the physical endurance requirements as well as continuance of the Writ Petitioners on a daily wage basis with the minimum of the pay scales were set aside by the Division Bench.

8. The daily wagers relied upon a judgment of this Court in Putti Lal (supra) and submitted that the same relief may be extended to them. It is relevant to note that the judgment in Putti Lal (supra) relates to a dispute similar to that involved in this case. Daily rated wage earners in the Forest Department in the State of Uttar Pradesh approached the High Court for regularization of their services. The Division Bench of the High Court of Allahabad directed the State Government to constitute the Committee as directed in order to frame the scheme for regularization. The judgment of the High Court that the daily rated wage workers shall be paid at the minimum of the pay scales was affirmed by this Court on the principle of equal pay for equal work. The Division Bench of the High Court while deciding Special Appeal No.1530 of 2007 referred to the judgment in Putti Lal (supra) but placed reliance on a later judgment of this Court THak Raj (supra). The Division Bench of the High Court also cited the case of Surjit Singh (supra) to hold that the daily wagers cannot seek the benefit of the judgment of Putti Lal (supra) case in view of the subsequent decisions of this Court wherein, according to the High Court, it was held that daily wage employees were not entitled to the minimum of the pay scales.

9. On a comprehensive consideration of the entire law on the subject of parity of pay scales on the principle of equal pay for equal work, this Court in Jagjit Singh (supra) held as follows:

" 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. Anyone, 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 dependants 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."

10. The issue that was considered by this Court in *Jagjit Singh* (supra) is whether temporary employees (daily wage employees, ad hoc appointees, employees appointed on casual basis, contractual employees and likewise) are entitled to the minimum of the regular pay scales on account of their performing the same duties which are discharged by those engaged on regular basis against the sanctioned posts. After considering several judgments including the judgments of this Court in *Tilak Raj* (supra) and *Surjit Singh* (supra), this Court held that temporary employees are entitled to draw wages at the minimum of the pay scales which are applicable to the regular employees holding the same post.

11. In view of the judgment in *Jagjit Singh* (supra), we are unable to uphold the view of the High Court that the Appellants-herein are not entitled to be paid the minimum of the pay sales. We are not called upon to adjudicate on the rights of the Appellants relating to the regularization of their services. We are concerned only with the principle laid down by this Court initially in *Putti Lal* (supra) relating to persons who are similarly situated to the Appellants and later affirmed in *Jagjit Singh* (supra) that temporary employees are entitled to minimum of the pay scales as long as they continue in service.

12. We express no opinion on the contention of the State Government that the Appellants are not entitled to the reliefs as they are not working on Group 'D' posts and that some of them worked for short periods in projects.

13. For the aforementioned reasons, we allow these Appeals and set aside the judgments of the High Court holding that the Appellants are entitled to be paid the minimum of the pay scales applicable to regular employees working on the same posts. The State of Uttar Pradesh is directed to make payment of the minimum of pay scales to the Appellants with effect from 1st December, 2018.

Judgment Referred.

¹(2003) 6 SCC 0123

²(2009) 9 SCC 0514

³(2006) 9 SCC 0337