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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A. No.060/01054/2014

Date of Decision: 4.1.2016

Reserved on: 01.12.2015

**CORAM: HON'BLE MRS. RAJWANT SANDHU, ADMINISTRATIVE MEMBER
HON'BLE DR. BRAHM A. AGRAWAL, JUDICIAL MEMBER**

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1. Ganesh (President UT Road Workers Union) son of Dev Raj, working as Beldar, Road Sub Division No.R-2, Sector-9, Division CP-1, U.T. Chandigarh, resident of H. No.1253, Mauli Jagran Complex, U.T. Chandigarh.
2. Bish Ram (General Secretary, UT Road Workers Union) son of Ram Sunder, working as Beldar, Road Sub Division No.3, Sector-9, CP Division No.2 (R), UT, Chandigarh, resident of House No.3212, Maloya Colony, UT, Chandigarh.
3. Inder Pal (Cashier, UT Road Workers Union) son of Gaya Parshad, working as Beldar, Road Sub Division No.C-10, Sector-26, Chandigarh, resident of H. No.729, Kishangarh, UT, Chandigarh.
4. Smt. Chander Wati wife of Sh. Jhuri, working as Beldar, Road Sub Division C-10, UT, Chandigarh, resident of H. No.729, Kishangarh, UT, Chandigarh.
5. Guna Sekar son of Sh. Kangai, working as Beldar, Road Sub Division R-3, Sector-9, Chandigarh, CP Division No.2(R), resident of H. No.616, Village Palsura, UT, Chandigarh.

Applicants

Versus

1. Secretary, Department of Personnel, Chandigarh Administration.
2. Secretary Engineering, Chandigarh Administration, UT, Chandigarh.
3. Chief Engineer, UT, Chandigarh.
4. Superintending Engineer, Construction Circle-I, Chandigarh.
5. Superintending Engineer, Construction Circle-II, Chandigarh.

Respondents

Present: Sh. Beant Singh Seemer, counsel for the applicant.
Sh. Aseem Rai, counsel for the respondents.

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

- "8 (i) The applicants are entitled to minimum scale of pay prescribed as 6950/- + DA instead of Rs.6550/- + DA as per facts and law of the case.
- (ii) The applicants are entitled to revised scale of pay w.e.f. 01.12.2011 alongwith interest @12% per annum."

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2. Averment has been made in the O.A. that the applicants are working in the Engineering Department, UT Administration, Chandigarh as Beldars. Issue involved in the present O.A. is regarding initial pay to the daily wagers/applicants at par with the minimum scale of pay of the regular employees. It is stated that aggrieved on the same issue, persons like applicants approached this Tribunal by filing OA No.276/CH/1989 titled as Dharampal & Ors. vs. UOI & Ors. and vide order dated 01.04.1992, this Hon'ble Tribunal passed the following order:

"In the premises, respondents are hereby directed to pay the applicants the same pay and allowances as are being paid to the regular employees doing similar work as is being done by the applicants at the minimum of the pay scales of regular employees. Respondents shall make the payment including arrears from the date of their continuous employment within a period of 4 months from today. Respondents are also directed to consider the case of the applicants for regularization within a period of 6 months from the date of receipt of copy of this judgment."

The copy of the order dated 01.04.1992 is annexed (Annexure A-3).

3. It is further stated that the daily wage workers are being paid minimum scale of pay prescribed plus dearness allowance as revised from time to time by the Chandigarh Administration w.e.f. 01.04.1990. Accordingly, they have been paid Rs.2520/- + DA w.e.f. 01.01.1996 on revision of pay scale and also granted revised pay w.e.f. 01.01.2006 i.e. revised Pay Band (4900-10680) and Grade Pay Rs.1300 (with initial start of Rs.6200/- plus DA as admissible from time to time. The Punjab Government w.e.f. 01.12.2011 further revised the pay band (Rs.4900-10680) and Grade Pay Rs.1650 with initial start of Rs.6950/-, which was also adopted by the Chandigarh Administration and the same has been implemented in respect of Regular Group D employees of Chandigarh Administration and Municipal Corporation as well as those who are working as daily wager in various departments of U.T. and M.C. The present applicants approached the Chief Engineer, Chandigarh Administration by a

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written representation dated 02.01.2014 (Annexure A-8). The matter was referred to the Department of Personnel, Chandigarh Administration that passed an illegal, arbitrary and non-speaking order dated 21.10.2014 bearing Memo no.U.O No.28/11/94-IH(7)-2014/19635, whereby the applicants were said to be entitled for minimum of scale of pay as Rs.6550/- + DA. The Chief Engineer, UT, Chandigarh, in pursuance to the order dated 21.10.2014 confirmed the same and in furtherance of order dated 21.10.2014 again confirmed the minimum pay scale as Rs.6550/- + DA in an illegal and arbitrary manner by order dated 30.10.2014 bearing Memo No.P1/2014/2499-503 (Annexure A-9 and A-10).

4. In the grounds for relief it has, inter alia, been stated as follows:

- i. The impugned orders dated 21.10.2014 (Annexure A-9) and 30.10.2014 (Annexure A-10) are against the law of the land and are also against the directions given by this Tribunal as well as by the Hon'ble Apex Court in case of Dharmpal (Supra).
- ii. The impugned orders are against the Article 14 and 16 of the Constitution of India as it promotes discrimination between the applicants and the daily wagers employed in different departments of Chandigarh Administration.
- iii. The impugned orders are against the judgment dated 10.10.2006 passed in transfer case (civil) 72 of 2004 titled as Col. (Retd.) B.J. Akkara vs. Government of India & Ors.
- iv. The impugned orders are against the principle of natural justice.
- v. The impugned orders are illegal and arbitrary as it also contravenes the Rule 5 of Punjab Civil Services (Revised Pay) Rules, 2009.

5. In the written statement filed on behalf of the respondents it has been stated that vide Home Secretary, Chandigarh Administration, letter dated 30.04.1990 (A/1) it has been clarified that payment of wages to Daily Wage Workers should be made equivalent to minimum of the scale enjoyed by regular employees doing the same work in corresponding post plus DA. The applicants are accordingly being paid minimum of pay scale plus DA from time to time. The C.E. UT Memo No.5439-40 dated 27.11.2001 (A/2) also contains the same clarification wherein it has been stated that Govt. of India, Ministry of Home vide

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DO letter dated 27.11.2011 has allowed the benefit of DA in addition to minimum of the pay scale of the regular post to daily wage workers. The applicants are being paid accordingly.

6. It is further stated that Chandigarh Administration has complied with directions of the Tribunal in Dharampal's case and the applicants are being paid minimum of the pay scale of regular employees plus DA. The applicants have themselves admitted that they have been paid Rs.2520/- plus DA being minimum of the pre-revised scale of Rs.2520-4140 with initial start of Rs.2620/- The Daily Wage Workers were paid minimum of scale i.e. Rs.2520/- and not the initial start which was Rs.2620/-. The scales were revised w.e.f. 01.01.2006 with pay band of Rs.4900-10680 with grade pay of Rs.1300/- and initial pay of Rs.6200/-. The daily wage workers (applicants) were accordingly allowed minimum of the pay band i.e. Rs.4900/- and grade pay of Rs.1300/- with DA from time to time in view of the Chandigarh Administration, Department of Personnel letter dated 10.09.2009. The pay band and grade pay was further revised w.e.f. 01.12.2011 as Rs.4900-10680 with grade pay of Rs.1650 with initial pay of Rs.6950/- in respect of regular employees vide Punjab Govt. letter no.1023 dated 15.12.2011 adopted by Chandigarh Administration vide letter No.1496 dated 14.02.2012. The pay of the daily wage workers (applicants) was also revised to minimum of the band pay i.e. Rs.4900 and grade pay of Rs.1650 which comes to Rs.6550 plus DA as admissible from time to time. It has incorrectly been stated by the applicants that all the Departments of Chandigarh Administration are paying minimum pay scale prescribed as Rs.6950 to their daily wage employees as per revised pay scale of 2011. All the daily wage Beldars in all the Divisions/Sub Divisions of Engineering Department of Chandigarh Administration are being paid Rs.6550 plus DA as revised from time to time as per the Chandigarh Administration Department of Personnel letter 17222 dated 20.09.2009 and Chief Engineer, U.T.,

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Chandigarh, clarification vide No.698-702 dated 27.03.2014 and again vide C.E.U.T. No.2499-2503 dated 30.12.2014 wherein it has been clarified that:-

"A.D. is informed that in terms of Circular letter No.28/15/IH(7)/2009/17224 dated 10.09.2009 issued by the Department of Personnel, the daily wage (Group-D) employees are entitled for minimum of pay band + grade pay i.e. Rs.4900+1650 which comes to Rs.6550/- + DA."

The minutes of the meeting held on 23.01.2014 (A-7), which has been made basis of the instant claim by the applicants, were amended vide subsequent minutes of meeting dated 12.02.2014, conveyed by the Superintending Engineering, Project P.H. Circle U.T., Chandigarh vide Memo No.545-50 dated 19.02.2014 (Annexure R-1), wherein the following decision was conveyed:-

- "01. Muster Roll for the current month of February 2014 may be issued/paid with initial pay of Rs.6950 however arrears for the period prior to February 2014 will not be prepared till clarification in this respect is received from the competent authority.
02. The payment of Muster Roll for February 2014 will also be subject to the issue of clarification from the competent authority. The payment for February 2014 at the rate of 6950 was subject to issue of clarification from the competent authority. The clarification was given by the Department of Personnel on 21.10.2014, which was conveyed vide C.E.U.T. No.2499-2503 dated 30.10.2014, wherein the daily wage workers were allowed Rs.6550 plus DA." (Copy enclosed)

7. Arguments advanced by learned counsel for the parties were heard. Learned counsel for the applicants reiterated the content of the O.A. and stated that as per letter dated 15.12.2011 (Annexure A-5), the revised scale of pay w.e.f. 01.12.2011 was Rs.6950/- for the categories of Peon, Chowkidar, Sweeper, Mali etc. and the applicants were entitled to this amount plus DA on their wages keeping in view judgment in Dharampal's case (Supra). This notification was adopted by Chandigarh Administration on 14.12.2014 but the respondent Administration was only paying daily wages @ Rs.6550 + D.A. Learned counsel also cited judgment dated 10.10.2006 in Col. (Retd.) B.J. Akkara vs. Govt. of India & Ors. in Transfer Case (Civ.) Nos.72, 74, 75-128, 129-140 and 141 of 2004, 2, 14 to 18, 28 and 43 of 2005, reported as 2006 AIR

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(SCW 5252), in support of his contention that there can be no discrimination between the daily wagers and the regular employees and daily wagers had to be allowed the same minimum pay as applicable in the case of regular employees.

8. Learned counsel for the respondents stated that as per the letter dated 15.12.2011 subsequently adopted by the Chandigarh Administration, the initial pay w.e.f. 01.01.2006 was Rs.6200 and this had been revised to Rs.6950 only in respect of the regular employees who were in the pre-revised pay scale of Rs.2520-4140 with initial start of Rs.2620. The applicants did not fall in this category. Minimum scale for the regular employees was Rs.6550 as had been conveyed by the Personnel Department of the U.T. Administration and the applicants being daily wagers were not entitled to any additions to the minimum of the scale while determining their emoluments for the future. In this regard, learned counsel cited judgment dated 11.11.2011 in CWP Nos.14796 of 2003, 8903 of 2010 and 22092 of 2010 in case of Avtar Singh & Others Vs. State of Punjab and Others, wherein it has been held as follows:-

"Keeping in view the various parameters delineated above and till such time, the Expert Committee examines the similarity of work which may entitle a daily wager to get minimum of pay scale, a daily wager engaged by the Head of the Department or in any other manner is not entitled to claim minimum of pay scale as that of regular employee without undergoing regular selection process and the absence of any post. The fact that he has not undergone regular selection process and the fact that he has not subject to disciplinary control and transfer in administrative exigencies, does not entitle a daily wager to the minimum of the regular pay scale."


Learned counsel also clarified that although for a short period various departments did pay @ Rs.6950/- to the daily wagers but this had been withdrawn subsequently on the clarification having been issued by U.T. Administration.

9. We have given our thoughtful consideration to the matter. The fixation of the daily wagers at Rs.6550/- plus D.A. is in accordance with the

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formula devised as per the Punjab Pay Scale for fitment in the revised scales applicable w.e.f. 11.01.2006 and thereafter w.e.f. 01.12.2011. The judgment in B.J. Akkara (supra) is not relevant to this matter while judgment in Avtar Singh (supra) clarifies the matter adequately. Hence we conclude that there is no merit in this O.A. and the same is rejected.


(RAJWANT SANDHU)
ADMINISTRATIVE MEMBER


(DR. BRAHM A. AGRAWAL)
JUDICIAL MEMBER

Place: Chandigarh
Dated: 4.1.2016
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