



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A /351/1032/AN/2018

Date of order : 29.11.2018

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr.(Ms) Nandita Chatterjee, Administrative Member

BISNU BISWAS, son of Late Ramesh
Biswas, residing at Bachra Pahar,
Chouldari, Ward No.5, District – South
Andaman, PIN-744103

.....Applicant

- Versus -

1. UNION OF INDIA, service through
the Secretary, Ministry of Home Affairs,
North Block, Central Secretariat, Govt.
of India, New Delhi-110001;
2. The Lt. Governor, A&N Islands,
Raj Niwas, Port Blair, District – South
Andaman, Pin-744101;
3. The Chief Secretary, A&N Administration,
Secretariat, Port Blair, District-South Andaman,
PIN -744101;
4. The Secretary(Revenue), A&N Administration,
Secretariat, Port Blair, District – South Andaman,
Pin-744101;
5. The Deputy Commissioner, South Andaman,
Office at Port Blair, District-South Andaman,
Pin-744101;

.....Respondents

6. Shri Mohsin;
7. Shri E. Loknathan
8. Shri Mohan Rao,
9. Shri B. Terepathi Rao

All are working as DRM under the office of the
Deputy Commissioner, South Andaman,

Port Blair, District-South Andaman, Pin-744101

.....Private Respondents

For the applicant : Mr. B.K. Das, counsel
Mr. A. Dutta, counsel

For the respondents : Mr. R. Halder, counsel

ORDER

Bidisha Banerjee, Judicial Member

The applicant by way of this application has prayed for the following reliefs:-

"a) Directing the Government Respondents particularly 3,4 &5 to allow the applicant to draw 1/30th Pay+D.A. as per 7th C.P.C. in view of the office order No.1647 dated 27.12.2017 w.e.f. the date when the Private Respondents were allowed the benefit of 1/30th Pay+D.A. as stated above;

b) Such other and further order/orders as the Hon'ble Tribunal may deem fit and proper for the interest of justice."

2. Id. counsel were heard and materials on record perused.

3. At hearing, Id. counsel for the respondents, Sri R. Halder would very fairly submit that the applicant is serving as daily rated Mazdoor, scale 'B' under the respondent authorities for a long time and such daily rated mazdoors who were inducted/engaged against sanctioned posts have been bestowed with the minimum of the pay scale of Group 'D' employees. Mr. Halder would further submit that since the applicant is being utilised not against the sanctioned post, the respondents felt it appropriate not to allow the minimum of such pay scale as allowed to the daily rated mazdoors vide office order dated 27th December, 2013.

4. At that juncture, Id. counsel for the applicant would invite our attention to the decision rendered by Hon'ble Apex Court in **Civil Appeal No.213 of 2013** in

State of Punjab and Ors. vs. Jagjit Singh & Ors. where having discussed its earlier decisions on the issue, the Hon'ble Apex Court would conclude as under:-

"51.iii) Based on the consideration recorded hereinabove, the determination in the impugned judgment rendered by the full bench of the High Court, whereby it classified temporary employees for differential treatment on the subject of wages, is clearly unsustainable, and is liable to be set aside.

52. 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 & Ors. (CWP no. 14796 of 2003)**, dated 11.11.2011, 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 & Ors. v. Rajinder Singh & Ors. (LPA no. 337 of 2003, decided on 7.1.2009)** is also liable to be set aside, and the same is also hereby set aside. We affirm the decision rendered in **State of Punjab & Ors. v. Rajinder Kumar (LPA no. 1024 of 2009, decided on 30.8.2010)**, with the modification, that the concerned employees 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.

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

54. 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.

55. 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.

56. We would also like to extract herein Article 7, of the International Covenant on Economic, Social and Cultural Rights, 1966. The same is reproduced below:-

"Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays."

India is a signatory to the above covenant, having ratified the same on 10.4.1979. There is no escape from the above obligation, in view of different provisions of the Constitution referred to above, and in view of the law declared by this Court under Article 141 of the Constitution of India, the principle of 'equal pay for equal work' constitutes a clear and unambiguous right and is vested in every employee – whether engaged on regular or temporary basis.

57. 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 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.

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

59. Disposed of in the above terms.

60. It would be unfair for us, if we do not express our gratitude for the assistance rendered to us by Mr. Rakesh Khanna, Additional Advocate General, Punjab. He researched for us, on our asking, all the judgments on the issue of pay parity. He presented them to us, irrespective of whether the conclusions recorded therein, would or would not favour the cause supported by him. He also assisted us, on different parameters and outlines, suggested by us, during the course of hearing."

[extracted with supplied emphasis for clarity]

5. In a recent decision, in Civil Appeal Nos. 10957-10963 of 2018 and 10964 of 2018 while reiterating the conclusion as in judgment of Jagjit Singh (supra), the Hon'ble Apex Court has decided as under:-

"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 situated 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 scales. 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."

6. In view of the above, since admittedly the present applicant is serving under the respondent authorities, the respondents are directed to consider their claim for proper wages in accordance with the rules and in the light of the decisions referred to supra and pass appropriate orders within a period of two months from the date of receipt of this order.

7. Accordingly the O.A. stands disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

sb

