

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
(CIRCUIT BENCH AT SHIMLA)**

O.A.NO.063/00582/2018

Orders pronounced on: 15.03.2019
(Orders reserved on: 07.03.2019)

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)**

Rita Joshi

wife of Sh. Jagdev Joshi,

resident of Joshi Niwas,

Village Parachi,

Near Panchayat Ghar,

PO,AG, Shimla-3.

Applicant

(Argued by: **MR. HEMENDER SINGH CHANDEL, ADVOCATE**).

Versus

1. Central Council for Research in Homeopathy Department of AYUSH, Ministry of Health & Family Welfare, Government of India, Jawahar Lal Nehru Bhartiya Chikitsa Avum Homeopath, Anusandhan Bhawan, 61-65, Institutional Area, Opposite D-Block, Janakpuri, New Delhi-1100581, through its Director General
2. Officer-in-Charge, Regional Research Institute for Homeopathy, Department of AYUSH, Ministry of Health & Family Welfare, Government of India, C-12, Lane-I, Sector-1, New Shimla-171009.

.. Respondents

(Argued by : **MR. ANSHUL BANSAL, ADVOCATE**)

ORDER
SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has approached this Tribunal under section 19 of the Administrative Tribunal Act, 1985, seeking quashing of the order dated 7.9.2018 (Annexure A-8), vide which her claim for grant of salary at par with salary of class IV employee in Central Government has been rejected, and for issuance of a direction to the respondents to grant her salary at par with a class IV employee in Central Government etc.

2. The facts of the case, which led to filing of the instant Original Application (O.A), are that applicant was initially appointed as Gyne Attendant (Aya) in the office of Respondent No.3 in 2008 after going through a proper selection process consisting of interview and examination of documents. She was appointed at a salary of Rs.2000/- per month for a job between 9.30 AM to 5.00 PM (full time). On her representation, remuneration was raised to Rs.3000/-. In 2010, she was asked to execute an agreement for contractual appointment in the respondent department. However, on 1.12.2011, her services were dispensed with. This order was challenged by her by filing O.A. No. **141-HP-2012** which was allowed and disposed of on 27.9.2012 (Annexure A-1), vide which her termination of service was held to be illegal and she was held entitled to reinstatement in service. The **CWP No.83134/2014** filed by the department was dismissed vide order dated 5.11.2014 (Annexure A-2). The applicant was re-engaged vide order dated 9.12.2015 (Annexure A-3) and she was initially paid a sum of Rs.5,400/- and then it was enhanced to Rs.6,000/- w.e.f. April, 2016. She submitted various representations for grant of minimum salary of Rs.13,000/- per month but to no avail. Finding no response, she filed **O.A.No. 063/930/2017** which was disposed of on 11.8.2017 (Annexure A-6) directing the respondents to take a view in the matter.

The representation dated 28.8.2018 (Annexure A-7), filed by applicant was rejected vide order dated 7.9.2018 (Annexure A-8), hence the O.A.

3. The O.A. has been resisted by the respondents by filing a written statement. They submit that applicant was paid monthly wages @ Rs.5400/- per month prescribed by Government of H.P. for unskilled category, which was held prior to her termination, and not against any sanctioned post. She accepted the terms and conditions of salary and as such is estopped from challenging it now. She cannot compare her case with others employed through outsource agency. Her wages have been engaged to Rs.6,000/- and at present she is getting Rs.6,300/- per month as per rates fixed by State Government. The others were engaged under Minimum Wages Act whereas applicant was appointed as a stop gap arrangement under wages applicable in State Government. Thus, they support the impugned order.

4. We have heard the learned counsel for the parties at length and examined the material on file.

5. The claim of the applicant has been declined only on the ground that her colleagues were appointed under the Minimum Wages Act, whereas her appointment was stop gap and as such she is being paid as per rates fixed by State Government. As to what is the status of the applicant is not at all in dispute in view of earlier judicial pronouncement which has attained finality. In O.A.No.141-HP-2012 decided on 27.9.2012, Court held her termination to be invalid and she was held entitled to reinstatement in service forthwith against the very post which she occupied before her termination came about and claim of her regularization was to be considered as per policy in currency.

6. It cannot be disputed that even a daily wager in Central Government Offices or its instrumentalities is given minimum wages

under the Minimum Wages Act, which even the respondents admit when they say that such payment is being made to the colleagues of the applicant appointed through Placement Agency. It defies any logic as to how a person appointed by respondents directly can be allowed less than minimum wages, while granting such wages to a person appointed through a placement agency. This cannot be allowed by a court of law being contrary to the equality clause enshrined in Article 14 and 16 of the Constitution of India.

7. Hon'ble Apex Court in **STATE OF PUNJAB AND OTHERS VS. JAGJIT SINGH AND OTHERS**, 2017 (1) SCC 148, has held that if one set of temporary employees are discharging similar duties and responsibilities as are being discharged by regular employees holding the same/corresponding posts, they would be entitled to the same minimum pay scale. The Hon'ble Court has delineated upon the law as settled regarding the principle of "equal pay for equal work" and came to hold as under:

"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."

8. Our own Hon'ble Jurisdictional High Court at Chandigarh, while dealing with similar claims, has settled the issue vide order dated 21.4.2017 in CWP-14887-2013 titled **SWARNA SINGH AND OTHERS VS. PEPSU ROAD TRANSPORT CORPORATION, PATIALA AND ANOTHER**, in the following words:-

"10. The argument that the petitioners are mere commission agents and not contractual employees, not working against a definite post and would thus not be entitled to equal pay for equal pay, is an argument not sustainable. It is the admitted case of the respondent corporation that the petitioners are working on a contract basis. The respondents herein have full effective control over the working of the petitioners as has been noted herein above. The payment made to them is as per the number of tickets sold, but what cannot be ignored is that work hours have been fixed as per clause 9 of the agreement to be between 4.30 a.m. to 10.30 p.m. Remuneration is in the form of commission based upon the number of tickets sold, which depends upon the volume of the traffic on a particular day on the particular sector. The volume of traffic or the number of persons buying tickets is not in the realm of control of the petitioners. Why should the petitioners be put at disadvantage only on account of the fact they are getting commission instead of a regular salary/ wage especially when they are putting in equal number of hours and performing duties of a regular employee? The term 'commission' has several meanings and as per the Cambridge Advanced Learners Dictionary Fourth Edition the term 'Commission' has been defined to mean : "a payment to someone who sells goods that is directly related to the amount of goods sold, or a system that uses such payments". The term salary /wage would mean payment for the work done. In the given circumstances, when the Corporation is having an effective control over the working of the petitioners and they are bound by the terms of the contract entered into, the term 'commission' would also be interchangeable in the instant matter as payment for work done. It is to be appreciated that the petitioners though employed on contract and on commission discharge the duties of Ticket Vendors of the Corporation and without their valuable input passengers would be hardly ticketed or put to great inconvenience.

11. As regards the argument raised that there are no comparable sanctioned posts for Advance Booking Agents and, thus, no comparison can be made, this court places reliance upon a judgment rendered by Hon'ble Supreme Court in State of Haryana vs Tilak Raj 2003 (6) SCC 123 wherein it was held :

"11. A scale of pay is attached to a definite post and in case of a daily-wager, he holds no posts. The respondent workers cannot be held to hold any posts to claim even any comparison with the regular and permanent staff for any or all purposes including a claim for equal pay and allowances. To claim a relief on the basis of equality, it is for the claimants to substantiate a clear-cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with the other group vis-à-vis an alleged discrimination. No material was placed before the High Court as to the nature of the duties of either categories and it is not possible to hold that the principle of "equal pay for equal work" is an abstract one.

12. "Equal pay for equal work" is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula."

But, despite holding that the petitioners in the case aforesaid would not be entitled to "equal pay for equal work", the Supreme Court did direct the State of Haryana to pay minimum wages as prescribed for such workers. In the instant case, though there is nothing on the record to show that the petitioners have counter parts working against a regular post and drawing a particular salary, there are no doubts, the petitioners are working as Advance Booking Clerks since 2003 against regulars hours and cannot be denied minimum wages by holding them to be mere commission agents."

The principle of equality for grant of wages applied by courts in aforementioned cases would apply on all fours to the facts of this case and it is held that the applicant cannot be denied minimum wages under the Minimum Wages Act.

9. In the wake of the above, we quash the impugned order dated 7.9.2018, Annexure A-8. The respondents are directed to grant the applicant minimum wages, as allowed to her colleagues, for similar post, under the Minimum Wages Act w.e.f. 9.12.2015 onwards. The needful be done within a period of two months from the date of receipt of a certified copy of this order. The parties are, however, left to bear their own costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

PLACE: CHANDIGARH.
DATED: 15.03.2019

HC*