

**(2007) 09 AHC CK 0199**

**Allahabad High Court**

**Case No:** None

Amit Kumar Sharma and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** Sept. 18, 2007

**Acts Referred:**

- Constitution of India, 1950 - Article 13, 14, 16, 39

**Citation:** (2007) 115 FLR 847

**Hon'ble Judges:** B.S. Chauhan, J; Arun Tandon, J

**Bench:** Division Bench

**Final Decision:** Dismissed

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### **Judgement**

B.S. Chauhan, J.

This Special Appeal has been filed against the judgment and order dated 10.08.2007 passed by the learned Single Judge

rejecting the application for modification of the judgment and order dated 08.12.2006.

2. The facts and circumstances giving rise this case are that the petitioners-appellants claim to have been working with the respondent Moradabad

Development Authority, Moradabad (hereinafter called the "Authority") as Daily Wagers since long, as they had been engaged between the period

01.12.1996 to 01.01.2000. A combined seniority list of such daily wagers was prepared according to their dates of engagement. The Government

issued an order dated 13.04.1998 which provided to consider such persons engaged on daily wages for regularisation provided they had been

appointed prior to 19.12.1989. Subsequently, the Government issued another order dated 07.03.2001 for considering the regularisation of such

persons who had been appointed before 29.06.1991. A large number of writ petitioners along; with these appellants filed writ petitions challenging the cut-off date and seeking regularisation as well as "Equal Pay for Equal Work" from the date of their initial appointment. The said writ petitions were disposed of vide judgment and order dated 08.12.2006 directing the Authority to consider for regularisation of services of those persons who had been appointed prior to cut-off date, i.e. 29.06.1991 in pursuance of the Government Order dated 07.03.2001. Persons who had been engaged subsequent to the cut-off date, were permitted to continue. However, some of them who had completed a particular period were directed to be paid minimum of the pay scale. These appellants had not completed the minimum period, had not been allowed even the minimum of the pay scale. Being aggrieved, they sought modification of the order dated 08.12.2006 seeking direction for minimum of the pay scale. The said application has been rejected vide impugned order. Hence this appeal.

3. Shri P.C. Misra, learned Counsel for the petitioners-appellants has submitted that even the petitioners-appellants were not entitled for regularisation, they were entitled for minimum of the regular pay scale of the post and, therefore, the application for modification of the order, has wrongly been rejected.

4. On the other hand, the learned Counsel for the respondents have vehemently opposed the appeal contending that the minimum of pay scale of the regular employees is available to the employees who have attained the status and daily wagers are not entitled for claiming such a relief and, therefore, the appeal is liable to be dismissed.

5. We have considered the rival submissions made by learned Counsel for the parties and perused the record.

6. This Special Appeal has been filed only against the order dated 10.08.2007, by which the application for modification has been rejected.

Therefore, the issue regarding the validity of cut-off date is not under challenge. The only question involved herein is as to whether these appellants who had been engaged between 01.01.1996 to 01.01.2000 and are working as daily wagers are entitled for payment of minimum of pay scale of regular employees.

7. The issue involved herein is no more res integra as it has been considered by the Hon"ble Supreme Court time and again. In Khagesh Kumar

and others Vs. Inspector General of Registration and others, the Court observed that casual workers/daily wagers who have been in continuous

service for several years cannot be put in a category different that of ad hoc or temporary employees merely by giving them a different

nomenclature as in such a case the distinction between the temporary/ad hoc/daily wagers/casual workers loses the significance.

8. In Indian Council of Agricultural Research Vs. A.N. Lahiri, and State of Haryana and Another Vs. Ram Chander and Another, , the Hon"ble

Supreme Court held that while considering the issue of pay parity in view of the provisions of Article 39(d) of the Constitution, the difference in

educational qualification may have a vital effect.

9. In State of Haryana and Others Vs. Jasmer Singh and Others, the Hon"ble Supreme Court considered the provisions of Articles 39(d), 14 and

16 of the Constitution and held that the principle of "equal pay for equal work" is not always easy to apply. There are inherent difficulties in

comparing and evaluating the work done by different persons in different organisations, or even in the same organisation. There may be differences

in educational or technical qualifications, which may have a bearing on the skills which the holders bring to their job although the designation of the

job may be the same. There may also be other considerations which have relevance to efficiency in service which may justify differences in pay

scales on the basis of criteria such as experience and seniority, or a need to prevent stagnation in the cadre, so that the good performance can be

elicited from persons who have reached the top of the pay scale. These may be various other similar considerations which may have a bearing on

efficient performance in a job. The evaluation of such jobs for the purposes of pay scale must be left to expert bodies and, unless there are any

mala fides, its evaluation should be accepted. The Court further observed as under:

The respondents, who are employed on daily wagers cannot be treated as on a par with persons in regular service of the State of Haryana holding

similar posts. Daily-rated workers are not required to possess the qualifications prescribed for regular workers, nor do they have to fulfil the

requirement relating to age at the time of recruitment. They are not selected in the manner in which the regular employees are selected. In other words, the requirements for selection are not as rigorous. There are also other provisions relating to regular service such as the liability of a member of the service to be transferred, and his being subject to the disciplinary jurisdiction of the authorities as prescribed, which daily-rated workmen are not subjected to. They can not, therefore, be equated with regular workmen for the purposes for their wages. Nor can they claim the minimum of the regular pay scale of the regularly employed.

10. In *Associate Bank of Officers' Association v. State Bank of India and Ors.* AIR 1998 SC 32, the Hon'ble Supreme Court rejected the claim of the Association for pay parity as their counterparts in the Bank on the ground that they pay scales had been fixed on a settlement reached by negotiation. The Court rejected the theory of violation of Article 14 of the Constitution observing that mere difference would not amount to discrimination.

11. In *Union of India and Ors. v. Nanda Kumar and Ors.* (1997) 11 FCC 661, the Hon'ble Supreme Court after considering large number of its earlier judgments including *Daily Rated Casual Labour Employed under P & T Department through Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others*, *Jacob M. Puthuparambil v. Kerala Water Authority* (1999) 1 SCC 28 held that the daily wagers or casual labourers employed on temporary basis by the railway administration would not be granted pay parity.

12. A similar view has been reiterated in *State of U.P. and Ors. v. Ministerial Karamchari Sangh* AIR 1998 SC 303 observing that the issue of pay parity should be assigned to the Expert Body as it cannot be done by the Courts.

13. In *Gujarat Agricultural University Vs. Rathod Labhu Bechar and Others*, the Hon'ble Supreme Court considered a similar issue of pay parity to the daily-rated workers working since long considering large number of its earlier judgments including *Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others*, *Ghaziabad Development Authority and others Vs. Sri Vikram Chaudhary and others*, *Basudev Pati Vs. State of*

Orissa and Another, Jasmer Singh (supra); State of Haryana and others Vs. Piara Singh and others etc. etc., Bhagwati Prasad Vs. Delhi State

Mineral Development Corporation, and held that for their absorption etc. the University may frame the Scheme for regularisation and as

regularisation cannot be directed in absence of regular post and such employees can be entitled for minimum wages under the Statute, if any, or the

prevailing wages in the locality but the question of claiming the minimum of the pay scale of a regular employee would not arise.

14. In State of Haryana and Another Vs. Tilak Raj and Others, the Hon"ble Supreme Court held as under:

A scale of pay is attached to a definite post and in case of daily wager, he holds no post. The respondent workers cannot be held, to hold any post

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 resultant hostile discrimination before

becoming eligible to claim rights on a par with other group vis-a-vis an alleged discrimination.... Equal pay for equal work is a concept which

requires for its applicability complete and wholesome 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.

15. While deciding the said case, reliance had been placed by the Hon"bie Supreme Court on its earlier judgments including State of U.P. v. P.

Chaurasia AIR 1989 SC 19; Harbans Lal v. State of Himachal Pradesh (1989) 4 SCC 549. In Harbans Lal (supra), it has been held that a mere

nomenclature designating a person is not enough to come to a conclusion that he was doing the same work. A comparison cannot be made with

counterparts in other establishments with different locations though owned by the same management. The quality of work which is produced may

be different, even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of principle of pay

parity requires consideration of various dimensions of given ob.

16. In *State of Haryana and Others Vs. Charanjit Singh and Others, etc. etc.*, a similar view has been reiterated rejecting the claim of "equal pay

for equal work" observing that persons may do the same work, their quality of work may differ. Where persons are selected by a Selection

Committee on the basis of merit with due regard to seniority, a higher pay scale granted to such persons who are evaluated by a Competent

Authority cannot be challenged. A classification based on different educational qualifications may also justify different pay scale.

17. In *State of Karnataka and Others Vs. KGSD Canteen Employees Welfare Association and Others*, after considering very large number of its

earlier judgments and considering the provisions of Articles 14, 13 and 39(d) of the Constitution of India, the Hon'ble Supreme Court held that

daily wagers cannot claim pay scale as that of government employees. The Court again reiterated the law laid down by it in its earlier judgment in

*Mahendra L. Jain and Others Vs. Indore Development Authority and Others*, wherein it has been held that the daily wagers do not hold the post,

therefore, they were not the employees of the State. Salary of a regular scale of pay, it is trite, is payable to an employee only when he holds a

status.

18. In *U.P. State Sugar Corporation Ltd. and Anr. v. Sant Raj Singh and Ors.* AIR 2000 SC 2296, the Hon'ble Supreme Court held that the

doctrine of equal pay for equal work as enshrined under Article 39(d) of the Constitution read with Article 14 thereof, cannot be applied in

vacuum. The constitutional scheme postulates equal pay for equal work for those who are equally placed in all respects. Possession of a higher

qualification has all along been treated to be a valid basis for classification of two categories of employees.

19. A similar view has been reiterated in *Sohan Singh Sodhi Vs. Punjab State Electricity Board, Patiala*,

20. In view of the above, the law can be summarised that daily wagers do not hold the post. They cannot claim parity with those who are working

in the regular cadre as they earned a status, therefore, the question of parity with them would not arise. The pay scale may depend upon large

number of factors including seniority, experience, educational qualification, mode of selection and it cannot be claimed by the persons unless they

establish complete equality with those who are working in regular cadre. The daily wagers are entitled only for minimum of lie wages fixed by the

State Government or the wages prevailing in the locality.

21. In view of the above, we do not see any cogent reason to interfere with the judgment and order of the learned Single Judge, impugned herein.

Vide judgment and order dated 08.12.2007, the learned Single Judge has permitted the minimum of the pay scale of the post only to those persons

who had been working prior to cut-off date and become eligible for consideration of regularisation, therefore, they form a separate class.

Petitioners cannot claim any parity with them as they were not within the framework of consideration for regularisation. Appeal lacks merit and

accordingly dismissed.