

(2014) 07 JH CK 0035

Jharkhand High Court

Case No: W.P. (S) No. 4472 of 2013

Sidheshwar Manjhi

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: July 15, 2014

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 39(d)

Citation: (2015) 145 FLR 324

Hon'ble Judges: Aparesh Kumar Singh, J

Bench: Single Bench

Advocate: Hansnain Waris, Advocate for the Appellant; Bharti Kumari, J.C. to Sr. S.C.-I,
Advocate for the Respondent

Judgement

Aparesh Kumar Singh, J.

Heard learned counsel for the petitioners and learned counsel for the respondents.

2. As per the submissions of learned counsel for the petitioners and also the judgments passed earlier in the writ petitions, which are contained at Annexure-4 series, the petitioners who are claiming to be engaged in the respondent-Drinking Water and Sanitation Department since 1988, have been getting minimum scale of pay upon direction passed in their own cases earlier. On this occasion, petitioners have, however, again made a prayer to treat them as regular permanent employees and to pay them salary and allowances as are admissible to the regular employee of the respondent-State on the principles of equal pay for equal work. According to them, they are performing the same duties from the last 26 years and are entitled for such relief.

3. Learned counsel for the petitioners has submitted that representations have been made before the respondent-State which is at Annexure-4 dated 7th January, 2013 and Annexure-5 dated 8th July, 2013 for consideration of their aforesaid grievances.

4. The respondents have taken the plea that these petitioners are working on the post of Truck Driver or Pump Khalasi and have been engaged without any advertisement and without roster clearance as daily wage workers. Such appointments under the scheme of Constitution can be made only after following the principles laid down under Article 14 & 16 of the Constitution of India. It is further submitted that nature of the posts comes under work charged establishment and the petitioners are engaged on muster roll and on daily wages basis for which there is no sanctioned regular post in the Department. It is also submitted that pursuant to the orders passed earlier in many cases, the Department has decided to pay lowest scale of pay to such post enjoyed by the petitioners. However, the Department is unable to regularize the petitioners on any sanctioned vacant post. In the aforesaid circumstances, petitioners' engagement being made on daily wage basis, they cannot claim equal pay for equal work as permanent regular employee of the respondent-State and respondent-Department.

5. From the submissions of the parties and the pleadings on record, the claim of the petitioners that they are entitled for regularization and pay and allowances equal to that of the regular permanent employee does not seem to be made out as the petitioners have been engaged on daily wage/muster roll basis and on work charged establishment. Principles of equal pay for equal work which flow from the Directive Principles of State policy under Article 39(d) of the Constitution of India have been diluted over a period of time by the judgments rendered by Hon"ble Supreme Court. The nature of appointment, qualification required for the said post as a permanent employee, and the other conditions which are required to be fulfilled in permanent employment, are some of the several factors which have to be established to show that the persons claiming equal pay for equal work are absolutely similarly situated as that of the regular employee. Admittedly, the entry of the petitioners in service, nature of the duty performed, qualification etc. can not be said to be similar to those who are in regular establishment and have been appointed after due procedure as provided under Annexures 14 & 16 and after giving opportunity to all eligible persons. Therefore, such a claim cannot be countenanced on the part of the petitioner on the said principle. The petitioners, however, have got minimum scale of pay pursuant to the judgment passed in their cases where they had confined their prayer for the relief for minimum pay scale. Therefore, I do not find that the petitioners have made out a case for directing the respondents to pay same salary and allowances as are admissible to the regular/permanent employee of the State.

6. The writ petition is, accordingly, dismissed.