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Court : Kerala

Decided On : Jan-31-1989

Reported in : (1989)IILLJ23Ker

Judge : Sivaraman Nair, J.

Appellant : George

Respondent : State of Kerala

Judgement :

Sivaraman Nair, J.

1. In the establishments of Public Health Engineering and Public Works Departments of the State, there were different categories of workmen. Persons who were appointed in the regular establishment formed the first category; and persons who were engaged for nominal work of the Department but not of a regular nature were NMR workmen. There were Casual Labour Roll workmen engaged on daily rates of wages in the exigencies of service. Seasonal Labour Roll workmen were engaged only for work during specified seasons. Apparently due to delay in assessment of the strength of the regular establishment and for like reasons, the NMR and CLR workmen had to be engaged for continuous periods. SLR workmen were engaged only for seasons.

2. The third respondent engaged the petitioner as a seasonal labour roll operator by order dated 25th July 1981. He commenced work on daily wages on 4th August 1981 and claims to have been working continuously thereafter. The State Government had evolved a scheme for absorption of NMR workmen into regular establishment subject to certain conditions. The vacancies of NMR workmen who were absorbed into regular service were to be filled up by converting CLR workmen into NMR workmen. SLR workmen were to be converted as CLR workmen as and when occasion arose. Such absorption was obviously to be on the basis of seniority. In the meantime, provisional appointments were made in the regular establishment in the absence of candidates advised by the Public Service Commission. Such appointments were made under Rule 9(a)(i) of the Kerala State and subordinate Services Rules and only for short durations.

3. Petitioner filed O.P. No. 8713 of 1986, claiming that he was entitled to the same scale of pay as the establishment and NMR operators, on the ground that he was performing the same duties and functions. He also claimed that he is entitled to regular absorption in accordance with the above-mentioned scheme. Petitioner, who had become a CLR, operator, was informed in Ext. P2 communication by the Managing Director of the Water Authority that his case would be considered only along with similarly placed persons. It was thereafter that he filed O.P. No. 8713 of 1986, claiming equal pay like other pump operators. This Court disposed of that Original Petition in Ext: P3 judgment, observing that on the basis of the decision of the Supreme Court in Surinder Singh v. Engineer-in-Chief, C.P.W.D. 1986-1-LLJ-403, the petitioner may claim equal pay for equal work. This Court also directed the respondents to hear the petitioner if he makes a representation within a specified time. Pursuant to that, petitioner filed Ext. P4 representation and Ext. P5 reminder. The first respondent informed the petitioner in Ext. P6 letter that the list of CLR hands to be absorbed into regular establishment was forwarded to the Public Service Commission for concurrence and orders will be issued after obtaining such concurrence. What the petitioner asserts in this Original Petition is that he is entitled to a direction to the respondents to grant him equal scale of pay and other service benefits admissible to regular employees of the respondents with effect from 4th August 1981 with interest at 12 percent.

4. A distinction was maintained in the rules and orders governing the establishment of the Public Health Engineering Department, which was subsequently formed into the Water Authority, between the employees in the regular establishment, those who were NMR employees, those who were CLR employees, and those who were SLR employees. Regular employees were appointed on selection by the Public Service Commission. Provisional appointments in that category were made from among candidates who were sponsored by the Employment Exchange. They were governed by the rules, special and general, or orders relating to their service conditions. Different salary scales or wages were prescribed for different categories of workmen, obviously with reference to the nature of the work performed by them and the quality of their work. Such determinations were subject to rules and orders of uniform application. A person who is engaged as a seasonal labour roll workman can aspire to become a casual labour roll workman only when a vacancy arises in the latter category. This obviously meant engagement as seasonal labour roll workman for some length of time, though not for continuous periods. Casual labour roll workmen were to be converted as nominal muster roll workmen and nominal muster roll workmen were to be absorbed as regular establishment workmen on the basis of length of service in the respective categories. Obviously, there was a distinction scrupulously maintained on the basis of assessment and evaluation of the nature, quantity and quality of the work performed by different categories of workmen. Casual engagement of a workman, according to exigencies, and during seasons only, cannot entitle a person to claim the same rate of wages as a regular establishment workman, who was recruited and appointed according to rules which prescribe the qualifications, method of appointment and criterion for selection. The distinctions were consciously made and consciously maintained with reference to the relevant considerations. In this view, I am not inclined to hold that the petitioner is entitled to insist that he shall be paid the same salary as a regular establishment operator from 4th August 1981, the date on which he was engaged as a seasonal labour roll workman.

5. Considerable reliance was placed on the decision of the Supreme Court reported in Surinder Singh v. Engineer-in-Chief, C.P. W.D. , (supra). The Supreme Court had occasion to consider the above decision on the question of equal pay

for equal work in State of U.P. v. J.P. Chaurasia 1989-I-LLJ-309. The court held that the principle has no mechanical application in every case of similar work and that classification can be based on some qualities or characteristics of persons grouped together and not in others who are left out. Reference was made to the observations contained in the decision in Federation of A1C & CE Stenographers v. Union of India : [1988]3SCR998 , where it was observed:

There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bona fide, reasonably on an intelligible criterion which has a rational nexus with object of differentiation, such differentiation will not amount to discrimination. It is important to emphasise that equal pay for equal work is a concomitant of Article 14 of the Constitution. But it follows naturally that equal pay for unequal work will be a negation of that right.

It was observed further, that--

The same amount of physical work may entail different quality of work, some more sensitive, some requiring more tact, some less-it varies from nature and culture of employment. The problem about equal pay cannot always be translated into a mathematical formula. If it has a rational nexus with the object to be sought for. as reiterated before a certain amount of value judgment of the administrative authorities who are engaged with fixing the pay scale has to be left with them and it cannot be interfered with by the Court unless it is demonstrated that either it is irrational or based on no basis or arrived at mala fide either in law or in fact.

6. In Chaurasia, (supra), the Court found that differential treatment of persons who were selected for appointment on the basis of merit with due regard to seniority and those who were not subject to the consultative process was just and proper classification for the purpose of payment of different pay scales. On the basis of the review of all earlier decisions of the Supreme Court, in the latest decision, in Chaurasia, (supra), I am not inclined to agree that the ritualistic formula that equal

pay for equal work must be mechanically applied to all situations irrespective of tangible differences in the qualities, nature and characteristics or differences in degree of the work performed by two sets of persons who were separately grouped together. Nor am I persuaded to hold that the value judgment which must be the basis of the differentiation, should be held to be discriminatory and unconstitutional on a mechanical application of the principle. It is evident from the recitals contained in the Original Petition and the additional affidavit, that the petitioner is a person awaiting his absorption into the regular establishment. The distinction between establishment workmen and NMR workmen was abolished with effect from 1st June 1980. The difference in emoluments between a CLR operator and an establishment operator is only Rs. 65/-, since the former receives Rs. 928/- and the latter receives a total salary of Rs. 993/-. The difference in the nature of employment seems to me to justify this marginal difference in emoluments. 1 am also of the opinion that the slight difference in other service conditions are also fully justified on the basis of the principles emerging from the decisions of the Supreme Court in Federation of AIC & CE Stenographers and Chaurasia (supra).

7. The Original Petition, therefore, fails and is hereby dismissed.

8. Issue carbon copies of this judgment to counsel for the petitioner and the Government Pleader on usual terms.