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Court : Rajasthan

Decided On : May-11-1988

Reported in : 1988(2)WLN396

Judge : Ashok Kumar Mathur and; Milap Chandra, JJ.

Appeal No. : D.B. Civil Writ Petition No. 2004 of 1987

Appellant : Ramesh Chandra and ors.

Respondent : State of Rajasthan and anr.

Disposition : Petition allowed

Judgement :

Ashok Kumar Mathur, J.

1. The petitioners by this writ petition have prayed that by a writ of mandamus the respondents be directed to pay the petitioners the same pay as is paid to the persons belonging to their cadre.

2. The petitioners are working on the post of L.DCs. in various offices of the State of Rajasthan in Udaipur District but they are not paid the regular pay scale of L.D.C. How ever, they have been paid a sum of Rs. 15/- per day as daily rates workers. The grievance of the petitioners is that other persons who are working on the post of L.D.Cs. they are getting the regular pay scale of L.D.C. where as the

petitioners are only paid daily wages at rate of Rs. 15/-per day though they are performing the same duties as other L.D Cs. who are working in the office are performing. But they are paid in the pay scale of 880-1680. Therefore, the petitioners' grievance is that on the principle of equal pay for equal work as enshrined in Article 39(d) of the Constitution of India they must be paid the same wages as is paid to the L.D.Cs. working in the various offices of the Collectorate Udaipur.

3. A return has been filed by the respondents and the only plea taken was that these petitioners have accepted the appointment on the basis of daily wages at rate of Rs. 15/- per day. It has further been submitted that these persons form one class whereas other persons who have been selected by the Rajasthan Public Service Commission form another class. Therefore, a distinction is sought to be made that the regularly selected candidates by the Rajasthan Public Service Commission are paid regular pay and these persons have been paid at rate of Rs. 15/-per day as daily wages employees. It is not disputed that both class of L.D.Cs. are discharging the same duties.

4. Learned counsel for the petitioner has invited our attention to Daily Rated Casual Labour employed under P & T Department through *Bhartiya Dak Tar Mazdoor Manch v. Union of India and Ors.* : (1988)ILLJ370SC and *U.P. Income Tax Department Contingent Paid Staff Welfare Association v. Union of India and Ors.* 1988 SCC (L & S) 344.

5. We have heard both the learned Counsel for the parties. It is undisputed fact that both the LDCs are discharging the same functions and Article 39(d) of the Constitution lays down that for equal work for equal pay should be paid. It is true that these petitioners have not been regularly selected, but none-the-less they are discharging the same functions as are being discharged by the regularly selected candidates of the Rajasthan Public Service Commission.

6. In Daily Rated Casual Labour's case (*supra*) their Lordships of the Supreme Court have laid down that the State cannot deny at least the minimum pay in the pay scales of regularly employed workmen even though the Government may not be compelled to extend all the benefits enjoyed by regularly recruited employees.

Such denial amounts to exploitation of labour. The Government cannot take advantage of its dominant position, and compel any worker to work even as a casual labourer on starvation wages. It may be that the casual labourer has agreed to work on such low wages. But he does so because he has no other choice. It is poverty that has driven him to that state. The Government should be a model employer.

7. A similar view has been taken by this court at Jaipur Bench in *Madan Lal Sharma v. State of Rajasthan & 2 Ors.* (D.B. Civil Writ Petition No. 585 of 1987 decided on July 13, 1987). In view of the legal position which has been crystalised that equal pay for equal work is a social necessity of time and Government as a model employer should be fair and should not discriminate amongst the employees who are discharging the similar duties. Therefore, all these petitioner L.D Cs. are entitled to the minimum pay together with D.A. as is paid to the regularly recruited L.D.Cs.

8. The next question which arises for consideration is that from what date they are entitled to. In *Daily Rated Casual Labour's case* (supra) their Lordships of the Supreme Court while allowing the petitions clearly observed as under:

We accordingly direct the Union of India and the other respondents to pay wages to the workmen who are employed as casual labourers belonging to the several categories of employees referred to above in the Posts and Telegraphs Department at rates equivalent to the minimum pay in the pay scales of the regularly employed workers in the corresponding cadres but without any increments with effect from February 5, 1986 on which date the first of the above two petitions, namely, Writ Petition No. 302 of 1986 was filed. The petitioners are entitled to corresponding dearness allowance and additional dearness allowance, if any, payable thereon. What ever other benefits which are now being enjoyed by the casual labourers shall continue to be extended to them.

Similarly in *U.P.I.T. Deptt. Contingent Paid Staff Welfare Association's case* (supra) the same ratio was applied and their Lordships of the Supreme Court observed as under:

We accordingly allow this writ petition and direct the respondents to pay wages to the workmen who are employed as the contingent paid staff of the Income-tax Department throughout India, doing the work of Class IV employees at rates equivalent to the minimum pay in the pay scale of the regularly employed workers in the corresponding cadres without any increments with effect from December 1, 1986. Such workmen are also entitled to corresponding Dearness Allowance and Additional Dearness Allowance payable thereon. Whatever other benefits which are now being enjoyed by the said workmen shall continue to be extended to them.

9. This writ petition was filed before this Court on 13-8-1987, therefore, we think it proper to allow the petitioners the pay scale of regularly recruited employees from the date of filing of the writ petition i.e. 13-8-1987.

10. In the result, the writ petition is allowed and we direct the respondents to pay the petitioners the minimum of pay scales of the regular recruited LDCs w.e.f. 13-8-1987 but without any increments. The petitioners are also entitled to corresponding Dearness Allowance and Additional Dearness Allowance if any payable thereon.

11. No order as to costs.