

**Mohan Ram Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/765888](http://sooperkanoon.com/765888)

**Court :** Rajasthan

**Decided On :** Apr-04-1996

**Reported in :** 1996(1)WLN94

**Judge :** N.K. Jain, J.

**Appeal No. :** S.B. C.W. Petition No. 5940 of 1993

**Appellant :** Mohan Ram

**Respondent :** State

**Advocate for Def. :** Mr. Singhvi

**Advocate for Pet/Ap. :** Mr. Choudhary

**Disposition :** Petition dismissed

**Judgement :**

**N.K. Jain, J.**

1. Mr. Choudhary, learned counsel for the petitioner submits that this case is squarely covered by the decision of this Court rendered in S.B.C. Writ Petition No. 260/93 decided on 13.2.1996 and D.B.C. Special Appeal No. 99/83 Mithalal State and Ors. decided on 26.3.93 and submits that petitioner who is admittedly working since 18.7.1986 is entitled to be paid minimum pay scale of Class IV employee

from the date of his initial appointment along with arrears.

2. On the other hand Mr. Singhvi, learned counsel for the respondents submit that the petitioner was not appointed against regular post. He submits that on the availability of post the services of Class IV employee are being regularised as per their turn according to seniority and before filing of the writ petition the petitioner is being paid minimum of pay scale, therefore, no direction is necessary. He relies on Ghaziabad Development Authority v. Vikram Chaudhary and Ors. 1995 SCC (L&S-1226;), National Federation of P & T Employees v. Union of India 1988 SCC (L&S;)138) Himmat Singh v. State WLR 1994 Raj.- 182, Bhol Ram v. State 1991 WLR(S)-260, Chaturbhuj Acharya v. State WLR 1993-275, Sita Ram Mali v. State 1994(2) WLC Raj-177, Jodha Ram v. State WLR 1992 (S) Raj.- 110, BabulaL v. New Delhi Municipal Committee : (1995)ILLJ 1119 SC , Davandra Sharma v. UOI 1989 SCC (L&S;)-133, Daily Rated Casual Labour Employed Under P&T; Dept. v. Union of India 1988 SCC (L&S;)-138, Pappu v. State and Ors. 1995 (3) WLC-362, Shrikank Modak v. Raj. Agriculture University, Bikaner 1994 WLR-479, Hem Raj v. State 1992 (1) RLR-40, Natwar Lal Thanvi v. State 1988(1) RLR- 932. He submits that in all such cases daily wages employees have been granted minimum of pay from the date of filing writ petition and these cases have not been brought to the notice of the learned Single Judge while delivering the judgment in S.B.C.W.Petition No. 260/93(Puran Ram v. State), so the petitioner is not entitled for the grant of minimum pay scale from the date of initial appointment.

3. I have heard learned counsel for the parties and perused the case law cited by the learned counsel for the petitioner as well as by the counsel for the respondents.

4. It is settled that so long as there is no regular post available for appointment the question of making pay to daily wage employee at par with the regular employee does not arise. However such employees cannot be denied minimum of pay scale.

5. In the instant case, as alleged by the petitioner, he is working since 18.7.1986 as daily wage employee on the post of Class IV. According to the respondents there was no vacant post, substantive appointment could not be given to the petitioner. On availability of regular vacant post the petitioner was granted regular

pay scale as per his turn on the basis of seniority on 17.11.1993. Therefore, the question of the regularisation does not arise from the date of appointment as it is always subject to the availability of the substantive vacant post. The grant of minimum pay to the petitioner from the date of initial appointment cannot be granted at this stage in view of the argument of Mr. Singhvi that the petitioner is not entitled for a direction for grant of minimum of pay scale now in the year 1996 from his initial appointment in the year 1986 which he claimed in the year 1993. That apart the petitioner did not make any grievance at the point of time except moving a representation for the first time on 25.10.1993 (Anx.3). and filed this writ petition only on 11.12.1993. In the representation dt. 25.10.1993 (Anx.3) also the petitioner did not make any request for granting him minimum pay from the date of initial appointment. Under the circumstances, no relief as prayed for can be granted. So far as the decision rendered in Puran Ram's case (supra) relied upon by the learned counsel for the petitioner is concerned, the same is not helpful in the case of the petitioner because the case law cited by the learned counsel for the respondents were not considered at the time of delivering the judgment. The petitioner also cannot take advantage of the D.B. decision dt 26.9.1993 rendered in Mithala's case (supra) wherein also it has been observed that 'if there is any vacant post than the petitioner should be regularised as Class IV employees according to, his seniority.' On the contrary in the cases cited by Mr. Singhvi, minimum pay was granted from the date of writ petition when the incumbent was getting less than the minimum pay. Therefore, the petitioner cannot take any advantage out of the decision cited by Mr. Choudhary to grant him minimum pay scale from the date of initial appointment, and no interference is called for in this writ petition. However, the respondents will consider the case of the petitioner as per turn and roster point according to seniority as per their reply.

6. Accordingly, the writ petition is hereby dismissed.