

State Of Uttarakhand & Ors. vs Sulendra on 25 April, 2022

Bench: S.K. Mishra, R.C. Khulbe

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Special Appeal No. 69 of 2022

State of Uttarakhand & Ors.

..... Appellants

Versus

Sulendra, S/o Shri Phool Chandra
R/o Village Palyurha, Tehsil Someshwar
District Almora

.....Respondent

Present:

Mr. B.S. Parihar, the learned Standing Counsel for the State-
appellants.

Mr. Shubhang Dobhal, the learned counsel for the respondent.

Date of hearing : 25.04.2022

Coram: Sri S.K. Mishra, ACJ.
Sri R.C. Khulbe, J.

Upon hearing the learned counsel for the parties, this Court made the following judgment: (Per: Sri S.K.Mishra, ACJ.) In this appeal, the State of Uttarakhand has assailed the order, passed by the learned Single Judge on 29.11.2017 in WPSS No. 2980 of 2017. It is a short and cryptic order. It is appropriate to take note of the entire order passed by the learned Single Judge, which is quoted below:-

"By means of present writ petition, the petitioner seeks following reliefs:-

(i) Issue a writ, order or direction in the nature of certiorari quashing the order dated 22.06.2017 (annexure no. 10) passed by the respondents.

(ii) Issue a writ, order or direction in the nature of mandamus commanding the respondents to consider the case of the petitioners for regularization on their respective posts and pay the salary to the petitioner as being paid to the regular employee working on the post of Sweeper on the principle of equal pay for equal work.

After arguing the writ petition at some length, learned counsel for the petitioner confined his prayer only to the extent that the respondents may be directed to pay minimum of pay scale on the principle of equal pay for equal work.

Learned Standing Counsel for the State has no objection to such innocuous prayer of learned counsel for the petitioner.

Writ petition is disposed of by directing respondents to pay minimum of pay scale, for the post of sweeper, to the petitioner, at an early date, in the light of decision of Hon'ble Apex Court in Civil Appeal NO. 213 of 2013, State of Punjab & others vs. Jagjit Singh & others, in accordance with law.

Writ petition thus stands disposed of."

2. In assailing the order passed by the learned Single Judge to grant minimum pay scale to the respondent, the learned Standing Counsel Mr. B.S. Parihar, appearing for the State of Uttarakhand would argue that in view of the judgment passed by the Division Bench of this Court in the case of State of Uttarakhand & others vs. Vinod Kumar, decided on 09.08.2021, in Special Appeal No. 252 of 2021, the order passed by the learned Single Judge is not sustainable. Similar issue was involved in the earlier special appeal wherein the following observations were made by the Division Bench while allowing the appeal:-

"6. Even if the letter date 25.07.2015 does indicate and does claim that the petitioner was working for eight hours, even then, the said letter is contrary to the appointment letter dated 06.09.2006. According to the appointment letter dated 06.09.2006, the petitioner was appointed as a part- time Sweeper. Even, in the writ petition, the petitioner claims that he was appointed as a part- time Sweeper. Therefore, the letter dated 25.07.2015 is in the face of the appointment letter dated 06.09.2006.

7. It is, indeed, a settled position of law that a part-time worker cannot claim the wages of a full- time worker. For, the doctrine of 'Equal Pay for Equal Work' is inapplicable as a part-time worker does not discharge the equal work of a full-time worker.

Therefore, the learned Single Judge was unjustified in directing the State to pay the minimum of the pay scale of a regular employee to the petitioner.

8. According to the State, presently, the petitioner is being paid the minimum wages i.e. Rs. 3180/- per month. The said amount shall be continued to be paid to the petitioner during the pendency of the writ petition."

3. In registering the claim of the State of Uttarakhand, the learned counsel for the respondent would rely upon the reported judgment of Sabha Shanker Dube vs. Divisional Forest Officer & Ors., (2019) 12 SCC 297, wherein the Hon'ble Supreme Court having taken into consideration the reported cases of State of Haryana vs. Tilak Raj, (2003) 6 SCC 123, State of Punjab vs. Surjit Singh, (2009) 9 SCC 514, State of U.P. vs. Putii Lal, (2006) 9 SCC 337 and State of Punjab vs. Jagjit Singh, (2017) 1 SCC 148, has held that a person discharging duty equal to a regular employee is entitled to equal pay. However, the law pronounced by the Hon'ble Supreme Court has been read down in the case of State of Bihar & Ors. vs. Bihar Secondary Teachers Struggle Committee, Munger & Ors., (2019) 18

SCC 301. In the said case, the Hon'ble Supreme Court, has taken note of the judgment rendered by it in its seven Judges Bench, in the case of Zabar Singh vs. State of Haryana, (1972) 2 SCC 275. It is appropriate to take note of the principle decided by the Hon'ble Supreme Court at paragraph 36 of the case Zabar Singh (supra):-

"36. The principles on which discrimination and breach of Articles 14 and 16 can be said to result have been by now so well settled that we do not think it necessary to repeat them here once again. As already seen, ever since 1937 and even before, the two categories of teachers have always remained distinct, governed by different sets of rules, recruited by different authorities and having, otherwise than in the matter of pay scales and qualifications, different conditions of service. This position remained as late as February 13, 1961. On that day whereas the State cadre teachers were governed by 1955-Rules, Rules had yet to be framed for the provincialised teachers. The two cadres thus being separate, Government was not bound to bring about an integrated cadre especially in view of its decision of making the provincialised cadre a diminishing one and bringing about ultimately through that principle one cadre only in the field in a phased manner. If through historical reasons the teachers had remained in two separate categories, the classification of the provincialised teachers into a separate cadre could not be said to infringe Article 14 or Article 16. It was also not incumbent on the Government to frame the 1961-Rules uniformly applicable to both the categories of teachers, firstly, because a rule framing authority need not legislate for all the categories and can select for which category to legislate (See *Sakhawat Ali v. State of Orissa*, *Madhubhai Amathalal Gandhi v. The Union of India*, and *Vivian Joseph Ferreira v. The Municipal Corporation of Greater Bombay*), and secondly, because it had already come to a decision of gradually diminishing the provincialised cadre so that ultimately only the state cadre would remain in the service. That was one way of solving the intricate difficulty of inter- seniority. There can be no doubt that if there are two categories of employees, it is within Government's power to recruit in one and not recruit in the other. There is no right in a government employee to compel it to make fresh appointments in the cadre to which he belongs. It cannot also be disputed that Government had the power to make rules with retrospective effect, and therefore, could provide therein that appointments made between October 1, 1957 and February 13, 1961 shall be treated as appointments in the State cadre. That had to be done for the simple reason that the provincialised cadre was already frozen even before October 1, 1957 and Government had decided not to make fresh appointments in that cadre since that cadre, was to be a diminishing one.

4. Thus, it is apparent that the Constitutional Bench judgment provided that two separate cadres cannot be merged on the principle of Equal pay to Equal Work. In fact, in such a situation, the petitioner must establish by raising appropriate plea that he worked or the work he is discharging is equal to the work discharged by the other employee to get pay equal to them. Moreover, it is also settled principle of law that Equal pay to Equal Work is a very technical subject and it should be left to the executives and the Court should not interfere in the matter unless a patent error on

established facts is shown.

5. In this case, the petitioner pleads that he was employed as a Sweeper in the Tehsil of Someshwar. However, no written order has been filed. On the contrary, from the record i.e. Annexure-2 to the writ petition, shows that the Tehsildar of Someshwar has recommended to the District Magistrate, Almora, that the petitioner was given temporary appointment as per oral order on 17.02.2004 to work for two hours every day as a Sweeper. So it cannot be held at this stage that the respondent is discharging duties as a Class-IV employee in the Tehsil of Someshwar. Hence, there is no question of equal pay to equal work. The other condition that has been raised by Mr. Shubhang Dobhal, the learned counsel for the respondent is that, the order impugned that has been passed by the learned Single Judge is a consenting order. However, it is observed that the learned Single Judge has reflected in his order that the learned Standing Counsel for the State has no objection to such innocuous prayer of the learned counsel for the petitioner. Firstly, the prayer to pass an order to give equal pay to equal work is not an innocuous order, and, secondly, the learned Standing Counsel without proper instructions cannot give concession in such a matter. In that view of the matter we are of the opinion that even if, concession was given by the learned Standing Counsel that would have no binding effect on the Court.

6. In that view of the matter, appeal is allowed. Order dated 29.11.2017, passed by the learned Single Judge is hereby set aside. However, it is brought to our notice that respondent is being paid Rs. 8300/- per month. Let the respondent be paid this aforesaid amount in the future also for the duties he is discharging.

(Ramesh Chandra Khulbe, J.) (Sanjaya Kumar Mishra, ACJ.) PV