



**HIGH COURT OF ANDHRA PRADESH**  
WEDNESDAY ,THE TWELFTH DAY OF JULY  
TWO THOUSAND AND TWENTY THREE

**PRESENT**

**THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**  
**THE HONOURABLE DR JUSTICE K MANMADHA RAO**  
**WRIT PETITION NO: 11868 OF 2019**

**Between:**

1. The State of Andhra Pradesh rep. by its Principal Secretary, Finance (HR.I.P1g. and Policy) Department Secretariat, Velagapudi, Guntur District.
2. The State of Andhra Pradesh rep. by its Principal Secretary now as Special Chief Secretary, Panchayat Raj and Rural Development Department, Secretariat, Velagapudi, Guntur District.
3. The Deputy Executive Engineer, RWS and S Sub-Division, Koyyalagudem, West Godavari District.
4. The Executive Engineer, RWS and S Division, Eluru, W.G.District.
5. The Superintending Engineer, RWS and S Circle, Eluru, West Godavari District.
6. The Chief Engineer, RWS and S Government of A.P. Vijayawada, Krishna District.

**...PETITIONER(S)**

**AND:**

1. J.Ravi, S/o Engulla, aged about 40 years, Occ- Pump Mechanic (Ill Party Outsourcing), RWS and S Sub-Division, Buttaigudem, West Godavari District.
7. The Mandal Parishad Development Officer Mandal Parishad, Buttaigudem, W.G.District

(2 Respondent is a formal party)

**...RESPONDENTS**

**Counsel for the Petitioner(s): GP FOR SERVICES IV**

**Counsel for the Respondents: T V V KOTESWARA RAO**

**The Court made the following: ORDER**



**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI  
AND  
THE HON'BLE DR. JUSTICE K. MANMADHA RAO**

**WRIT PETITION No.11868 OF 2019**

**JUDGMENT:** *(Per Hon'ble Sri Justice Ravi Nath Tilhari)*

Heard learned Government Pleader for Services-IV appearing for the petitioners and Sri T.V.V. Koteswara Rao, learned counsel appearing for the respondent No.1.

2. The 1<sup>st</sup> respondent filed O.A No.2673 of 2018 before the A.P. Administrative Tribunal, Hyderabad (for short "the Tribunal"), seeking to declare that he was entitled for minimum in the time scale of pay plus DA and HRA attached to the post of Pump Mechanic by taking into consideration the judgment of the Hon'ble Supreme Court of India in **State of Punjab and others Vs Jagjit Singh and others**<sup>1</sup>, being in continuous service, as Pump Mechanic under the respondents for more than 25 years since his appointment in the year 1993.

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<sup>1</sup> 2016 Law Suit (SC) 1057/2017(1) SCC 148



3. Previously some other applicants had filed O.A.No.3859 of 2014, which was disposed of in terms of another O.A.No.9546 of 2011 decided vide order, dated 06.04.2015.

4. The 1<sup>st</sup> respondent initially filed O.A.No.4201 of 2016 for regularization of services which was dismissed. He also filed O.A.No.723 of 2018 for the relief of direction to the respondents therein to fix and pay the minimum in the time scale of pay at par with the similarly situated employees. The respondents therein filed counter affidavit. However, the applicant of O.A sought permission to withdraw the O.A, as pending consideration of O.A., the Government issued orders extending the benefit of minimum in the time scale of pay to some persons, with permission to file fresh O.A. The O.A.No.723 of 2018 was dismissed as withdrawn.

5. Thereafter, O.A.No.2673 of 2018 was filed.



6. The O.A No.2673 of 2018, was allowed at the stage of admission, vide order dated 13.12.2018, directing the present petitioners to pay minimum in the time scale attached to the post in which the present 1<sup>st</sup> respondent was working along with D.A., providing further, for payment of arrears for the working period of the 1<sup>st</sup> respondent.

7. Challenging the order dated 13.12.2018, the present writ petition has been filed.

8. Learned Government Pleader for Services-IV submits that any opportunity to file counter affidavit was not granted and the O.A was allowed at the admission stage itself.

9. The aforesaid submission deserves rejection. The Tribunal decided the O.A after opportunity of hearing to the learned Government Pleader (before the Tribunal) as also hearing him who, as per the order, submitted that the O.A was squarely covered by the decisions in the previously decided other O.A(s).



10. The aforesaid factual aspect, recorded in the order of the Tribunal itself, has not been disputed in the writ petition.

11. Learned Government Pleader for Services-IV next submitted that, in view of **Jagjit Singh** (supra), in relation to temporary employees, while applying the principle of '*equal pay for equal work*' for grant of minimum time scale, it is required to be considered, if the employee was rendering the duties and responsibilities similar to those being discharged by the regular employees holding the same/corresponding posts, but it was not considered by the Tribunal.

12. There is no dispute on the legal submission advanced, but the same deserves rejection, in as much as, there is nothing on the record of the writ petition to show that the duties and the responsibilities being discharged by the 1<sup>st</sup> respondent were different from their counter parts holding the same/corresponding posts.



13. Even if, the O.A was decided at the admission stage, the relevant material in this regard could have been brought on the record of the present petition. We find that, even such a plea has not been raised. Basically, it is a plea of fact and in the absence of any averment/pleading, oral submission on factual aspect, cannot be permitted to be raised.

14. Learned Government Pleader lastly submitted that the 1<sup>st</sup> respondent would not be entitled to allowances or increments, but only to the minimum of the time scale attached to the same/corresponding post. He submitted that the Tribunal erred in awarding Dearness Allowance, placing reliance in **Jagjit Singh** (supra) and **Ram Naresh Rawat vs. Ashwini Ray and others**<sup>2</sup>.

15. Learned counsel for the respondent No.1 submitted that the petitioners granted the payment of minimum pay scale, D.A and H.R.A, to similarly situated persons and in this respect G.O.Rt.No.507 dated 29.04.2010 and G.O.Rt.No.445 dated

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<sup>2</sup> (2017) 3 SCC 436



28.03.2011 and G.O.Ms.No.7 dated 12.01.2017 were issued in the cases of individuals. So the Tribunal has not erred in granting D.A.

16. On this point, we find force in the submission of the learned Government Pleader for Services-IV.

17. In **Uma Devi vs. State of Karnataka**<sup>3</sup> on pay parity, it was held that the daily wage earners should be paid wages equal to the salary at the lowest grade of the cadre concerned, but without any allowances. In **Jagjit Singh** (supra), the Hon'ble Apex Court held that the temporary employees would be entitled to the minimum of the pay scale, of the category to which they belong, but would not be entitled to allowances attached to the posts held by them.

18. In **Ram Naresh Rawat vs. Ashwani Roy and others**<sup>4</sup>, the Hon'ble Apex Court referring to **Uma Devi** (supra) and **Jagjit Singh** (supra), reiterated that

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<sup>3</sup> (2006) 4 SCC 1

<sup>4</sup> (2017) 3 SCC 436



even if the principle of equal pay for equal work is applicable to temporary employees and the pay in the regular pay scale is admissible to such employees, they would be entitled to minimum of the regular pay scale which is attached to the post but without any increments.

19. It is apt to refer paragraphs 15 to 17 of **Ram Naresh** (supra) as under:

“15. At this stage, reference is made to the aforesaid judgment in the case of **Jagjit Singh** (supra) for the purpose that even if principle of 'equal pay for equal work' is applicable and the pay in the regular pay-scale is admissible to such employees, these employees would be entitled to minimum of the regular pay- scale and not the increments. This case is taken note of and discussed in **Jagjit Singh** (supra) in the following manner:

“36. [Secretary, State of Karnataka v. Umadevi](#) [(2006) 4 SCC 1], decided by a five-Judge Constitution Bench: Needless to mention, that the main proposition canvassed in the





instant judgment, pertained to regularization of government servants, based on the employees having rendered long years of service, as temporary, contractual, casual, daily-wage or on ad-hoc basis. It is, however relevant to mention, that the Constitution Bench did examine the question of wages, which such employees were entitled to draw. In paragraph 8 of the judgment, a reference was made to civil appeal nos. 3595-612 of 1999, wherein, the respondent-employees were temporarily engaged on daily-wages in the Commercial Taxes Department. As they had rendered service for more than 10 years, they claimed permanent employment in the department. They also claimed benefits as were extended to regular employees of their cadre, including wages (equal to their salary and allowances) with effect from the dates from which they were appointed. Even though the administrative tribunal had rejected their claim, by returning a finding, that they had not made out a case for payment of wages, equal to those engaged on regular basis, the High Court held that they were entitled to wages, equal to the salary of regular employees of their cadre, with effect from the date from which they were appointed. The direction issued by the High



Court resulted in payment of higher wages retrospectively, for a period of 10 and more years. It would also be relevant to mention, that in passing the above direction, the High Court had relied on the decision rendered by a three-Judge bench of this Court in [Dharwad District PWD Literate Daily- Wage Employees Association v. State of Karnataka](#)[(1990) 2 SCC 396]. The Constitution Bench, having noticed the contentions of the rival parties, on the subject of wages payable to daily-wagers, recorded its conclusions as under:-

“55. In cases relating to service in the commercial taxes department, the High Court has directed that those engaged on daily wages, be paid wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively appointed. The objection taken was to the direction for payment from the dates of engagement. We find that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It



was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called and were entitled to any other benefit. They had also been engaged in the teeth of directions not to do so. We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that is being paid to regular employees be paid to these daily- wage employees with effect from the date of its judgment. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily-wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily-wage earners, there would be no question of other allowances being paid to them. In view of our conclusion, that Courts are not expected to issue directions for making such persons permanent in service, we set aside that part of the direction of the High Court directing the Government to consider their cases for regularization. We also notice that the High Court



has not adverted to the aspect as to whether it was regularization or it was giving permanency that was being directed by the High Court. In such a situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent. If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of selection. But when regular recruitment is undertaken, the respondents in C.A. Nos. 3595-3612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time. That would be the extent of the exercise of power by this Court under [Article 142](#) of the Constitution to do justice to them.” We have extracted the aforesaid paragraph, so as not to make any inference on our own, but to project the determination rendered by the Constitution Bench, as was expressed by the Bench. We have no hesitation in concluding, that the Constitution Bench consciously distinguished the issue of pay parity, from the issue of absorption/regularization in



service. It was held, that on the issue of pay parity, the High Court ought to have directed, that the daily-wage workers be paid wages equal to the salary at the lowest grade of their cadre. The Constitution Bench expressed the view, that the concept of equality would not be applicable to the issue of absorption/regularization in service. And conversely, on the subject of pay parity, it was unambiguously held, **that daily-wage earners should be paid wages equal to the salary at the lowest grade (without any allowances).** ”

16. Another significant reason for referring to the judgment of **Jagjit Singh** (supra) is that the Court culled out the principles of 'equal pay for equal work' from the earlier judgments on the subject and collated them at one place. Further, the Court also drew an important distinction between the grant of benefit of 'equal pay for equal work' to temporary employees on the one hand and the status of regular employees on the other hand. Insofar as parameters of principles of 'equal pay for equal work' deduced by the Court are concerned (para 42), our purpose of



deduction stated in sub-para vi thereof is important, which is reproduced below:

“(vi) For placement in a regular pay-scale, the claimant has to be a regular appointee. The claimant should have been selected, on the basis of a regular process of recruitment. An employee appointed on a temporary basis, cannot claim to be placed in the regular pay-scale (see – Orissa University of Agriculture & Technology Vs. Manoj K. Mohanty[2003 5 SCC 188]). ”

17. Insofar as distinction between pay parity and regularisation of service is concerned, referring to the Constitution Bench judgment in **Uma Devi** (supra), the Court made the following observations:

“49.1. We are of the considered view, that in paragraph 44 extracted above, the Constitution Bench clearly distinguished the issues of pay parity, and regularization in service. It was held, that on the issue of pay parity, the concept of ‘equality’ would be applicable (as had indeed been applied by the Court, in various decisions), but the



principle of 'equality' could not be invoked for absorbing temporary employees in Government service, or for making temporary employees regular/permanent. All the observations made in the above extracted paragraphs, relate to the subject of regularization/permanence, and not, to the principle of 'equal pay for equal work'. As we have already noticed above, the Constitution Bench unambiguously held, that on the issue of pay parity, the High Court ought to have directed, that the daily-wage workers be paid wages equal to the salary, at the lowest grade of their cadre. This deficiency was made good, by making such a direction. ”

Thus, it follows that even if principle of “equal pay for equal work” is applicable, temporary employee **shall be entitled to minimum of the pay-scale which is attached to the post, but without any increments.”**

20. In view of the aforesaid, the 1<sup>st</sup> respondent was entitled to minimum of the pay scale which was attached to the post but without any increments or/and allowances.



21. So far as the submission of the learned counsel for the respondent No.1 is that in many cases of individuals, the petitioner granted minimum of the pay scale with D.A and H.R.A etc., we can only observe that there should be uniformity in treatment to similarly situated persons by the State, but once in the present case they have challenged the order of the Tribunal, we have to decide the same as per the law of the land.

22. We are of the considered view that the direction given by the Tribunal to the extent it allows the D.A to the 1<sup>st</sup> respondent, is not correct and to that extent, the judgment is modified by providing that the respondent No.1 shall be entitled to pay in the minimum of the time scale attached to the post/ corresponding post in which the 1<sup>st</sup> respondent has been working, but without D.A or any other increment.

23. In the result, the Writ Petition is partly allowed.





24. The petitioners shall implement the judgment of the Tribunal, as herein modified, within eight (08) weeks from today.

25. There shall be no order as to costs.

As a sequel, all the pending miscellaneous applications shall stand closed.

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**RAVI NATH TILHARI, J.**

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**DR. K. MANMADHA RAO, J.**

Date :12-07-2023

**Note:**

L.R copy to be marked.

B/o.

Gvl/Scs



**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI  
AND  
THE HON'BLE DR. JUSTICE K. MANMADHA RAO**

**WRIT PETITION No.11868 OF 2019**

*Date : 12 .07.2023*

*Gvl / Scs*