

Court No. - 34

1. Case :- WRIT - A No. - 17253 of 2017

Petitioner :- Bimal Tiwari And 14 Ors.

Respondent :- State Of U.P. And 2 Ors.

Counsel for Petitioner :- Gunjan Sharma,Anoop Trivedi,Manoj Kumar Sharma,Namit Kumar Sharma

Counsel for Respondent :- C.S.C.,A.S.G.I.,Rizwan Ahmad

2. Case :- WRIT - A No. - 12518 of 2017

Petitioner :- Ashutosh Dwivedi And 5 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Namit Kumar Sharma,Bhuwan Chandra Mishra,Ghanshyam Kumar Kesarwani,Gunjan Sharma,Krishnakant Gupta,Siddharth Khare

Counsel for Respondent :- C.S.C.,A.S.G.I.,Dr.Santosh Kr Shukla.Uoi,Tej Prakash

3. Case :- WRIT - A No. - 11085 of 2018

Petitioner :- Sant Kumar Verma And 10 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Namit Kumar Sharma,Gunjan Sharma

Counsel for Respondent :- C.S.C.,A.S.G.I.

Hon'ble Saurabh Shyam Shamshery,J.

1. Heard Sri Namit Kumar Sharma and Sri Manoj Kumar Sharma, Advocates for petitioners in Writ-A No. 17253 of 2017 and 11085 of 2018 and for Petitioners-2 to 6 in Writ-A No. 12518 of 2017; Ashutosh Dwivedi, Petitioner No. 1 in Writ-A No. 12518 of 2017, in person, and Sri I.S. Tomar, learned Additional Chief Standing Counsel for State-Respondents.

2. All these three writ petitions referred above are raising common questions of law and fact, therefore, as agreed by learned counsel parties, they are being decided by this common judgment.

3. The reliefs sought in all these writ petitions are reproduced as under:

W.P. No.	Reliefs
17253/2017	i) Issue a writ, order or direction in the nature of mandamus commanding / directing the Respondents to grant all benefits to the Petitioners such as regular salary in a prescribed pay, Scale Grade pay and other allowances at par with the permanent Junior Engineers

	working in the establishment of Public Works Department and Panchayati Raj Works Department of State Government of U.P. ii) Issue a writ, order or direction in the nature of mandamus commanding/ directing the Respondent authorities to frame policy in the matter of Human Resource Development as it was done by the other states and gives benefits of revised pay scale and other benefits for which a permanent employee in the state is entitle. iii) Issue a writ, order or direction in the nature of certiorari to quash the impugned order dated 24.05.2016 passed by the Respondent no. 1 (Annexure No. 20 to this w.p.) with all of its consequential effects whatsoever. iv) Issue any other suitable writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of this case. v) Award the cost of the writ petition in favour of the petitioner.
12518/2017	i) Issue a writ, order or direction in the nature of mandamus commanding / directing the Respondent to grant all benefits to the Petitioners such as regular salary in a prescribed pay scale grade, pay travelling allowances, leave medical facilities, house rent allowance and annual increments treating them at par with the permanent Junior Engineers working in the establishment of Public Works Department and Panchayati Raj Department of State Government of U.P. ii) Issue a writ, order or direction in the nature of mandamus commanding/ directing the Respondents to grant all such benefits to the Petitioners as have been recommended in the guidelines issued by the Government of India, Ministry of Panchayati Raj on 23.10.2009. iii) Issue a writ, order or direction in the nature of mandamus commanding/ direction the State of U.P. to frame policy in the matter of HRD take it was done for other states and give benefit of raised salary and other benefits which a permanent employees in the state is entitled. iv) Issue any other suitable writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of this case. v) Award the cost of the writ petition in favour of the petitioner.
11085/2018	i) Issue a writ, order or direction in the nature of mandamus commanding / directing the Respondent to grant all benefits to the Petitioners such as regular salary in a prescribed pay Scale, Grade pay and other allowances at par with the permanent Computer Operators working in the establishment of Public Works Department, Gram Vikas Vibhag, Panchayati Raj Works Department, etc. and in different corporations. ii) Issue a writ, order or direction in the nature of mandamus commanding/ directing the Respondent authorities to frame policy in the matter of Human Resource Development as it was done by the other states and gives benefits of revised pay scale and other benefits for which a permanent employee in the state is entitle. iii) Issue a writ, order or direction in the nature of mandamus commanding/ direction the Respondent authorities to decide the representation dated 11.04.2018 sent by the Petitioners (Annexure No. 14 to the w.p.)

	iv) Issue any other suitable writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of this case. v) Award the cost of the writ petition in favour of the petitioner.
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4. The facts which are not disputed that that petitioners were recruited on contractual basis as Junior Engineers or Technical Assistants under Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (*hereinafter referred to as "MNREGA, 2005"*) in District Sonbhadra on a fixed monthly remuneration of Rs. 4000/- which was subsequently increased to Rs. 8000/- per month. Petitioners are claiming salary in the prescribed pay scale with other admissible allowances at par with regularly appointed Junior Engineers in Public Works Department and Panchayati Raj Department of State of U.P.

5. Few of the petitioners have earlier approached this Court by way of filing Writ-A No. 29664 of 2015 (Bimal Tiwari and 73 others vs. Union of India and five others). A Coordinate Bench has disposed of the writ petition vide order dated 06.01.2016 with following directions:

"In this view of the matter, admittedly the petitioners are getting Rs. 8,000/- per month only as honorarium for last more than five years and the same has not been revised. Attention of this Court was drawn to various orders passed by the various State Governments indicating that persons working as the Technical Assistants are getting wages varying from Rs. 14,000/- to Rs. 24,000/- as indicated in the representation of the petitioner, which is Annexure-14 to the writ petition.

In such view of the matter, it would be appropriate that at the first instance, the grievance of the petitioner be considered by the State Government for revision of the honorarium to be paid to the petitioners, particularly in view of the fact that earlier, the State Government had issued a Government Order dated 30th August, 2013 providing for engagement of such persons by way of outsourcing and admittedly, the litigation in this regard is pending before the Hon'ble Apex Court and interim order is operating in favour of the petitioners.

In such view of the matter, at this stage, it would be appropriate that the grievance of the petitioner is first considered by the concerned authority itself. Accordingly, it is directed that the respondent No. 5-Principal Secretary, Panchayati Raj, U.P. Government shall consider and decide the representation of the petitioners in the light of the

provisions of the Act No. 42 of 2005; the guidelines issued by the Union of India under Section 27 of the Act; various decision of Hon'ble Apex Court; and the amount which is being paid by the other State Governments as honorarium to identically situated Technical Assistants.

The petitioners are at liberty to raise all issues as raised in this writ petition by moving of fresh representation before the appropriate authority, who shall consider and decide the representation of the petitioners within a period of three months from the date of production of certified copy of this order.

It is made clear that this Court has not examined the merits of the claim of the petitioners, which shall be looked into by the said respondent while deciding the claim of the petitioners.”

6. Petitioners being aggrieved by the above referred order, filed Special Appeal No. 78 of 2016 (Bimal Tiwari and 68 others vs. Union of India and five others), which was decided by the Division Bench vide order dated 24.02.2016 with following observations:

“Prima facie, it would not be possible to accede to the payment to the contractual employees engaged for a stipulated duration for implementing a centrally sponsored scheme at par with regular staff of the State Government, recruited after following a competitive process. The issue of pay parity again cannot be determined a priori since matters of pay parity do raise an issue of policy impacting upon the finances of the State. Claims for pay parity cannot be determined by the Court in the abstract since a whole range of issues have to be considered including the qualifications prescribed, role and responsibilities, method of recruitment and other relevant factors. Though the learned Single Judge has not articulated these reasons, we find a plausible basis in the impugned order for the ultimate direction which was issued to the Principal Secretary in the Panchayati Raj Department to consider and decide the representation of the appellants.

*Even assuming that the appellants are right in their contention that the fixation of the honorarium at Rs.8000/- per month for persons who have engineering degree qualifications is in urgent need for revision, as has been done by several other States, this is evidently a matter which should, in our view, engage the attention of the State Government in the first instance. **Hence, we are inclined to confirm the judgment of the learned Single Judge which we, accordingly, do. We leave it open to the appellants to place all relevant material before the State Government, including the report, if any, of the Monitoring Committee and comparable data in regard to the***

emoluments which are being allowed to other similarly situated contractual employees under the Scheme elsewhere. The State Government shall, it is needless to add, take into account all relevant facts and circumstances before taking a decision, within a period of three months from the date of receipt of a certified copy of this order. The appellants would be at liberty to point out to the State Government the circular dated 5 January 2016 which has been issued recently in implementation of the earlier circular dated 30 August 2013. The applicability thereof is kept open for being decided by the competent authority.”

7. In compliance of above referred order the petitioners filed detailed representation, a copy is annexed with these writ petitions, which was considered by Principal Secretary, Rural Development Department, State of U.P. and by impugned office memorandum dated 24.05.2016 (Annexure-20 to Writ Petition No. 17253 of 2017) representations were rejected that petitioners, were appointed on contractual basis and not against any sanctioned posts, therefore, their claim did not fall under Government Order dated 30.08.2013 and 05.01.2016. However, for review the quantum of honorarium a Committee was constituted. It is relevant to mention here that no report of said Committee is placed before this Court.

8. Learned counsels appearing for petitioners in all these writ petitions and Ashutosh Dwivedi, Petitioner No. 1 in person in Writ-A No. 12518 of 2017, have vehemently argued that they are Accredited Engineers as mentioned in Clause 5.5 of Operational Guidelines issued by Central Government in the year 2006 and particularly relied on Part IV of the said Clause which says that, “*The State Government shall fix the rate to be paid to accredited engineers in case where they are not Government servants.*” However, till date State Government has not acted in pursuance of said Clause. It is also pointed out that State Government has issued a Government Order dated 17.07.2006 contemplating provisions for empanelment of Junior Engineers and Technical Assistants in consonance with the operational guidelines issued by the Central Government. However, it does not consider the question of determination of salary.

9. It is also argued that petitioners are doing similar work which is undertaken by Junior Engineers working in Public Works Department and

Panchayati Raj Department of State of U.P. Learned counsels and petitioner in person submits that the petitioner are undertaking duties of being overall incharge of the different works undertaken under the Mahatma Gandhi National Rural Employment Guarantee Scheme which includes public works relating to water conservation and water harvesting, watershed management, micro and minor irrigation, renovation of traditional water bodies, afforestation, tree plantation etc. They have relied on orders passed by Chief Development Officer whereby the petitioners were also directed to be responsible for any shortcomings during the work undertaken under the said Scheme. The petitioners are also responsible for measurements as well as to maintain measurement books as per the various office memorandum issued by State Government. Their presence are marked by bio-matric machine. It is also pointed out that even the daily wagers are paid more than petitioners as per the minimum wages fixed by the State of U.P.

10. Learned counsel for petitioners have relied on certain notifications issued by other State Governments that the State has allocated appropriate budget for the purpose of payment of salary. They also pointed out the higher monthly emoluments fixed by other State, such as, State of West Bengal, Uttarakhand, Mizoram and Chhatisgarh whereby the monthly salary is increased to more than Rs. 18000/- and in some State it is about to Rs. 35,000/- per month, whereas in the State of U.P. it is about Rs. 8000/- per month only. It is apparent from the huge difference of salary that the State has failed to discharge its responsibility being a welfare State. They placed reliance on the judgments passed by Supreme Court in **State of Punjab and Ors. vs. Jagjit Singh and Ors.**, (2017) 1 SCC 148, **Sabha Shanker Dube vs. Divisional Forest Officer and others**, (2019) 12 SCC 297 and a judgment of Rajasthan High Court passed in **Budh Singh vs. Urban Improvement Trust, Alwar through its Secretary** (Civil Writ Petition No. 1882 of 2016), decided on 15.05.2017 with regard to principle of “equal pay for equal work” and its applicability to employees appointed on contractual basis also.

11. Meanwhile, State has issued Government Order dated 23.10.2008 whereby terms and conditions of management/ impanelments of Technical

Assistants was substantially altered. This notification was challenged before this Court and vide judgment dated 20.03.2009 a Coordinate Bench has declared said notification ultra vires. However, special appeal filed by State against aforesaid judgment was allowed by Division Bench vide judgment dated 06.11.2009 and the judgment passed by learned Single Judge was set aside and presently issued is seized before Supreme Court in Special Leave Petition No. 35284 of 2009 wherein there is an interim order in favour of employees and according to instructions the Special Leave Petition is still pending.

12. The above submissions are vehemently opposed by learned Standing Counsel appearing for State-Respondents and contended that the petitioners with open eyes have applied for the concerned post with prior knowledge that they will be appointed on contractual basis on a fixed amount of honorarium.

13. With regard to object of MANREGA, 2005, implementation of Scheme, budget allocations etc. observations of Supreme Court in **Swaraj Abhiyan (VI) vs. Union of India, (2018) 7 SCC 591**, are relevant to mention hereinafter:

“25. The Central Government through the Ministry of Rural Development has expressed the view in its affidavit of 3rd January, 2018 that implementation of the Scheme is the responsibility of the States and, hence, securing funds for implementation is the responsibility of the States. We cannot accept this blanket statement, particularly when it concerns delayed payments. It is true that when the Mother Sanction based on the 'agreed to labour budget' nears exhaustion or is exhausted, the concerned State or Union Territory must obtain another Mother Sanction by providing the Central Government with the requisite documents as per the financial norms. According to the Central Government, there is some laxity in this regard by the State Governments and Union Territory Administrations, which cannot be overlooked in view of the General Financial Rules. This is a bottleneck that must be addressed and, as stated in the affidavit, checklists have been prepared in consultations with the State Governments and Union Territory Administrations to facilitate smoother processing of proposals. Perhaps something more needs to be done and we leave it to the Ministry of Rural Development to find a solution.

26. One of the positive measures adopted by the Ministry of Rural Development to reduce delays in release of funds is conducting a Mid Term Review with the State Governments and Union Territory Administrations. One such Mid Term Review was conducted from 29th August, 2017 to 13th October, 2017 to "reorient" them on the financial norms and the checklists to be adhered to for preparing proposals for release of funds. We expect a similar exercise to be conducted for 2018-19 and for subsequent years to tide over any possible stumbling blocks.

27. We reiterate the necessity of meaningful discussions while approving or finalizing the labour budget. The fact that so many States and Union Territories have exceeded the expenditure postulated by the 'agreed to labour budget' is an indication that the Scheme is either well received by the unemployed or the Empowered Committee is being a little tight-fisted. It must be appreciated that the release of funds is for a good socio-economic cause and therefore expeditious and sufficient availability of funds should be the objective. Under the circumstances, we reject the submission of learned Counsel for the Petitioner that the Central Government cannot prepare an 'agreed to labour budget' or that the process of preparing an 'agreed to labour budget' is impermissible or that there is an informal cap on release of funds."

14. Procedure for appointment of petitioners were initially provided under Government Order dated 07.07.2006 which was partially modified by Government Order dated 09.09.2007. They were appointed by a six Member Committee headed by District Magistrate by inviting applications from the candidates having requisite minimum qualification and thereafter a panel was prepared whereof appointments were made. The appointments of Junior Engineers in Public Works Department and Panchayati Raj Department of State of U.P. is through examination conducted by Uttar Pradesh Public Service Commission. Petitioners have not placed any comparison of work and duties undertaken by them and by similarly situated persons working in other departments, though the petitioners have placed certain notifications to show the duties undertaken by them. Therefore, in absence of such comparative data this Court could not enter into the arena of comparison of work. In **Jagjit Singh (supra)** Supreme Court has held that for "equal pay for equal work" the sole factor which requires for determination is, whether petitioners were rendering similar duties and responsibilities as were being discharged by regular employees holding the same/ corresponding posts. It is

relevant to mention that in **Jagjit Singh (supra)** the issue of “equal pay for equal work” was among the one department whereas in the present case there is no grievance amongst similarly situated employees in a department as the petitioners are seeking application of principle considering work and duties undertaken by the persons working in other departments where admittedly the selection process is different.

15. In a recent judgment the Supreme Court in **State of Madhya Pradesh vs. R.D. Sharma and another, 2022 SCC OnLine SC 94** while rejecting the claim of “equal pay for equal work” has held as under:

“16. The High Court in the impugned orders passed in Writ Petition as well as in the Review Petition had thoroughly misdirected itself by applying the principle of “equal pay for equal work” placing reliance on the decision of this court in case of State of Punjab and Ors. Vs. Jagjit Singh and Ors. 2017 SCC 148, which had no application to the facts of the present case. It may be noted that this court has consistently held that the equation of post and determination of pay scales is the primary function of the executive and not the judiciary and therefore ordinarily courts will not enter upon the task of job evaluation which is generally left to the expert bodies like the Pay Commissions. This is because such job evaluation exercise may include various factors including the relevant data and scales for evaluating performances of different groups of employees, and such evaluation would be both difficult and time consuming, apart from carrying financial implications. Therefore, it has always been held to be more prudent to leave such task of equation of post and determination of pay scales to be best left to an expert body. Unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post, and that the court’s interference was absolutely necessary to undo the injustice, the courts would not interfere with such complex issues. A beneficial reference of the observations made in this regard in case of Secretary, Finance Department Vs. West Bengal Registration Service Associations and Ors. 1993 Supl. 1 SCC 153 be made. As held in State of Haryana and Anr. Vs. Haryana Civil Secretariat Personal Staff Association 2002 (06) SCC 72 “equal pay for equal work” is not a fundamental right vested in any employee, though it is a constitutional goal to be achieved by the Government.

17. Pertinently the Administrative Tribunal after considering the relevant factual and legal aspects had rightly rejected the claim of the respondent no. 1 for granting the apex scale on the basis of “equal pay for equal work” in the O.A. filed by him. The said well-

considered, just and proper order of the Tribunal was wrongly set aside by the High Court on extraneous grounds applying the principle of “equal pay for equal work”, while exercising the power of superintendence under Article 227 of the Constitution of India. It is well-settled legal position that the power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. In the instant case, the Tribunal had not committed any jurisdictional error, nor any failure of justice had occasioned, and hence the interference of the High Court in order passed by the Tribunal was absolutely unwarranted.” (emphasis supplied)

16. The outcome of the above discussion is that in absence of any relevant factual and legal aspect and there being no circumstance, which warrants this Court to enter upon the arena of job evolution, the prayers of these writ petitions are liable to be rejected.

17. However, before concluding the judgment, considering the facts and circumstances, the case in hand warrants certain direction/ observations of this Court with regard to monthly emoluments of petitioners which is presently Rs. 8000/- per month which appears to be on lower side even in relation to prevailing price index and quantum of money requires for maintaining a decent life. The monthly emoluments of other States which are on record is comparatively on very higher side. However, State of U.P. has not taken any decision despite a specific direction of this Court and also considering that in the impugned order itself the State has contemplated that issue was pending before the Committee but till date the so called Committee has not taken any decision and the issue is pending since 2016.

18. In view of above discussion, it is necessary and imperative to pass following direction:

“The Principal Secretary, Rural Development Department of State of U.P. is directed to constitute a new Committee to look into the grievance of petitioners with regard to increase of monthly emoluments considering the emoluments fixed to similarly situated persons under MNREGA, 2005 working in other States. The said Committee shall take a reasoned decision within a period of six weeks

from today and shall place the decision/ report before this Court within a period of eight weeks from today.”

19. Accordingly the prayers made in all these writ petitions are rejected and the writ petitions stand disposed of with aforesaid direction.

20. However, all these writ petitions are directed to be listed as fresh on 27th May, 2022 only for the purpose of considering the report submitted by the Committee. The Court will appreciate if Principal Secretary, Rural Development Department, State of U.P., remain present on the next date to assist the Court.

Order Date :- 06.04.2022

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