

7. The Gauhati High Court,
Represented by the Registrar General,
Gauhati High Court, Guwahati-781001.

.....Respondents.

**BEFORE
HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE MITALI THAKURIA**

For the Appellant(s) : Mr. S.P. Sharma.Advocate.

For the Respondent(s) : Mr. N. Das, GA, Assam (R-1 to 3),
Mr. P. Nayak, SC, Finance,(R-4),
Mr. A. Hassan, SC, AG (R-6),
Mr. H.K. Das, SC, GHC (R-7).
.....Advocates.

Date of Hearing : 27.04.2023

Date of Judgment : **3rd May, 2023**

JUDGMENT AND ORDER

[***Sandeep Mehta, CJ***]

This intra-Court appeal is preferred by the appellants/writ petitioners for assailing the judgment and order dated 21.09.2021 passed by the learned Single Bench in WP(C) No.6961/2018.

2. The case in hand has a chequered history. The appellants/writ petitioners were selected and appointed in different categories of Grade-III and Grade-IV posts and were

provided postings in various Fast Track Courts across the State of Assam. However, since there was no encadrement of posts for the Fast Track Courts, the appellants were not granted regular pay scale.

3. Few of the appellants, filed WP(C) No.5153/2010 praying for regularization of their services. The said writ petition filed by those litigants came to be rejected by this Court vide order dated 20.12.2012, which was assailed by filing SLP(C) No.12560/2013 before the Hon'ble Supreme Court. However, finding that the issue relating to fixation of pay scale equivalent to the pay scale being offered to regular employees, was neither raised nor considered by the High Court, the SLP was dismissed vide order dated 20.12.2012 giving liberty to the litigants therein to approach the High Court by way of a review petition. Consequently, Review Petition No.82/2013 came to be filed in this Court, wherein, an offer of settlement was extended by the State Government and accordingly, the Review Petition came to be disposed of with the following directions:-

“We, therefore, having regard to the acceptance of condition nos.(i) & (ii) of the offer of settlement, direct the State Government as under:-

That the services of 8 petitioners mentioned above will not be dispensed with (but for disciplinary action) by the State Government till they attain the age of superannuation and that they shall be paid minimum wages of the regular pay scale from March, 2017 onwards.”

4. In addition to the above direction, the petitioners therein were also given liberty to make a representation to the State Government for extending the benefit of pension and for

counting their past services for computation of pensionary dues and also for grant of medical benefits during the period they remained in service. The petitioners thereupon, submitted representations dated 30.05.2017 and 05.08.2017. The Judicial Department, Government of Assam, passed a speaking order dated 11.05.2018 with reference to the representation dated 30.05.2017, which indicates that after consultation with the Pension and Public Grievances Department and the Finance Department, the claim of the petitioners for being extended benefit of the Assam Services (Pension) Rules, 1969 could not be acceded to.

5. It was further indicated that pursuant to the directions given by this Court in another case, a Committee was constituted to examine the issue of granting benefits of health, accidental and insurance schemes. The names of the petitioners were also submitted to the Committee for appropriate recommendation. However, as no favourable decision came forth, the petitioners instituted captioned WP(C) No.6961/2018 raising various grievances, of which the substantial prayer is to include various allowances attached to basic pay being granted to the petitioners i.e. Dearness Allowances, House Rent Allowances and Medical Allowances. The petitioners claim in the writ petition that they are entitled to these allowances as wage would mean basic pay plus the applicable allowances. It was further submitted that the duties and responsibilities discharged by the petitioners are at par with their counterparts in the department and therefore, any disparity in the matter of wages

suffered with the vice of discrimination. Reliance in support of the relief claimed for was placed by the petitioners on the judgment rendered by Hon'ble Supreme Court in the case of ***State of Punjab & Ors. Vs. Jagjit Singh & Ors.***¹

6. The respondent State counsel also placed reliance on the judgment in the case of ***Jagjit Singh*** (supra) and urged that by virtue of the observations made at paragraph 55 of the said judgment, the prayer of the petitioners for being afforded the benefit of allowances with the minimum of pay scale was misconceived. The writ petition came to be dismissed by the order dated 21.09.2021, which is assailed in this intra-Court writ appeal.

7. Mr. S.P. Sharma, learned counsel representing the appellants urged that the principles applied by the learned Single Bench that scrutiny by a writ court is confined to the decision making process and not to the actual decision would not apply to a matter, wherein a service dispute is agitated and that in such cases, even the validity of the decision of the authority can also be examined by the Court exercising jurisdiction under Article 226 of the Constitution of India. He placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of ***Jagjit Singh*** (supra) and urged that the learned Single Bench was not justified in holding that the ratio of the said judgment could not have a universal application and more so because the earlier writ petition of the petitioners was dismissed. He contended that the review

¹ (2017) 1 SCC 148

petition filed by the petitioners was entertained and on concession of the State Government, the appellants/writ petitioners have been given the benefit of minimum of pay scale.

8. As per Shri Sharma, the reliance which is placed by the State counsel on observations made at paragraph 55 of the impugned judgment, relates to purely *ad hoc* and daily rated casual employees whereas, the appellants herein fall in the category of temporary employees for which category the Hon'ble Supreme Court clearly held that such employees would be entitled to draw wages at the minimum of pay scale extended to regular employees holding the same post. As per Shri Sharma, once the benefit of minimum pay scale is extended to the employees, their right to claim allowances is automatic because such allowances are a part and parcel of the pay scale.

9. Per contra, Mr. P. Nayak, learned standing counsel, Finance Department and Mr. N. Das, learned Government Advocate urged that as a matter of fact, most of the appellants who are serving against Grade-IV posts have already been extended the benefit of minimum pay scale and allowances in terms of the notification/O.M. dated 08.03.2019 issued by the Government of Assam. However, those of the appellants/petitioners who are serving against Grade-III posts, would not be entitled to claim benefit of allowances because no such specific circular/notification has been issued by the State, qua, such posts. Mr. Nayak referred to the following observations

made by the Hon'ble Supreme Court in the case of ***Jagjit Singh*** (supra) and urged that the appellants do not deserve the relief claimed for in this appeal:

“55. In view of all our above conclusions, the decision rendered by the Full Bench of the High Court in *Avtar Singh v. State of Punjab* [2011 SCC OnLine P&H 15326:ILR (2013)1 P&H 566], dated 11-11-2011, is liable to be set aside, and the same is hereby set aside. The decision rendered by the Division Bench of the High Court in *State of Punjab v. Rajinder Singh* [2009 SCC OnLine P&H 125] is also liable to be set aside, and the same is also hereby set aside. We affirm the decision rendered in *State of Punjab v. Rajinder Kumar* [2010 SCC OnLine P&H 13009], with the modification that the employees concerned 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.”

10. We have given thoughtful consideration to the submissions advanced at Bar and have gone through the material available on record.

11. At the outset, we may note that the issue regarding the entitlement of the appellants to receive minimum of pay scale is no longer *res integra* because in the earlier round of litigation, while deciding the Review Petition No.82/2013, in terms of the amicable settlement arrived at with the State, the Division Bench directed that the appellants herein would be paid minimum wages of regular pay scale from March, 2017 onwards. It is an admitted fact that the appellants were actually granted all benefits of minimum pay scale including allowances

till January, 2018. Contents of the letter dated 16.03.2000 issued to the Accountant General (Audit), Tripura and the corresponding communications in the other North-Eastern States would indicate that when the Fast Track Courts were set up, the temporary posts were created against which, the appellants herein were appointed.

12. Apparently thus, the nature of services of the appellants was neither *ad hoc* nor on daily wage basis, they were definitely temporary employees appointed against temporary posts created for newly set up fast track courts. It is true that at the inception the services of the appellants may have been declared as coterminous with the existence of the Fast Track Courts, but the fact remains that even after the Fast Track Courts were abolished, the petitioners' services continued to be utilized in different Judicial Courts. Hence, it is not a case that the petitioners lost their utility to the Judicial Courts after the system of Fast Track Courts was discontinued. That is why, the State Government came out with a scheme of settlement during the course of hearing of the review petition (*supra*) and offered minimum of pay scale to the petitioners so that their experience of working in the judicial courts could be utilized and they too could be offered a chance of working with dignity by offering them the minimum of pay scale attached to their respective posts.

13. There cannot be any two views that pay scale, even if is of the minimum applicable to the posts in question, would include the allowances. In this background, the contention of

the learned government counsel Mr. Nayak that the claim of the petitioners/appellants is hit by the observations made at paragraph 55 of the judgment rendered in **Jagjit Singh** (supra) is absolutely unacceptable. Those observations were made by the Hon'ble Supreme Court while considering the cases of daily wagers, work charged and contractual employees, etc. However, qua the temporary employees in which category the appellants clearly fall, the Hon'ble Supreme Court went on to discuss the issues from paragraph 56 onwards and held that such employees would be entitled to the minimum of pay scale. As there is no observation in the said judgment that temporary employees would also be deprived of allowances, the petitioners would definitely be entitled to claim benefit of the observation made at paragraph 61 of the above judgment, which reads as below:-

“61. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding that all the temporary employees concerned, in the present bunch of cases would be entitled to draw wages at the minimum of the pay scale (at the lowest grade, in the regular pay scale), extended to regular employees holding the same post.”

14. It is also not in dispute that those from the petitioners who are holding Grade-IV posts have already been extended the benefit of minimum pay scale as well as allowances attached thereto by virtue of the State Government's notification dated 08.03.2019. Hence, excluding the remaining petitioners/appellants who are serving against Grade-III posts and denying them the benefit of allowances attached to the minimum pay scale would be nothing short of hostile

discrimination and is clearly violative of the fundamental rights enshrined under Article 14 and 16 of the Constitution of India.

15. As a consequence, the appeal deserves to be accepted. The impugned judgment dated 21.09.2021 is hereby reversed and, as a consequence, the speaking order dated 11.05.2018 is set aside. It is directed that those of the appellants, who have not been granted the benefit of allowances even though they are drawing a minimum of pay scale, shall also be afforded the allowances in accordance with the pay scale. This financial benefits shall accrue to the appellants from the date the review petition was decided i.e. 23.01.2017.

16. The writ appeal is allowed accordingly.

Sd/- Mitali Thakuria
JUDGE

Sd/- Sandeep Mehta
CHIEF JUSTICE

Comparing Assistant