

A

STATE OF HARYANA AND ANOTHER ETC.

v.

MOHINDER SINGH AND OTHERS ETC.

(Civil Appeal Nos. 7391-7395 of 2013)

B

JANUARY 31, 2017

[JAGDISH SINGH KHEHAR, CJI AND
DR. D.Y. CHANDRACHUD, J.]

C

Labour Laws - Engagement of respondents as conductors and drivers - Under Statutory Rules framed by the State - Initial wages paid by treating them as daily wagers - Wages further enhanced by treating them as contract labourers - Finally wages paid to them in the regular pay scale - Writ petitions by 195 of such employees seeking wages in the regular pay-scale w.e.f. the date of their entry into service - Petitions disposed of by High Court by order dated 1.4.2013 holding that the employees were entitled to regular pay from the date of their initial appointments - High Court further held that they were entitled to arrears for three years and two months period prior to the date of filing the petitions - The State accepted and implemented the judgment of High Court as regards grant of regular pay-scale to all such employees from the date of their initial appointment - However, the State imposed the condition that it would pay the arrears only w.e.f 1.1.2014 - 65 of the writ petitioners-employees accepted the condition - Appeal of State - Held: The order of High Court as regards payment of wages on the principle of equal pay for equal work, calls for no interference - However, arrears should have been held to be payable only w.e.f the date of the order of the High Court i.e. 1.4.2013 - In exercise of jurisdiction u/Art. 142 of Constitution, direction issued to the State to pay arrears to all the persons similarly situated as the respondent-employees - Haryana Transport Department (Group C) Haryana Roadways Service (Amended) Rules, 2003.

D

E

F

G

State of Karnataka v. Umadevi (2006) 4 SCC 1 : [2006] 3 SCR 953 - followed.

State of Punjab v. Jagjit Singh (2017) 1 SCC 148 - referred to.

H

Case Law Reference

(2017) 1 SCC 148 referred to Para 7
[2006] 3 SCR 953 followed Para 10

CIVILAPPELLATE JURISDICTION: Civil Appeal Nos. 7391-7395 of 2013.

From the Judgment and Order dated 01.04.2013 of the High Court of Punjab and Haryana at Chandigarh in CWP Nos. 22516, 3084, 17357, 25975 of 2012 & CWP No. 1257 of 2013

WITH

C. A. Nos. 1556-1569 of 2017 and C. A. No. 8993 of 2014.

B. K. Satija, AAG., Ms. Indu Malhotra, Sr. Adv., Prashant Singh, Santosh Krishnan, Ms. Rakhi Mohanty, Tanvir Nayar, Dr. Monika Gusain, Vipin Kumar Jai, Advs. for the Appellants.

Manjeet Singh, Sr. Adv., Mrs. Vivekta Singh, Tarjeet Singh, Yogendra Kr. Verma, Pankaj Pandey, Sanjay Kr. Rathee (For Satyendra Kumar), L. R. Khatana, Mohit Singh, Hemraj Tewatia, Sidharth Khatana (For Sudhir Naagar), Suraj Prakash Ahlawat, Suresh Kumar Sharma, Sanjay Malik (For Bankey Bihari Sharma), Sachin Jain (For Dr. Kailash Chand), Jasbir Singh Malik (For Ms. Usha Nandini), Siddharth Mittal, Surender Singh (For Ms. Usha Nandini), Advs. for the Respondents.

The Judgment of the Court was delivered by

JAGDISH SINGH KHEHAR, CJI 1. The respondents before this Court were engaged as conductors and drivers under statutory rules, framed by the State of Haryana, under Article 309 of the Constitution of India. Under the concerned statutory rules, even though conductors and drivers were engaged after following due process, they were paid different wages. Their initial wages were paid by treating them as daily wagers, their wages were then enhanced by treating them as contract labourers, and finally, they were paid regular wages in the regular pay scale.

2. 195 of such employees preferred writ petitions before the High Court, seeking wages in the regular scale of pay, with effect from the date of their entry into service. All those writ petitions came to be disposed of, by a common order dated 1.4.2013 (or by placing reliance on the said order). The operative part of the above order, is being extracted hereunder:

"We are, therefore, of the opinion that placing the petitioners on

A consolidated salary is impermissible and the rules to this extent
are unconstitutional and, therefore, liable to be set aside. The
placing of the petitioners in pay scales meant for Grade-II and
two years thereafter in Grade-I cannot be permissible. The
B petitioners, thus, would be entitled to the minimum of the pay
scale from the date of their initial appointments and their pay
shall be fixed accordingly. However, insofar as arrears of pay
are concerned, they will be entitled to the arrears for three years
and two months' period prior to the date of filing of these
petitions."

(emphasis is ours)

C 3. It is further imperative for us to indicate, the basis on which
the High Court arrived at the above decision. Accordingly, a relevant
part of paragraph 11 of the impugned judgment, wherein the reasons
stand recorded, is being extracted hereunder:

D "11. The admitted facts, which are appearing on record, are that
the recruitment rules for appointment to the posts of Drivers and
conductors are same whether they are appointed on contract
basis initially or are given the pay scales after rendering the
services for specified number of years. All these petitioners
E fulfil those eligibility conditions contained in the recruitment rules.
It is also an admitted position on record that there was a proper
selection procedure followed by issuing the advertisement and
making the selection through the Staff Selection Board/Service
Commission. The petitioners were selected on merits. From day
one they started doing the job of Driver and Conductor which is
F the same as performed by the Drivers/Conductors who are placed
in the regular pay scale. It is, thus, not in dispute that the posts in
question were advertised for open competition for direct
recruitment and all the petitioners were appointed through the
selection process made by the Staff Selection Commission after
giving opportunity to each and every eligible person. The only
G reason for putting them on contract/fixed salary in the beginning
and bringing them on the regular pay scale after they render
service for specified period is that the provisions are made with
objective to recruit best Drivers and Conductors who can provide
best services to the commuting public. It is not understood as to
H how this objective is achieved by putting the Drivers and

Conductors initially on the fixed salary and bringing them in graded pay scales after 4/6 years. The aforesaid objective can well be achieved by putting the Drivers and Conductors after their appointment initially on probation and watching their work and conduct during the period of probation. The respondents have not been able to dislodge the weighty and meritorious contention of the petitioners that paying different salary even after getting same work offends the principle of 'equal pay for equal work'."

(emphasis is ours)

4. The judgment rendered by the High Court on 1.4.2013, has been assailed by the State of Haryana, by filing a large number of special leave petitions. Leave was granted in all the special leave petitions, except special leave petition (C) Nos.6159-6163/2014. Leave is hereby granted, in the aforesaid special leave petitions, as well. Even though, an impression was made out, that the State of Haryana, was assailing the determination rendered in the impugned order on merits, yet the aforesaid impression is clearly dispelled by a perusal of the affidavit dated 5.8.2014 (filed by the Additional Transport Commissioner, Haryana), before this Court. A relevant extract of the aforesaid affidavit, is being reproduced hereunder:

"4. That to resolve the issues of drivers and conductors of the Transport Department, a meeting of the representatives of the State Government and representatives of Haryana Roadways Workers Coordination Committee consisting of various registered unions of the employees was held on 21.01.2014, in which a Mutual Agreement was entered upon. A copy of the said mutual agreement is Annexed as Annexure 'A-1'.

5. That after the Mutual Agreement dated 21.01.2014, the Council of Ministers, in its meeting held on 24.6.2014, has taken the decision with regard to grant of regular pay scale to the drivers and conductors of Haryana Roadways appointed under the Haryana Transport Department (Group C) Haryana Roadways Service (Amended) Rules, 2003 as amended thereafter from time to time.

6. That after the decision of the Council of Ministers, the Principal Secretary to Govt. of Haryana Transport Department has issued directions vide memo no.1/82/2012-1 T(ii) dated 25.6.2014 to implement the decision of the Council of the Ministers. Copy of

- A the instructions dated 25.6.2014 is enclosed as Annexure 'A-2'.
- B 7. That the State Government vide the instructions dated 25.06.2014 has decided that as per the agreement reached on 21.01.2014 between the representatives of State Government and the representatives of various Employees Unions, the drivers and conductors of Haryana Roadways recruited after 01.01.2003 under the Haryana Transport Department (Group C) Haryana Roadways Service (Amended) Rules, 2003 as amended subsequently in 2004 and 2011, who have submitted their affidavits will be paid the regular pay scale of the relevant post from the date of their initial recruitment up to 31.12.2013. The benefit will be allowed to those drivers and conductors who have submitted their affidavits as per the agreement signed on 21.01.2014 and those who now submit the affidavits. The salary of July, 2014 will be paid at the revised rates as per the agreement and the arrears for the period January, 2014 to June, 2014 will be paid in August/September, 2014. After allowing the regular pay scales to the drivers and conductors, an application will be filed in the Hon'ble Supreme Court praying for the disposal of the SLPs in terms of agreement.
- C
- D
- E 8. That the abovesaid decision of the State Government has been taken as a golden handshake keeping in view the larger public interest and welfare of the employees. The implementation of the said Mutual Agreement will give quietus to the long pending issue of payment of regular pay-scale to the drivers and conductors of the department. Grant of regular pay scale to these employees would also be in accordance with the judgment of the Hon'ble Punjab and Haryana High Court under challenge in the abovesaid SLPs. However, the arrear allowed by the Hon'ble Punjab and Haryana High Court would put huge financial burden on the State Exchequer. It is pertinent to submit that these employees were appointed under the service rules legally framed under Article 309 of the Constitution of the India and do not have any vested right to claim the regular pay scale and the arrears.
- F
- G
- H 9. The majority of the drivers and conductors have expressed their willingness to forgo the arrears in case they are granted the regular pay scale as per Mutual Agreement dated 21.01.2014

and decision of the State Government vide instructions dated 25.6.2014.” A

(emphasis is ours)

5. Learned counsel representing the State of Haryana pointed out, that out of the 195 conductors and drivers, who had approached the High Court, the settlement (referred to in the affidavit extracted hereinabove), was accepted by 65 of such employees (who had approached the High Court). The remaining challenge, is therefore limited to 130 respondents (who had approached the High Court) herein. B

6. In conjunction to the factual position, noticed hereinabove, it is also necessary to appreciate, that the State of Haryana, at its own, accepted and implemented the judgment rendered by the High Court, even with reference to such conductors and drivers, who had not approached the High Court, for any relief. The above judgment has been implemented, so as to allow the regular pay scale to all conductors and drivers, with effect from the date of their appointment, with the overriding condition that arrears would be payable with effect from 1.1.2014. In the instant view of the matter, it is apparent, that there is no serious dispute with reference to the challenge made at the hands of the State Government, on the merits of the determination rendered by the High Court. We therefore hereby affirm the judgment rendered by the High Court, insofar as the merits of the controversy is concerned. C D E

7. Even otherwise, we are satisfied, that a challenge to the determination rendered by the High Court, with reference to the wages payable to the concerned employees, under the principle of equal pay for equal work, as has been expressed by the High Court, is in consonance with the legal position on the subject, declared by this Court in *State of Punjab vs. Jagjit Singh*, (2017) 1 SCC 148, and calls for no interference. F

8. What remains for adjudication, is the direction contained in the impugned judgment, that arrears would be payable to the appellants, who approached the High Court, for a period of three years and two months, prior to the date of their filing petitions before the High Court. It is this aspect of the matter, which is seriously contested by the learned counsel for the appellants. It was the submission of the learned counsel, that the appellants, while disbursing wages to the respondents, had paid them wages, as were due to them, in consonance with the statutory rules, framed under Article 309 of the Constitution of India. It was G H

A therefore submitted, that the appellants cannot be accused of having been unfair to the respondents. It was also submitted, that the State of Haryana, despite the extreme financial burden, had unilaterally adopted the judgment, and had agreed to pay arrears of wages, with effect from 1.1.2014. It was submitted that, wages had indeed been released to all
B conductors and drivers, in consonance with the impugned judgment, even to those who had not approached the High Court. It was however acknowledged, that arrears had been paid only, with effect from 1.1.2014. It was further submitted, that wages have also been released to 65 of the appellants, who had approached the High Court, in consonance with the impugned judgment, with effect from 1.1.2014, as they agreed to
C execute a settlement with the appellants, by conceding to accept arrears only with effect from 1.1.2014. It was therefore the submission of the learned counsel for the State of Haryana, that it would be not only just and appropriate, but would also be fair, to extend arrears to all the respondents, only for the period commencing from 1.1.2014. It was also
D submitted, that payment of arrears for any further time, would cause extreme financial hardship, to the State. It was also contended, that it would be almost impossible to pay wages to the respondents, for a period of three years and two months, prior to the date of their filing petitions, before the High Court.

E 9. As against the contention advanced at the hands of the learned counsel for the appellants, it was the submission of the learned counsel for the respondents, that the course adopted by the High Court, was in consonance with the declared position of law, inasmuch as, the High Court had taken into consideration, the period of limitation, over which a monetary claim could be accepted. It was also the assertion of the learned
F counsel representing the conductors and drivers, that the State Government became alive of the claim raised by the respondents, on the very date the respondents approached the High Court. It was submitted, that a fair government, would have accepted the employees' just demand, and would have released their wages, as were rightfully due to them, at its own. The fact, that the appellants were conscious of the genuineness
G of the claims of the conductors and drivers, it was pointed out, was apparent from the fact, that the appellants have not challenged the impugned order on merits, and that, the benefit of the judgment has been extended to even those employees who had not approached the High Court, unilaterally by the State Government. It was submitted, that the

H

action of the State Government in contesting the claim, which was rightful and legitimate, cannot be accepted from a welfare State.

A

10. We have given our thoughtful consideration, to the submissions advanced at the behest of the learned counsel for the rival parties. The only question, that arises for consideration at our hands, is the date from which arrears should be released to the respondents. Insofar as the instant aspect of the matter is concerned, during the course of hearing, Ms. Indu Malhotra, learned senior counsel representing the State of Haryana, had invited our attention to the Constitution Bench judgment of this Court in *State of Karnataka vs. Umadevi*, (2006) 4 SCC 1, wherein, on the subject in question, this Court had observed as under:

B

C

"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."

D

E

F

G

(emphasis is ours)

H

- A Having perused the determination rendered by this Court in the Umadevi's case (*supra*), we are satisfied, that in terms of the above judgment, arrears should have been held, to be payable to the respondents, only with effect from the date when the impugned judgment was rendered by the Division Bench of the High Court, i.e., with effect from 1.4.2013.
- B We are indeed bound to follow the aforesaid declared position, by the Constitution Bench of this Court. More so because, the legal position on the subject was uncertain, in view of the conflicting position reflected on the subject, by different judgments of the High Court. The correct legal position was declared for the first time, through the impugned judgment, which also held the statutory rules framed under Article 309 of the
- C Constitution as unconstitutional, to the extent of payment of wages. It is on the above and allied consideration, that we feel, that it would not be appropriate to extend the benefits of arrears to the respondents, keeping in view the period of limitation, for payment of monetary claims. In view of the above, we hereby dismiss all the civil appeals on merits. Insofar as the payment of arrears is concerned, the impugned order is modified,
- D and a direction is hereby issued, that arrears will be paid to the respondents with effect from the date of the impugned judgment, namely, with effect from 1.4.2013.

11. While determining the issue, as to from which date the arrears should be paid to the respondents, this Court cannot be oblivious to the
- E rights of those, who had not approached the High Court or this Court, nor can it be oblivious to the rights of those persons, who had entered into a settlement with the State Government, and had accepted arrears, with effect from 1.1.2014. It is imperative for us, in exercise of our jurisdiction under Article 142 of the Constitution, to do complete justice
- F in the matter. We feel ourselves persuaded, to direct the State Government, to pay arrears of wages, to all persons similarly situated as the private respondents herein, in consonance with the impugned judgment, with effect from 1.4.2013, this would include those employees who had not approached the High Court or this Court, as well as, those who had entered into a settlement with the State Government, agreeing to accept
- G arrears only with effect from 1.1.2014. Ordered accordingly.