

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 188 OF 2010
(Arising out of SLP (C) No.3904 of 2008)

Ram Kumar

... Appellant

Vs.

State of Haryana & Anr.

... Respondents

O R D E R

Leave granted. Heard the parties.

2. The appellant, who was working as Mason on daily wages from June, 1988, was regularised with effect from 7.10.1998 by order dated 29.2.2000. As there were no vacant post of Mason Grade-II where he could be regularised, he was accommodated in the vacant post of Washerman making it clear that until a post of Mason Grade-II was available, his salary will be in the pay scale of Rs.2550-3200. Feeling aggrieved, the appellant filed a writ petition before the High Court in the year 2005 praying for a direction to grant him the benefit of pay scale of Rs.3050-4590 applicable to the posts of Mason Grade II and Washerman, from 7.10.1998. He also

claimed confirmation of his service on the post of Mason Grade II with all consequential benefits.

3. The High Court by a short order dated 6.2.2007, disposed of the petition holding that as the post of Mason Grade-II was not available, he could not be regularised in the said post. It assumed that the appellant was claiming only the relief in regard to regularisation in the post of Mason Grade-II. The Review Petition filed by the appellant was dismissed on 2.11.2007.

4. Being aggrieved, the appellant has filed this appeal by special leave challenging the order dated 6.2.2007 and the review order dated 2.11.2007. The appellant submitted that he had no grievance in regard to the order of regularisation but his grievance was only in regard to pay scale applicable and that aspect had been completely lost sight of by the High Court. Learned counsel for the respondents on the other hand submitted that the appellant had also prayed for a direction to respondent to confirm him on the post of Mason Grade-II with consequential benefits and the High Court had dealt with that aspect, assuming that the prayer relating to pay scale was consequential.

5. As far as the second part of the prayer, that is for confirmation in the post of Mason Grade-II, the High Court was justified in observing that in the absence of a vacant post of Mason Grade-II, he could not be regularised in the said post. Insofar as the first part of the prayer, that is seeking the benefit of pay scale of Rs.3050-4590, no material has been placed by either side as to the pay scale that is applicable to Mason Grade-II or in regard to Washerman. Even before this Court, the relevant material is not produced. We find that this issue has been totally ignored by the High Court. The High Court ought to have addressed itself to this issue also. As no material is available before us to decide this issue, we set aside the impugned order dated 6.2.2007 insofar as the first part of the prayer and restore the writ petition to the file of the High Court and request the High Court to decide the pay scale applicable to the post on which the appellant was regularised and further decide whether the appellant was entitled to any scale higher than what was made applicable. Appeal is accordingly disposed of.

J.
(R V Raveendran)

New Delhi;
January 08, 2010.

J.
(K S Radhakrishnan)