

(1991) 01 AHC CK 0025

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No's. 10718, 11144 and 20882 of 1988 and 4853 and 18796 of 1989 and 26515 of 1990

Anil Kumar Mishra and Others

APPELLANT

Vs

Madhyamik Shiksha Parishad

RESPONDENT

Date of Decision : 11-01-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 39D
Uttar Pradesh Intermediate Education Act, 1921 — Section 7

Citation : (1991) 1 AWC 248

Hon'ble Judges : M.L. Bhat, J

Bench : Single Bench

Advocate : Ajai Kumar Divedi and O.P. Singh, for the Appellant;

Final Decision : Allowed

Judgement

M.L. Bhat, J.—These six writ petitions are identical in nature. There is a common question of law and facts, therefore, they were heard together and are being decided by a common judgment.

2. The Petitioners' case is that they were working as clerks the writing certificates of successful candidates who had passed High School and Intermediate Examinations. Their appointment was in pursuance of an advertisement notice A written test was held Thereafter the Petitioners were interviewed and the Petitioners came to be appointed as Certificate Writers.

3. In writ petition No. 10718 of 1988 the Petitioners state that they were appointed as certificate writers in February, 1986 on wards. They were doing the job of clerk in pay scale of Rs. 354-550 but they were not given the pay scale. They were first paid Rs. 12/- for writing 100 certificate and Rs. 4/- for checking the same. Subsequently the rate was enhanced to Rs. 20/- for writing 100 certificates and Rs. 6/- for checking the same. They would intend the office from 10 A.M. to 5 P.M. and would sign the attendance register kept by the Respondent for marking their attendance. The Petitioners were unemployed before joining the

service. They accepted the service by being exploited by the Respondent. The Petitioners were not only writing the certificates but they were also asked to write counterfoils of the certificates. In this way they would write 200 certificates 100 for the purpose of issuing to various candidates and 100 as counterfoils in lieu of Rs. 12/- and Rs. 4/- as checking charge; and subsequently in lieu of Rs. 20/- and Rs. 6/- as checking charges. The Petitioners are said to have made an application to the Respondent that they were discharging the work of regular employees, therefore, they should be paid as regular employees and be absorbed as such for which posts were available with the Respondent. On account of being jobless they had accepted to work on a meager monthly amount of Rs. 200/- to Rs. 300/- which they earned by writing certificates otherwise they were entitled to be paid the pay scales which are drawn by the regular employees of the Board. It is submitted that some employees who were certificate writers were absorbed against permanent posts and were paid pay scales which are drawn by the regular employees. The Petitioners' case is that they are working as casual labourers and have put in the requisite working days, therefore, they are entitled to be brought on the regular establishment of the Respondent and paid accordingly. All the Petitioners are highly educated and their educational qualifications are also given in the body of the writ petition.

4. The Petitioners' services were terminated which would amount to retrenchment. This was done without following the procedure provided under law. On the basis of the aforesaid grounds the Petitioners submit that they may be reinstated as Lower Division Clerks or in the alternative the Respondents be directed to absorb the Petitioners as Lower Division Clerk and place them in the office it is prayed that the Petitioners be given the pay as also the difference in the pay.

5. The case set out in writ petition No. 11144 of 1988 is the similar which is mentioned in writ petition No. 10718 of 1988.

6. In writ petition No. 20882 of 1988 the Petitioner also claims the same relief which is claimed in writ petition No. 10718 of 1988 and the facts stated in the writ petition are similar with those of the writ petition No. 10718 of 1988.

7. In writ petition No. 4853 of 1989 it is stated that the Petitioner has worked for 18 months with the Respondent and he was discharging the same functions which were being discharged by the Lower Division Clerks. The Petitioner was not regularised. He was entitled to be regularised and paid the salary which is payable to the Lower Division Clerk. His services are also said to have been terminated orally on 11-8-1987.

8. In writ petition No. 18796 of 1989 the Petitioners' case is also that they were appointed as certificate writers in pursuance of advertisement notice dated 24-1-1986. They were doing the work of clerk, whose pay scale is Rs. 354-550, but the Petitioners were not paid due salary though they discharged similar duty which was discharged by the Lower Division Clerk. The Petitioners' services were

orally terminated with effect from 2-6- 1985.

9. In writ petition No. 26515 of 1990 the Petitioners claim that they were also appointed as certificate writers in pursuance of advertisement notice dated 24-1-1986 and thereafter were orally discharged on 3-6-1988. Petitioner No. 1 is said to have worked as certificate writer from 21-4-1986 Petitioner No. 2 is said to have worked from 1-8-1986 to 30-12-1987. Petitioner No. 3 is said to have worked from 21-4-1986 to 30-12-1987. Petitioner No. 4 is said to have worked from 5-5-1986 to August, 1987. Other facts are similar as set out in writ petition No. 10718 of 1988.

10. The Respondent's case is that the Petitioners were required to write certificates and they were not to do anything beyond that. It was further stated that the set vices of the Petitioners were contractual. No application was invited for any post, as stated by the Petitioner". The Petitioners were not appointed as Lower Division Clerk. There was no appointment for any purpose and the work assigned to the Petitioner was not regular. The Petitioners services are not required now. There are no posts on which the Petitioners can be absorbed continued.

11. Learned Counsel for the parties were heard. Each petition was argued separately by the respective counsel.

12. It is contended by the learned Counsel for the Petitioners that the Petitioners were appointed in pursuance of an advertisement, a copy whereof is annexure 1 to the writ petition No. 10718 of 1988. From the reading of the said annexure it appears that the candidates having eligibility and desirous of writing corticated were asked to contact the Respondent for certificate writing Rates were given in the advertisement notice which rates were subsequently enhanced. On the basis of this advertisement the Petitioners? services were requisitioned and they were asked to discharge the functions of certificate writers with the Respondent. The Respondent has explained the purport of the advertisement. It stated that the job of writing or certificates was emanatory which was done by the employees during holidays on extra remuneration because they would devote extra time in doing the job. The regular employees would do the job of writing certificates during holidays for which they would be paid. The advertisement was not meant for appointment of clerks but it was meant to give notice to those who were desirous to write certificates on fixed rate of remuneration purely on contractual basis for a limited period. No written or oral examination was conducted, but on the basis of good hand writing and adequate competence of writing people were asked to write certificates on contractual basis. Since the year 1981 candidates are given computerised certificates, therefore, there was no need to appoint Petitioners as certificate writers on regular basis. It is denied that the Petitioners were regular employees in the pay scale of Rs. 354-550. The Petitioners worked on remuneration paid basis and when the work of certificate writing was discontinued the Petitioner were asked not to come and work. About one worker it is stated that he was allowed to work on daily wage basis and was treated as

daily wage labour it is stated that the Board is not an industry and the Petitioners' case is not covered under the Industrial Disputes Act. It is denied that the Petitioners' services were arbitrarily and illegally terminated.

13. A supplementary counter affidavit is also filed. It is stated that the number of certificates to be written has fallen to only 3000 from a huge backlog of nearly 30 lacs certificates. Only 94,000 certificates are in the process of printing.

14. The learned Counsel for the Petitioners have referred to a number of authorities in support of their contentions that once the Petitioners were appointed as casual labourers, they were entitled to be regularised and to draw equal pay for equal work. In *Shalleudra Nath Shukla v. The Vice Chancellor Allahabad University* 1986 UP LB & EC 667 a Division Bench of this Court has held that where services of daily wage workers were terminated after having completed 240 working days within a period of 12 months immediately preceding the date of termination without paying retrenchment compensation or following the procedure provided under law, such termination was void. The workman retrenched in this manner was held to a declaration for continuing in service with back wages. In *U.P. Income Tax Department Contingent Paid Staff Welfare Association Vs. Union of India (UOI) and Others*, the Supreme Court relying on the principle laid down in *Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others*, between daily rated casual labour employed in P & T Department v. Union of India, held that the workmen employed as contingent paid staff of the Income Tax Department found to have worked on daily wages for nearly eight years were entitled to get wages at the rate equivalent to minimum pay in the pay scale of the regularly employed workers in the corresponding cadre. A direction was given by the Supreme Court to prepare a scheme on rational basis for absorbing such employees who have been continuously working for more than one year with the Department. In *Bhagwati Prasad Vs. Delhi State Mineral Development Corporation*, it is held that daily rated workers not possessing initial minimum prescribed qualifications at the time of appointment cannot be refused confirmation if they did not possess the requisite qualification because they had gained sufficient experience after rendering many years of service and they would be entitled to pay equal to persons appointed in regular basis. *Dbarwad District PWD Literate Daily Wages Employees Association v. State of Karnataka*, Labour and Industrial Cases 1990 625 says that in the case of the daily rated and monthly rated employees in various Government establishments discharging similar duties a direction was given to pay salary to such persons at the rate equivalent to the minimum pay in the pay scale of regular employees and the Government was asked to prepare a more rational scheme for their absorption.

15. Reliance was placed on an unreported judgment of this Court in writ petition No. 21768 of 1987 decided on 21-4-1988. In the said judgment directions have been issued to the Respondents of that case to regularise the services of the Petitioners in that case and pay them the pay scale of Junior clerks with effect

from certain date.

16. In the present case the learned Counsel for the Petitioners have also relied on Section 7 of the U.P. Intermediate Education Act, 1920 which says that the Board has a statutory duty to grant certificates to all the successful candidates. The certificates are, therefore, to be scribed and scribing of certificates is to be done by the Board through its employees and, therefore, it is obligatory on the Board to get the certificates scribed. It is also contended that the Petitioners' services are not contractual but they were discharging the duties as daily wage labourers and their duties were similar to those rendered by the Junior clerks of the Board. It is, therefore, necessary that they should be regularised as regular employees and given the pay scale of the Lower Division Clerk. When they demanded equal pay for equal work, they all of a sudden were discontinued from service in violation of law. As daily wage labourers they could not be retrenched after having completed 240 days in a year immediately preceding the termination of their services. It is contended that they may be treated in continuous employment and they be paid equal pay for equal work. In the alternative, it is prayed that they may be directed to be absorbed against vacant posts available with the Board. The learned standing counsel has laid emphasis on the nature of service rendered by the Petitioners. It was argued that they were not discharging the duties of daily wage workers or temporary workers but were employed on contract basis. Their wages were fixed for writing 100 certificates and for checking them at a particular rate which they accepted. This rate was subsequently enhanced and they did not raise any objection but worked at the enhanced rate. No other work was assigned to them except writing of certificates which writing is said to be contractual work rendered by them. They were not invited to join the post nor the posts were available but general information was given to those who were desirous for writing certificates on remuneration basis to come forward and on the contract which was spelled out in the advertisement notice. There was no appointment order issued in favour of the Petitioners nor were they appointed at any point of time either as daily wages or casual workers. Since the Petitioners' services were not required, therefore, they were asked not to come from a particular date it is the Government which can create posts. There is no post available on which the Petitioners can be appointed or on which they can continue.

17. After hearing the detailed arguments in the case it is necessary first to consider what was the nature of the services rendered by the Petitioners. Whether they were rendering contractual service or they were daily wage workers/casual workers and have any right to continue in service and are entitled to be brought on regular establishment and claim equal pay for equal work.

18. It is true that the Petitioners were given wages at a certain rate for writing 100 certificates plus Rs. 4/- for checking the said certificates. The Petitioners are sufficiently educated and it is in the affidavits of the Petitioners that because of their being educated unemployed they opted to work on daily wage and after

they joined the Respondent they were exploited, inasmuch as they are to get Rs. 12/- for writing 100 certificates but they were asked to write 200 certificates, which would include 100 original and 100 counterfoils. Because of economic oppression they did work and would get meager wages for doing the work. Merely they and to write 200 certificates at a particular rate would not convert them into contractual labour. They were asked to work from 10 to 5 P.M. and the rate for doing the work was fixed which rate was subsequently raised to Rs. 20/- for 100 certificates and Rs. 6/- for checking them. The initial appointment of the Petitioners therefore, was that of the daily wage worker/casual workers and not contract labourers. For writing certificates at a particular rate they would not be termed as contract labourers. The Respondent has not said as to how many certificates were to be written by each of the Petitioners. They were asked to work daily and wages were determinable in a particular manner for scribing a document. They were not rendering any manual labour which would not make it possible to measure their work by recording the measurement of the work done by them. Measurement of their work was to be done in some other manner. Having regard to the nature of work, their wages being fixed, it cannot be held to be a contract labour, as contended by the learned Counsel for the Respondent.

19. There was a statutory obligation on the Board to get the certificates scribed and distribute them to the successful candidates. One of the functions of the Board is to prepare the certificates. The certificates could not be prepared unless they were scribed in accordance with the law applicable to the Board. Therefore, the Board was discharging its statutory obligation by attaining the Petitioners as daily wage/casual workers for doing the particular job which they were obliged to do under the Statute. It is also true that the Petitioners were not given regular appointment order for any particular post. The effect would be that they would not be treated as permanent or temporary appointees against any post on the establishment of the Board but they were asked to render particular service for which they were paid remuneration and this was to be done by the Petitioners daily from 10 AM to 5 P.M. They were, therefore, taken daily wage/casual workers by the Board for doing certain job which the Board was compelled to do under the statutes. The abetment of any appointment order issued to the Petitioners would not make any difference because on the regular establishment of the Board they were never brought; nevertheless they would render service to the Board and would draw wages in lieu of that service.

20. Each of the Petitioners has worked for more than 240 days. Each of them was worked for more than a year as daily wage worker, therefore, it was necessary for the Board to bring them on the regular establishment and thereafter absorb them against the vacant posts as and when they would be available for which they were eligible for being appointed. They could not be terminated from service without giving them any notice and without giving them retrenchment compensation. That being so, the oral termination of the Petitioners' services as daily wage/casual workers is rendered bad.

21. The Respondent has contended that it is for the Government to create posts against which the Petitioners can be absorbed. At present no post is available. The Petitioners are to be brought on the regular establishment as daily wage workers and thereafter their appointment is to be made against the available posts as and when they fall vacant. The Board can also make a requisition to the State Government for creation of posts. Having regard to the number of vacancies and to the posts available or created the Petitioners can be regularised and appointed against the available posts as and when they fall vacant. If the Petitioners are brought on regular establishment of the Board it is necessary that they must get similar pay which is paid to the other employees or doing the work similar to that which was rendered by the Petitioners. This is a principle which is enshrined under Article 39-D of the Constitution, which has become an integral part of Article 14 and 16 of the Constitution. Equals are to be treated similarly and if the Petitioners are assigned a particular job, they are to be paid the same pay scale which is being paid to others for doing the similar job as is being done by the Petitioners. There has to be equal pay for equal work in view of the authoritative pronouncement of the Supreme Court. The Respondent or any other authority of the State cannot make any discrimination in making payment to its employees for rendering similar service. Therefore, the Respondent has to make payment to the Petitioners on the same scale which is being paid to the other employees of the Respondent for doing the work which is done by the Petitioners.

22. For the reasons stated above the Petitioners are entitled to be treated as casual/daily wage workers with the Respondent and thereafter they can seek consideration for appointment against any regular post of Lower Division Clerk as and when the same is available or falls vacant. Their services shall not be terminated till they are absorbed in the regular establishment. However, for the intervening period for which they were out of service i.e. from the date of their termination to the date of their absorption as casual/daily wage workers they will not be entitled to any remuneration. Inasmuch as they did not render any work.

23. The writ petitions accordingly succeed and are allowed with the following directions:

(a) By a writ of mandamus it is directed that the Petitioners shall be taken back as daily wage/casual workers within one month from the date of production of a certified copy of this order before the Respondent and shall be paid wages according to law by the Respondent;

(b) The Petitioners shall be paid wages at such rates as are admissible to the regular employees of the Board for rendering similar services which are rendered by the Petitioners;

(c) The Petitioners shall be considered for appointment as Lower Division Clerk on the basis of their qualifications and seniority as daily wage labourers as and when posts are available or fall vacant with the Respondent;

(d) Their services shall not be dispensed with till they are absorbed in the regular establishment against the posts as and when the same are available or fall vacant; and

(e) From the date their services were orally terminated till the date they are taken back by the Respondent Board, they shall not be entitled to any wages for they did not render any work to the Board.