

(1985) 12 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 448 of 1985

Baldev Singh and Others

APPELLANT

Vs

H.P.S.E.B. and Another

RESPONDENT

Date of Decision : 23-12-1985

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 39, 43

Citation : (1986) 15 ILR HP 1

Hon'ble Judges : P.D. Desai, C.J;R.S. Thakur, J

Bench : Division Bench

Advocate : B.B. Vaid, for the Appellant; P.A. Sharma, for the Respondent

Judgement

P.D. Desai, C.J.—Pursuant to the interim order made on December 2, 1985, a supplementary affidavit dated December 13, 1985 has been filed by the Secretary of the Respondent-Board. The affidavit discloses that posts corresponding to those in which the petitioners are being employed on daily wages are available on the work-charged/regular establishments of the Respondent-Board. A statement showing the category-wise/post-wise pay-scales and the total emoluments drawn by the incumbents of such posts on the work-charged/regular establishments is annexed as Annexure R-I to the said affidavit. To an earlier affidavit dated October 29, 1985 filed by the Secretary of the Respondent Board is found annexed, as Annexure-A, a copy of an office order of September 27, 1985, setting out the rates of daily wages payable to the daily-rated workmen of different categories employed by the Respondent-Board including the petitioners. Be it stated that the daily wages have been accordingly fixed by the Respondent-Board by adopting the Government instructions contained in their notification dated May 8, 1985 in toto fixing the minimum rates of wages in respect of the unskilled/semi-skilled/skilled labourers etc. On a comparison of the daily wages payable to the petitioners as per Annexure-A and the total emoluments payable to employees holding corresponding posts on work-charged/regular establishments as given in Annexure R-I, it is evident that there

is a great disparity between the two. The following table provides the comparative data and illustrates such disparity:

Sr. Name of the Wages of daily-rated Total

No. . post workmen per month per day and emoluments of incumbents of corresponding posts on work-charged/ regular establishments

1. Beldar Rs. 10/- Rs. 300/- Rs. 863/-

2. Fitter Rs. 17.45 Rs. 523.50 Rs. 998/-

3. Store Munshi ? Rs. 475.02 Rs. 998/-

4. Mechanic Rs. 13.15 Rs. 394.50 Rs. 1158/-

5. Compressor Operator. Rs. 12.65 Rs. 379.50 Rs. 998/-

Such wide disparity between the emoluments payable to the daily-rated workmen and to the employees in similar trades on the work-charged/regular establishments would appear to be unfair, unjust and inequitable.

2. It would be pertinent to state in this connection that by an interim order made on September 23, 1985, the Respondent-Board was, inter alia, directed to specify whether the petitioners are required to discharge the same duties and perform the same functions as regular employees employed in similar trades. Pursuant to the said interim order, the Secretary of the Respondent-Board has filed an affidavit dated October 29, 1985, purporting to make out a distinction in the following terms between the duties discharged and functions performed by the two sets of employees:

... that the duties and functions performed by the petitioners (who are employed as daily rated workers) and regular employees are not the same, inasmuch as the daily rated employees like the petitioners perform duties for a fixed number of hours on fixed wages while in the case of regular employees their whole time is at the disposal of the Government and they can be employed on any type of work as may be desired by the employer. The daily rated employees are paid for the actual days they work and it is their own option to come to work or not to do so at any time. Further, the continuance of daily rated employees is subject to the availability of the work on which they can be employed and in the event of completion of any work and no other work being readily available, their services can be terminated by following the principle of 'first come last go'. It may further be submitted that the daily rated workers are to be paid wages as fixed under the Minimum Wages Act, 1948 in contradistinction of the regular employees are employed by the Government in a fixed scale of pay on which certain allowances are also admissible.

It will be seen that the extracted portion of the affidavit omits or fails to state whether there is any difference in the duties discharged and functions performed by the daily-rated workmen and regular employees employed in similar trades.

All that it does is to spell out the difference in the conditions of service of the two sets of employees. In view of the fact that the relevant query specifically put by the Court has not been answered and, more so, answered in the negative, it would not be unreasonable to assume that both the sets of employees, discharge similar duties and perform identical functions in similar trades. Indeed, even taking a common sense view of the matter, there cannot ordinarily be any difference in the job requirements of the two sets of employees employed in similar trades although the nature of their employment might be different. Under the circumstances, even granting that the daily-rated workmen may not be entitled to claim that their wages should be on a par with those of their counterparts on the work-charged/regular establishments, an attempt has to be made by the State and its instrumentalities, who have to live upto the reputation of being model employers, to narrow down the gap and to bridge the gulf, to the extent possible, having regard to all the circumstances of the case and the principle of equal pay for equal work, which is deducible from Articles 14 and 16 in light of the Preamble and Article 39(d) of the Constitution. In this context, the decisions of the Supreme Court in *Randhir Singh Vs. Union of India (UOI) and Others*, and *Delhi Veterinary Association Vs. Union of India (UOI) and Others*, are required to be borne in mind by all the employers in the public sector. The principle is relevant also in the matter of determination of wages payable to the daily rated workmen doing identical work as their counterparts on the work-charged/regular establishments, even if it is conceded that an absolute parity in the payment of wages to the two sets of employees is not required to be maintained since they cannot be regarded as similarly situate in all respects.

3. The justification, if any, for the comparatively low level of wages of these daily-rated workmen on the ground that their wages have been fixed in conformity with the minimum rates of wages in respect of the unskilled/semiskilled/skilled labourers determined by the State Government appears to over look the constitutional directive contained in Article 43 which, inter alia, provides that the State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, a living wage and conditions of work ensuring a decent standard of life. This is the ideal to which our socialist welfare State has to approximate in an attempt to ameliorate the living conditions of the workers. In this connection, it must be remembered that, broadly speaking, wages have been classified into three categories: (1) the minimum wage (2) the fair wage, and (3) the living wage. Each of these has a different connotation which is required to be truly appreciated.

4. The concept of 'minimum wage' is succinctly articulated in the following words in paragraph 8 of the report of the Committee on Fair Wages appointed by the Central Government:

The demand for the fixation of the minimum wage arose, in the first instance, out of the clamour for the eradication of the evils of 'sweating'. Thus, in the early days, the operation of the minimum wage legislation was confined to

employments which paid unduly low wages. There has since been increasing demand for the fixation of minimum wages so as to cover even non-sweated industries particularly those in which labour is unorganised or is only weakly organised. The International Convention of 1928 prescribes the setting up of minimum wage fixing machinery in industries in which 'no arrangements exist for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low.' The Minimum Wages Act passed by the Indian Legislature last year was found necessary on both these grounds. In foreign countries, particularly Australia, New Zealand, the United States of America and Canada, where the national wealth is high, living wage forms the primary basis of the minimum wage... . In India, however, the level of the national income is so low at present that it is generally accepted that the country cannot afford to prescribe by law a minimum wage which would correspond to the concept of the living wage as described in the preceding paragraphs. What then should be the level of minimum wage which can be sustained by the present stage of the country's economy? We consider that a minimum wage must provide not merely for the bare sustenance of life but for the preservation of the efficiency of the worker. For this purpose, the minimum wage must also provide for some measure of education, medical requirements and amenities.

The minimum wage is thus the lowest rate at which members of a specified grade of workers may legally be employed. In *Crown Aluminium Works Vs. Their Workmen*, , the following pertinent observations are found to have been made in this context:

It is quite likely that in under-developed countries, where unemployment prevails on a very large scale, unorganised labour, may be available on starvation wages, but the employment of labour on starvation wages cannot be encouraged or favoured in a modern democratic welfare State. If an employer cannot maintain his enterprise without cutting down the wages of his employees below even a bare subsistence or minimum wage, he would have no right to conduct his enterprise on such terms.

Observations in similar strain are found to have been made in *Chandra Bhavan Boarding and Lodging, Bangalore Vs. The State of Mysore* and *Another*,

We are not convinced that the (minimum) rates prescribed would adversely affect the industry or even a small unit therein. If they do, then the industry or the unit as the case may be has no right to exist. Freedom of trade does not mean freedom to exploit. The provisions of the Constitution are not erected as the barriers to progress. They provide a plan for orderly progress towards the social order contemplated by the preamble to the Constitution. They do not permit any kind of slavery, social, economic or political. It is a fallacy to think that under our Constitution there are only rights and no duties. While rights conferred under Part III are fundamental, the directives given under Part IV are fundamental in the governance of the country The mandate of the Constitution is to be build a welfare society in which justice-social, economic and

political shall inform all institutions of our national life. The hopes and aspirations aroused by the Constitution will be belied if the minimum needs of the lowest of our citizens are not met.

5. For appreciating the concept of 'fair wage' one has again to turn to the report of the Committee on Fair Wages. The following observations in paras 11-15 of the report highlight the concept of 'fair wage' :

'A fair wage' is, in the opinion of the Indian National Trade Union Congress, 'a step towards the progressive realization of a living wage'. Several employers while they are inclined to the view that fair wages would, in the initial stages, be closely related to current wages, are prepared to agree that the prevailing rates could suitably be enhanced according to the capacity of an industry to pay and that the fair wage would in time progressively approach the living wage.... While the lower limit of the fair wage must obviously be the minimum wage, the upper limit is equally set by what may broadly be called the capacity of industry to pay. This will depend not only on the present economic position of the industry but on its future prospects. Between these two limits the actual wages will depend on a consideration of the following factors and in the light of the comments given below:

- (i) the productivity of labour;
- (ii) the prevailing rates of wages in the same or similar occupations in the same or neighbouring localities ;
- (iii) the level of the national income and its distribution; and
- (iv) the place of the industry in the economy of the country.

It may be noticed that the 'fair wage' is thus a mesne between the living wage and the minimum wage, which, as explained above, is something more than the bare minimum or subsistence wage.

6. The concept of 'living wage' has been expounded in paras 6 and 7 of the report of the Committee on Fair Wages. The Committee considered the various statutory definitions, judicial decisions, reports of committees etc. and observed as follows :

It will be seen from this summary of the concepts of the living wage held in various parts of the world that there is general agreement that the living wage should enable the male earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter but a measure of frugal comfort including education of the children, protection against ill-health, requirements of essential social needs, and a measure of insurance against the more important misfortunes including old age.

7. The aforesaid exposition of the concepts of the living wage, the fair wage and the minimum wage has found judicial approval in several decisions of the Supreme Court (see for example: *Express Newspapers (Private) Ltd. and Another*

Vs. The Union of India (UOI) and Others, It is essential to bear in mind, as observed in Express Newspaper's case, however, that the content of these expressions is not fixed and static. It varies and is bound to vary from time to time. With the growth and development of national economy, living standards would improve and so would our notions about the respective categories of wages expand and be more progressive.

8. Against the aforesaid background and having regard to all the relevant facts and circumstances, to wit, (i) the constitutional goal of our socialist welfare State to ameliorate the conditions of work of the workers by endeavouring to secure for them a living wage (ii) the requirement of law that even the minimum wage should provide not only the bare sustenance of life but also the preservation of the efficiency of the worker by ensuring some measure of education, medical requirements and amenities, (iii) the ever-changing and expanding notion as to the true meaning and content of the three categories of wages, (iv) the escalation in the cost of living and the falling value of money affecting its purchasing power, (v) the wide disparity between the wages paid by the Respondent-Board to the daily-rated workmen on one hand and to the employees holding corresponding posts on work-charged/regular establishment on the other and (vi) the fact of which judicial notice can be taken that daily-rated workmen are continued to be employed over a long period of time with remote prospects of their being absorbed on the work-charged/ regular establishments, any step in the direction of the improvement in the rates of wages of daily rated workmen of different categories employed by the Respondent-Board, would appear to be in the right direction. Subject, of course, to the capacity of the Respondent-Board to pay, a substantial revision in the rates of daily wages payable to its workmen of different categories may justly be regarded as a long overdue measure.

9. In light of the foregoing observations and having regard to all the circumstances of the case, it appears to be expedient in the interest of justice to direct the Respondent- Board to consider improvement in the wage-structure of the daily rated workmen of different categories in accordance with law and against the background aforesaid so as to reduce to the extent possible the wide disparity between the wages paid to the daily-rated workmen and workmen holding similar posts on the work-charged/regular establishments and to ensure for them wages which can be regarded at least as falling between the minimum wage and fair wage.

10. The decision of the Respondent-Board taken pursuant to these directions will be placed on the record of the case on or before March 12, 1986.

11. To be listed on March 17, 1986.