

(2004) 06 SHI CK 0017
In the High Court Of Himachal Pradesh

Bhagat Ram

APPELLANT

Vs

Satluj Jal Vidyut Nigam Ltd. and Others

RESPONDENT

Date of Decision : 11-06-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2005) 104 FLR 734 : (2004) 2 ShimLC 8228

Hon'ble Judges : Lokeshwar Singh Panta, J

Bench : Single Bench

Judgement

Lokeshwar Singh Panta, J.—Partap Singh petitioner No. 1, Sarwan Kumar petitioner No. 2, Bhagat Ram petitioner No. 3 and Parma Nand petitioner No. 4 filed this writ petition under Articles 226-227 of the Constitution of India seeking the following reliefs:

(i) The respondents may be ordered to regularize the services of the petitioners as Attendants/Peons from the respective dates since when such vacancies become available with them and they may be required to pay all the consequential service benefits, and seniority etc. (ii) The respondents may be required to maintain seniority-list of the Attendants/Peons so that no discrimination is caused in any manner to the petitioners, (iii) That on the principle of "equal wages for equal work", respondents may be ordered to pay such wages as are permissible to regularly recruited Attendants/Peons with effect from February, 1991, when each of the petitioners joined duties as Attendants/Peons, (iv) The respondents may be ordered to produce all the relevant record for the perusal of this Hon'ble Court so that the subject-matter of controversy may be determined in accordance with law. (v) Any other suitable relief as deemed fit under the facts and circumstances of the case may kindly be allowed in favour of the petitioners and against the respondents.

It may be pointed out at this stage that during the pendency of the writ petition, petitioner No. 1, petitioner No. 2, the petitioner No. 4 filed two applications being C.M.P. No. 940 of 2000 and C.M.P. No. 1399 of 2001 for withdrawal of the writ

petition on their behalf. The Division Bench vide orders dated 9.8.2000 and dated 24.9.2001 permitted the said petitioners to withdraw the writ petition and their names were ordered to be deleted from the array of the petitioners.

2. Now the present petition is survived only on behalf of the petitioner Bhagat Ram. Name of Nathpa Jhakri Power Corporation Ltd. respondent No. 1 was also ordered to be substituted by Satluj Jal Vidyut Nigam Ltd. as respondent No. 1.

3. It is the case of the petitioner that pursuant to the requisition issued by the respondent on 19.12.1990, his name was sponsored by the Employment Exchange, Shimla for appointment as daily wage paid Attendant/Peon. The petitioner appeared in the interview. He was accordingly selected and engaged as Attendant/Peon on daily wage basis. He joined his duties on 18.2.1991 and since then he has been continuously working as daily wage paid Attendant/Peon in the office of Manager (Personnel) respondent No. 3 herein. The petitioner stated that there are vacancies of regular Attendant/Peon available with the respondents in their different offices at Delhi, Jhakhri and Shimla. He represented to the respondents in the month of April, 1993 for regularization of his services as his name from the role of Employment Exchange had already been struck off. He contended that he has been working to the entire satisfaction of the respondents and on the principle of "Equal pay for equal work", he is entitled to the same salary as was being paid to regular employees. According to the petitioner the respondent No. 3 on 19.4.1993 recommended his case to the higher authorities for bringing him on regular cadre of Attendants/Peons but the competent authority of the respondents has failed to take any decision on the said recommendation. On the oral and written request of the petitioner on 13.9.1994, respondent No. 3 again recommended his claim to the Director (Personnel) respondent No. 2 herein for consideration for appointment on regular basis. Similar recommendation was made by respondent No. 3 to respondent No. 2 on 8.11.1994. The respondent No. 2 has not regularized the services of the petitioner nor he is being paid wages equal to the regular appointed Attendants/Peons w.e.f. 19.4.1993.

4. The petitioner has given the names of some persons in paragraph 9 of the petition who have been recruited Attendants/Peons on regular basis w.e.f. 1st January, 1995 by the respondents whereas the claim of the petitioner has not been considered. On these premises the petitioner prays for the above said reliefs in this writ petition.

5. In reply to the writ petition, Mr. V.M. Chamola, Manager (Personnel) of the respondents has admitted the engagement of the petitioner as daily wages Attendant/Peon. The defence of the respondents is that presently there is no requirement of Attendants/Peons at Delhi as well as at Shimla consequent upon the shifting of the corporate office from Delhi to Shimla. He stated that by virtue of an agreement dated 23.7.1991 entered into between the Government of India and Government of Himachal Pradesh, 2870 employees of Himachal Pradesh State Electricity Board (H.P.S.E.B.) were transferred to the respondents Nigam

including 1049 daily waged employees. Out of the transferred manpower there are 125 Peons on regular rolls and 13 Peons on daily wage basis totalling 138 Peons. Besides the said employees there are 28 Daftries who also perform the similar job. The strength of the employees of the respondents fully met with the requirement of staff in this category for various offices of the respondents. The requirement of Attendants/Peons at Delhi was done strictly as per the recruitment policy of the organization for non-executives through the Local Employment Exchange. The respondents have stated that whenever vacancy/requirement arises at Project site, petitioner will be considered alongwith those sponsored by the Employment Exchange in accordance with their performance. It is stated that the petitioner is being paid according to the daily-rates prescribed by the respondents as well as by the State of Himachal Pradesh. In regard to the commendation of the case of petitioner by respondent No. 3 to respondent No. 2 for regularization of his services, the defence of the respondents is that the said recommendation has no official sanction and could only be considered if it conforms to the organisation's Policy/Recruitment Procedure. The petitioner cannot be regularized against the regular vacancy as there is no requirement of the regular Attendant/Peon at the offices of the respondents located at Shimla or Delhi. The respondents have denied the averments of the petitioner that only bona fide Himachalis are to be given employment. As per the stand of the respondents the agreement entered into between the Union of India and State of Himachal Pradesh envisages the other things being equal, preference will be given only to H.P.S.E.B. employees. The respondents have denied the allegations of the petitioner that they are acting arbitrarily and illegally.

6. In opposition to the reply the petitioner has filed rejoinder, reiterating and reasserting his averments made in the writ petition. He has stated that the respondents have sufficient vacancies of Attendants/Peons in their different offices at Delhi, Shimla and Jhakhri and they have wrongly claimed that they were not in need of Attendants/Peons at Delhi or at Shimla. The vacancies of Attendants/Peons at Jhakhri where the project was going on has not been disputed by the respondents.

7. The respondents during the pendency of this writ petition, had filed CMP No. 2693/1996 stating therein that all the original petitioners including petitioner Bhagat Ram were offered appointment on regular basis to the post of Attendant (W-1) vide letter dated 2.5.1996 in the pay scale of Rs. 1100-20-1400 (IDA) alongwith other allowances as per rules of the Corporation. In pursuance to the appointment letter, Partap Singh, Sarwan Kumar and Parma Nand and the petitioner have accepted the offer of appointment given to (hem and joined their duties as Attendant (W-1) against the regular pay scale, instead of on daily wage basis. The daily waged Attendants working at Delhi were offered regular appointments after their due consideration as per the recruitment policy. The respondents does not have the policy for maintaining the seniority of daily waged employees as they are employed on contingency basis.

8. In C.M.P. No. 1424/2003 filed by the petitioner it is stated that had there been no vacancies of regular Attendants/Peons in the establishment, the respondent No. 3 would have never recommended the case of the petitioner to respondent No. 2 on 19.4.1993 to regularize his services. The petitioner has given the names of the certain juniors daily waged employees of the respondents whose services were regularized by the respondents as well as the names of other persons who were given fresh recruitment. The petitioner prays for regularization of his services w.e.f. February, 1991.

9. The respondents have filed reply to this application in which it is specifically denied that there were vacancies of regular Attendants/Peons available with them during 1993. They have categorically slated that the strength of Peons was sufficient to meet with the requirement of Attendants in various offices of the respondents at Shimla. As the petitioner was recruited as daily-waged Attendant/Peon accordingly he was paid at the prescribed rules and he is not entitled to "equal pay for equal work" as claimed by turn. The recruitment of Attendants on regular basis was made in the year 1995 .it Delhi alter following the procedure laid down in Employment Exchange (Compulsory Notification of Vacancy) Act to meet their requirement at the Delhi office and the petitioner cannot claim regularization against the post of Attendants/Peons at the Delhi office of the respondents.

10. In rejoinder to the reply of the application the petitioner is again reasserting and re-agitating his grievance made in the writ petition. However, he stated that the respondents are maintaining joint cadre of officials at Jhakri, Shimla and Delhi offices. Therefore, against the regular vacancy of Attendants occurred in the year 1995 in Delhi office, the petitioner ought to have been considered and appointed but his claim was not considered.

11. In the backdrop of the factual situation, I have heard Mr. G.D. Verma, Senior Advocate for the petitioner and Ms. Devyani Sharma, learned Counsel appearing on behalf of the respondents.

12. Mr. G.D. Verma, Senior Advocate contended that as respondent No. 3 had recommended the petitioner's claim for regularization to respondent No. 2 against the regular vacancy the service of the petitioner should have been regularized by the respondents w.e.f. 19.4.1993 as he was eligible for regular appointment even w.e.f. 13.5.1991 when services of his junior were regularized, as per the agreement of the State Government with the respondents to give employment to Himachali only. He next contended that junior persons to the petitioner have been appointed in Delhi office in the year 1995 without giving opportunity to the petitioner to opt for regularization against the Said Vacancy. In support of the submission that the petitioner is entitled for "equal pay for equal work", the learned senior Counsel has placed reliance in the cases of Prem Chand and Ors. v. State and Anr. ILR (1987) 167, Tirath Raj and Ors. v. H.P. State Electricity Board and Ors. (1989) 2 S. LC 350 , Hindustan Machine Tools and Others Vs. M. Rangareddy and Others, , State of Orissa and Others Vs.

Balaram Sahu and Others, etc. etc., , and Mahatma Phula Agricultural University and Others Vs. Nasik Zills Sheth Kamgar Union and Others, In support of the next contention of the petitioner, that his services were not regularized for long period by the respondents reliance is placed in the case of National Aluminium Co. Ltd. Vs. Deepak Kumar Panda and Others, .

13. Per Contra Ms. Devyani Sharma, learned Counsel for the respondents contended that the petitioner and other similar situated persons who were recruited on daily waged basis in the year 1991 have been offered appointments on regular basis to the post of Attendants (W-1) vide office order dated 2.5.1996 and they have accordingly joined their duties on 11.5.1996 as per the vacancies available with the respondents. She next contended that the ratio of the above cited judgments relied upon by the petitioner is of no help and assistance to him in the facts and circumstances of the present case.

14. I have given my thoughtful consideration to the respective contentions made by learned Counsel for the parties.

15. On examination of the entire factual situation stated here-in-above, I find that the abovesaid relief No. 1 claimed by the petitioner in this writ petition has been granted to him by the respondents from the date when other similarly placed persons namely Pratap Singh, Sarwan Kumar and Parma Nand have withdrawn the petition on their behalf. The case of the petitioner was considered by the respondents in accordance with the Recruitment Policy of the respondents in the year 1996 and he has been offered appointment on regular basis which he has accepted. He joined his duties on 14.5.1996 as Attendant (W-1) in the office at Shimla. In the year 1991, undisputedly the petitioner was engaged as daily waged Attendant/Peon at the rate of Rs. 45.75 per day. His name was sponsored by the Employment Exchange in that capacity and not against appointment on regular basis. The recommendation of respondent No. 3 to respondent No. 2 for regularization of the services of the petitioner against the post of Attendant/Peon cannot be a sole criteria for giving him regularization. The recommendation so made by respondent No. 3 has no official sanction nor it can be construed binding on the competent authority. Mere recommendation of respondent No. 3 to respondent No. 2 as claimed by the petitioner does not give right to him to claim that his services should be regularized automatically when it is the clear defence of the respondents that there has no regular vacancy available with them in the office at Shimla. The respondents are not maintaining combined seniority list of daily waged at their various offices at Shimla, Delhi or Jhakri. The services of those employees who were working as daily waged at Delhi office, was regularized in accordance with the Policy and Recruitment Procedure and petitioner cannot claim that simply because his name was sponsored by the Employment Exchange at Shimla, his services ought to have been regularized against the vacancy available with the respondents at Delhi office. It is specific case of the respondents that Government of India and State Government had entered into an agreement on 23.7.1991 whereunder 2870 employees of

H.P.S.E.B. were transferred to the respondent-Nigam including 1049 daily waged employees, 125 Peons on regular rolls and 13 Peons on daily waged basis. Beside those employees there were 28 Daftries performing the similar duties for which the petitioner was employed. The number of Peons and Daftries have met the requirement of staff for various offices of the respondents. The petitioner cannot claim any benefit of regularization of his services w.e.f. 13.5.1991 or November, 1991. He is also not entitled to claim the benefit of regularization of the services from 1.1.1995 as the respondents had made recruitment of Attendants on regular basis in the year 1995 at Delhi from Employment Exchange, Delhi.

16. I have gone through the abovesaid judgments of the Courts cited and relied upon by the petitioner. In *Prem Chand and Ors. v. State and Anr.* (supra) a Division Bench of this Court directed the State Government to review the case of the petitioners who were employed as Daily rated workmen in the Himachal Pradesh Forest Department, Printing Press, Kalaghat for pretty long period without considering their claims for regularization of their services. They were given fictional or artificial breaks at the interval of 90 days at or at any other regular interval(s). The Division Bench of this Court directed the State Government to place on record of the case a fresh decision arrived at in accordance with law and in the light of the ratio of the judgments of the Hon'ble Supreme Court in the cases noticed in paragraphs 16, 17, 18 and 19 of the report. The facts of that case were totally different than the peculiar facts of the case in hand. The facts of *Tirath Raj's* case (supra) were that the petitioners were employed as T. Mates on daily wages but they required to perform the duties of Clerks. They were not paid the minimum wages in the pay scale of Clerk by the H.P. State Electricity Board. The Division Bench of this Court on consideration of the entire factual situation and settled proposition of law, directed the Board to pay to the petitioners the wages at the rate equivalent to the minimum pay scale of regularly employed Clerks, but without any increments, for the period for which they had been required to perform the duties of clerical nature including corresponding clearness allowance and additional clearness allowance, if any payable thereon. In *Hindustan Machine Tools and Ors. v. M. Rangareddy and Ors.* case (supra), the casual workers engaged in the Unit of the Hindustan Machine Tools Ltd. at Hyderabad filed the writ petition before the High Court of Andhra Pradesh with, a prayer to issue a writ or order or direction in the nature of a writ of mandamus directing the respondents to regularize their services in their respective posts from the date of the initial appointment with all consequential benefits forthwith. The case of the petitioners was that they had been working as helpers and skilled workers in different departments of the Company for long periods of 3 to 10 years continuously. Their engagement was treated as casual labourers on daily waged basis. Some of them had undergone training course (ITI) as apprentice under the Company. On successful completion of the said training the incumbents were given temporary appointments. The learned Single Judge of the High Court allowed the Writ petition. The appeal filed by the H.M.T. Ltd. was summarily

dismissed by the Division Bench. The matter landed in the Apex Court. Their Lordships on consideration of the ratio of the decision of the case of Raj Narain Prasad and Others Vs. State of U.P. and Others, observed that in the light of principles laid down in the said decision and keeping in mind the mandate of the Constitution under Articles 38(1), 39(e) and 43 the, directions issued by the High Court to the H.M.T. to frame a scheme for regularization Of services of the writ petitioners did not warrant interference. Certain further directions were also given including that the absorption of the casual workers in regular service will be subject to the fulfilment of the conditions of eligibility Qualification with relaxation of the age prescribed under the rules.

17. In Mahatma Phula Agricultural University and Others Vs. Nasik Zills Sheth Kamgar Union and Others, their Lordships held that the status of permanency cannot be granted to daily wages laborers when there are no post available to absorb them. Further it is stated that Universities are imparting education for the purpose of the education, it is necessary for them to maintain the agricultural fields and to carry on experiments. To maintain agricultural fields, they required daily-wagers. As the daily-wagers were required, the State Government cannot say that they would not pay the daily-wagers what was due to them. In the case of National Aluminium Co. Ltd. v. Deepak Kumar Panda and Ors. (supra), the question before their Lordships was whether the employer was justified in treating the employee as unqualified to continue in service after the expiry of duration of contractual appointment. On the basis of the material placed on record, the employee was ordered to be appointed on regular basis as Assistant with effect from the date of judgment of the High Court and was to be fixed up in appropriate pay scale as lie had produced the certificate of three years of high course in Aurbindo International Centre, which is undisputedly equivalent to graduation. The petitioner cannot derive any support from the ratio of the abovesaid decisions in his favour.

In State of Orissa and Others Vs. Balaram Sahu and Others, etc. etc., their Lordships of the Hon"ble Supreme Court had held that though "equal pay for equal work" is a concomitant of Article 14 as much as "equal pay for unequal work" will also be a negation of that right, equal pay would depend upon net only the nature or the volume of work, but also on the qualitative difference as regards reliability and responsibility as well and though the functions may be the same, but the responsibilities do make a real and substantial difference. Again in State of Haryana and Anr. v. Tilak Raj and Ors. 2003 (98) FLR 599 (SC), on consideration of earlier decisions of the Apex Court, their Lordships said:

6. The principle of "equal work" is not always easy to apply. There are inherent difficulties in comparing and evaluating the work done by different persons in different organizations, or even in the same organizations. In Federation of All India Customs and Central Excise Stenographers (Recognized) v. Union of India 1988 (57) FLR 258 (SC), this Court explained the principle of "equal pay for equal work" by holding that differentiation in pay scales among Government

servants holding the same posts and performing similar work on the basis of different in the degree of responsibility, reliability and confidentiality would be valid differentiation. The same amount of physical work may entail different quality of work, some more sensitive, some requiring more fact, some less it varies from nature and culture of employment. It was further observed that judgment of administrative authorities concerning the responsibilities which attach to the posts and the degree of reliability expected of an incumbent would be a value judgment of the authorities concerned which, if arrived at bona fide, reasonably and rationally, was not open to interference by the Court.

18. Further it is observed:

11. A scale of pay is attached to a definite post and in case of a daily-wager, he holds no posts. The respondent workers cannot be held to hold any posts to claim even any comparison with the regular and permanent staff for any or all purposes including a claim for equal pay and allowances. To claim a relief on the basis of equality, it is for the claimants to substantiate a clear-cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with the other group vis-a-vis an alleged discrimination. No material was placed before the High Court as to the nature of the duties of either categories and it is not possible to hold that the principle of "equal pay for equal work" is an abstract one.

12. "Equal pay for equal work" is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula.

19. In the present case, the petitioner has not placed on record any material to substantiate the resultant hostile discrimination before becoming eligible to claim rights at par with the other regular Attendants/Peons employed by the respondents. As noticed above he has been appointed on regular basis to the post of Attendant (W-1) alongwith other similar situated persons against the regular posts, from the date when such posts were available with the respondents. The petitioner cannot be held entitled to "equal pay for equal work" with other regularly appointed Attendants/Peons in the offices of the respondents, as he had been getting minimum wages for the entire period of his engagement as daily waged worker.

No other point was raised by the learned Counsel for the parties.

For the abovesaid reasons, I find no merit in this writ petition and it is accordingly dismissed. The parties are left to bear their own costs.

Miscellaneous application(s), if any pending shall stand disposed of accordingly.