

(1987) 12 MP CK 0006
In the Madhya Pradesh High Court
Case No : M.P. No. 271 of 1986

Brij Kishore Sharma and others

APPELLANT

Vs

State of M.P. and another

RESPONDENT

Date of Decision : 16-12-1987

Acts Referred:

Citation : (1988) J LJ 137

Hon'ble Judges : T.N. Singh, J; Ram Murti Rustogi, J

Bench : Division Bench

Advocate : H.N. Upadhyaya, for the Appellant; J.S. L. Sinha, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Dr. T.N. Singh, J.—Petitioners are foursome. They have joined hands to come to this Court with the common grievance. Indeed, they were given the final marching orders from the same Office on the same day, on 6-4-1986.

2. All of them sail in the same boat for several reasons. They are duly qualified to be appointed as lower Division Clerks. They have all passed the Higher Secondary Examination. Two petitioners-Brij Kishore Sharma and Avadh Kishore Dubey-have also passed Hindi Typing Examination. All of them, however, have been serving in the same Divisional Office of Public Works Department under the Executive Engineer, Chambal Ayakat Circle, Gwalior. They started working respectively in the said Office on 1-2-1980, 1-2-1982, 1-6-1982 and 1-7-1982. These facts appear in Annexure P/2 which came to be forwarded by the second respondent, the Executive Engineer, aforesaid, with his letter dated 5-9-1985 to the Superintending Engineer of the same Department and Division. However, what further appears therein is also noteworthy. What duties the petitioners were severally discharging are also noted besides the remarks that their work was satisfactory. Two of the petitioners, namely, Brij Kishore Sharma and Yogendra Singh Sikarwar, were serving respectively as Receipt Clerk and Despatch Clerk, while the other two petitioners doing typing work.

3. It is very unfortunate and indeed deplorable that in this Court when the petitioners came to join issue with the respondents, the factual position aforesaid, was sought to be denied in a very unholy and unbecoming manner, undeserving the respondents. They have endeavoured to deny the factual statements which were made by the petitioners with respect to their service in para 1 of the petition though with great dexterity they have avoided to deny either the authenticity or the validity of Annexures P/1 and P/2 which were filed with the petition and reference to which was mentioned in para 2 of the petition in categorical terms. So much so that the petitioners have been charged with the theft of public record and violation of the provisions of the Official Secret Act. This stand on the part of the respondents is wholly unsupportable. If petitioners have used Annexures P/1 and P/2 to pre-empt the respondents' taking a false stand to deny the truth of the factual averments made in para 1 of their petition, we do not think, they have committed any sin. Indeed, it is not shown how official secrecy is violated merely because the petitioners are seeking this Court's assistance to enforce their fundamental right guaranteed under Articles 14 and 16 of the Constitution. Unfortunately for the respondents, the clever and dexterous drafting of the Return does not bale them out because of the specified averment which is to be read in a single sentence of para 1-"The petitioners were appointed to whatever work they were required to do on the rates approved by the Commissioner for the daily rated workers". Indeed, the technical stand of the respondents in the Return as also in this Court through their counsel, has been that the petitioners were never "appointed" to do the clerical job in the Office of respondent No 2. In the face of what appears in Annexures P/1 and P/2, we are not at all convinced of the validity of the unlawful stand of the respondents which cannot be sustained on the basis merely of evasive denials even though repeated, times without number.

4. Now, we may also look at some other documents filed in the case by the petitioners whose authenticity as well as validity also remains undisputed. Before we do so, we may shortly sum up the grievance that they were denied regular pay scale applicable in the case of Lower Division Clerks, having been appointed as casual labourers on muster roll and indeed, for that reason, they were given verbally the marching orders on 6-4-1986 after their last term of 89 days' appointment made as per Annexure P/9, expired. Indeed, this order even makes an interesting reading deflating and falsifying the stand of the respondents decisively. This order is dated 30-1-1986 and in this order the petitioners, though described as "daily wage workers" whose wages were specified too (Rs. 15.40 per day) were regarded as holding certain posts (Pada) respectively that of "Hindi Typist", "English Typist", "Copyist" and "Copyist". A copy of this letter was marked to the four petitioners. What secrecy, therefore, there can be about a fact which was intimated to them and what sin they can be said to commit when they stated the factual position before the Court ?

4-A. At this stage, the position which is not denied in the return may also be noted. At para 6, it is admitted that State Government's decision was being

followed in respect of "daily-rated temporary casual workers" to engage them in work only for 89 days at a stretch and then to re-engage them after a break and on that basis, dismissal of the petitioners on 6-5-1986 is justified. What is objectionsable, however, is that respondent No. 2, after his attention was drawn by the petitioners vide their letter Annexure P/8 to a Government Circular (No. 18/865/vi. Aa. Pra./85) dated 15th January, 1985, in the matter of absorbing them in the regular service, instead of accepting their plea, told them to go home. However, before the general policy decision which is projected in Annexure P/10, on 12-9-1984, in the Public Works Department itself, a decision appears to have been taken (as per Annexure P/17) not to remove from service any daily wage worker. We do not think if it is necessary to refer to either Annexures like P/11, P/12, P/13, P/14, P/15 and P/16 which merely buttress the inescapable conclusion regarding truth and validity of facts of the case pleaded by the petitioners.

5. We now come to the legal contentions and in examining the same, we confess that our labour is much reduced in accepting and deciding one part of the petitioners' claim because of the recent policy decision of the State Government, projected in Notification No. 191/1/Ve. Aa. Pra./87, dated 15-5-1987 of General Administration Department. There is a clear prohibition indicated in para 2 of the said circular against any daily wage worker being dismissed from service, whether he was appointed prior or subsequent to 1-5-1985. However, the direction was merely a clarification of the earlier order which had been issued as respects persons who had been appointed prior to 1-5-1985. That being the position, the petitioners, who had been in service on and before 1-5-1985, could not have been dismissed from service on 6-4-1986.

6. Although we cannot reinstate them by mandamus with retrospective effect because termination of services of the petitioners cannot be held to be unconstitutional, we have no doubt that we can still direct in the premises of the said Notification that they would be taken back in service from the date of the Notification, namely-15-5-1987. This view we have taken because in para 2 of the said Notification there is an express direction to the effect that if services of any person had been terminated ignoring the circular, then such persons shall be reappointed. The right of the petitioners to be reappointed became available to the petitioners on the date on which the Notification was made inasmuch as in the absence of any statutory rules dealing with the service conditions to that effect of the daily wage workers, the Notification will hold the field. The Notification being expressed as being made in the name of the Governor, the direction made therein must be deemed to deal with the service conditions of daily wage workers. For this view, authorities abound, and indeed at the highest level. (See Satyabrata Choudhury [1], Amatjit Singh [2], K.P. Joseph [3], Sant Ram [4]).

7. Accordingly, for the reasons aforesaid, we hold that the services of the petitioners having been terminated in violation of the Government Notification

dated 15-5-1987, they shall be deemed reappointed from the date of that Notification in terms of the directions made in para 2 of that Notification. The petitioners shall be entitled to be paid salary accordingly for the period commencing 15-5-1987, but they must submit joining report immediately, making a reference in their joining report to the order passed today by this Court in this matter.

8. The question which survives for consideration is, to what salary they would be entitled. Whether they would be paid salary as before, or they would be paid salary for the work they have been doing, as found by us. In other words, whether they would be paid salary which is being paid to Lower Division Clerks and not daily wage labourers. To answer this question also, we do not have to travel far back into the annals of precedents because of two recent decisions placed for our consideration by petitioners' counsel. Indeed, the latest decision of the Apex Court in the case of *Daily Rated Casual Labour Employed Under P & T Department Through Bhartiya Dak Tar Mazdoor Manch v. Union of India and others* [1], clinches conclusively and decisively the issue surfaced in the instant case. In similar circumstances, the claim of the petitioners was upheld on basis of the provisions of Articles 14, 16, 37 and 38(2) of the Constitution holding that the casual daily workers employed by the P & T Department were entitled to "the rates equivalent to the minimum pay in the pay scales of the regularly employed workers in the corresponding cadres" from the date when the petition was filed in the Supreme Court. Their Lordships endorsed the view taken earlier by them in *Dhirendra Chamoll's* case [2] wherein the argument advanced on the basis of Article 14 was accepted to give similar relief to "casual workers" on "daily wage basis" employed at Nehru Yuvak Kendra, Dehradun. It was found that the petitioners were "doing the same work as is performed by Class IV employees appointed on regular basis" and it was held that in the matter of payment of salary, they could not be, discriminated. It was held that it made no difference whether they were appointed in sanctioned post or not, but so long as they performed the same duty, "they must receive the same salary and conditions of service as Class IV employees". The two decisions bind our hands and feet as the mandate of Article 141 of the Constitution is inexorable and there is little to distinguish the case in hand from those considered by their lordships.

9. No doubt, from *Randhir Singh* [3], the Apex Court has travelled a long way and the Constitutional right of "equal work for equal pay" formulated therein has acquired several new dimensions. Accordingly, case-law galore has come on both sides, but we do not think, if it can be said that there is any ambiguity in the development of law, as may be said to jeopardise the contention raised by the petitioners. *Shri Upadhyaya* cited among other three decisions of Supreme Court, reported in *M/s. Mackinnon Mackenzie and Co. Ltd. Vs. Audrey D'Costa and another*, . The first case is *Mackinnon Mackenzie*. In that case it was held that Stenographer of either sex performing same work or work of similar nature were entitled to same salary. The next case is of *Jeet Singh*, wherein temporary workers' claim after their being regularised for payment of salary and allowances

as paid to regular and permanent employees was upheld on the principle of "equal pay for equal work." Bhagwan Dass is reported at p. 2049 and is a case in which it was held that "once the nature and function and work of two persons are not shown to be dissimilar, the fact that recruitment was made in the one way or the other would be hardly relevant from the point of view of "equal pay for equal work doctrine". Surinder Singh [1], hailed the dictum in Dhirendra Chamoli (supra) and harkened also to the primal call of Randhir Singh (supra). Their Lordships also reminded the Judiciary not to forget that the Constitution Bench in D.S. Nakara [2], had approved Randhir Singh (supra), holding categorically the doctrine "equal pay for equal work" did no longer remain "an abstract doctrine", but it is rather a "vital and vigorous doctrine accepted throughout the world, particularly by all socialist countries." Indeed, before their Lordships, as in this case, daily wage earners who had worked for several years as such, had come with the grievance that they be paid the same wages as paid to permanent employees doing identical work. Their grievance was redressed and the petition was allowed. A host of other decisions still remains to be noted, but we would not like to extend our enterprise any further.

10. What, however, has come from other side must be noted. Shri Sinha has cited a decision of vintage view, Ram Jawaya [3], but that has little relevance to the issues litigated in this lis, In that case what was held was that executive power of the State was not confined to implement or follow laws but the modern State was expected to engage in all activities necessary for promotion of social and economic welfare of the community. Reliance thereon must be considered, therefore, misplaced. Sant Ram (supra) is also relied on where the question was of administrative practice of promotion based on merit and not on seniority alone, which question is totally foreign to the present lis. Two other decisions cited by Shri Sinha, we may dispose of in the same manner as neither has any relevance to the case in hand. In Union of India v. K.R. Tahiliani [4], the question was of interpretation of F.R. 56 (1) (i) and in F. R. Jesuratnam [5], the case was one under the Industrial Disputes Act wherein reinstatement of person on an abandoned project was refused. But, cases in the same volume of 1980 Lab. & I.C. are also cited by Shri Sinha. Nepal Singh, reported at p. 747 is Apex Court's decision wherein the question of applicability of Article 311(2) to an order of discharge simpliciter of a temporary Government servant came up for their Lordship's consideration. The other decision is that of Andhra Pradesh High Court, reported in N.O.C. 10 wherein provisions of life Insurance Act and Industrial Disputes Act were considered. Both decisions evidently carry no weight in so far as this case is concerned.

11. Surveying the decisions cited by Shri Sinha, we are rather buttressed in our conclusion that no discordant note has ever been struck at any time, anywhere, in any Court as would imperil the holding in Randhir Singh (Supra) and decisions following it, of which the number is every day growing. Not a single decision Shri Sinha could cite as would help the contention he has pressed that the petitioners are not entitled to invoke the doctrine "equal pay for equal work" evolved by

their Lordships of the Supreme Court unambiguously and continuously, in all cases decided by them.

12. In the premises aforesaid, we have no hesitation to hold that the second contention of Shri Upadhyaya must also succeed. The petitioners are entitled to be paid the same salary and allowances which are paid to Lower Division Clerks, regularly appointed on permanent establishment. Accordingly, we direct that the arrear salary as also future salary to be paid to them shall be fixed and paid with reference to the dictum of their Lordships in the two cases aforesaid, namely, *Daily Rates Casual Labourers*" case and *Dhirendra Chamolis*'s case (supra). Because they have been working as Lower Division Clerks, some as typists and others as Receipt and Despatch Clerks, they would be paid salaries albeit without increments, applicable to Lower Division Clerks appointed on regular basis.

13. In the result, the petition succeeds and is allowed to the extent indicated. However, there shall be no order as to costs. Outstanding amount of security be refunded to the petitioners.