
(2003) 09 AHC CK 0297
In the Allahabad High Court
Case No : C.M.W.P. No. 7020 of 2002

Gopal Prasad and Another	Vs	APPELLANT
State of Uttar Pradesh and Others		RESPONDENT

Date of Decision : 09-09-2003

Acts Referred:

Constitution of India, 1950 — Article 38, 41
Uttar Pradesh Regularisation of Daily Wage Appointments on Group C Posts Rules,
1979 — Rule 3, 5

Citation : (2003) 6 AWC 5080

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : Ram Chandra Shukla, for the Appellant; Pankaj Misra, Adv and S.C.,
for the Respondent

Final Decision : Allowed

Judgement

S.N. Srivastava, J.—The above petitions were tagged on by reason of consideration of issue relating to regularisation of daily wage employees belonging to category 3 in various Nagar Nigams/Nagar Palika Parishads and they were heard together for decision by a composite judgment.

2. Civil Misc. Writ Petition No. 7020 of 2002, has been taken up as leading case in which arguments at prolix length were heard. The counsel in other cases put weight to the arguments and submissions advanced by the learned Counsel for the Petitioners in the leading case.

3. The Petitioners in this petition claim to have been appointed on 30.7.1989 and 3.4.1989 respectively as Electricians-a post in class III category, on daily wage basis in Nagar Palika Parishad, Modinagar. The reliefs claimed are two fold ; firstly that the Petitioners be paid their salary in the minimum of the pay scales admissible to a regular class III employee together with other allowances on the principle of "equal pay for equal work" and secondly, that the services of the Petitioners be regularized on the post of Electrician together with regular pay

scale and other allowances.

4. In connection with the proposition that they are entitled to regularisation by reason of the fact that they have already put in more than 12 years of service, the learned Counsel placed reliance on Government orders dated 8.2.1992 and 7.5.1992 a perusal of which would indicate that the State Government had then taken a policy decision that those daily wage employees who were actually working on 11.10.1989 but had not completed three years of service on 11.10.1989 but actually working on that date would not be thrown out but they would be allowed to continue and their services would be regularized in future vacancies. It is further submitted by the learned Counsel that the aforesaid Government order dated 7.5.1992, further postulates that till such daily wage employees are regularized further appointment shall not be made from outside. The learned Counsel also referred to subsequent Government order dated 29.8.1998, issued by the State Government which embodied directions that process should be commenced for regularisation of those who had been directly appointed on daily wage basis and who had been working unabatedly upto 9th July, 1998, without any break consistent with the requirements contemplated in the relevant service Rules. In opposition, the learned Counsel representing the opposite parties vehemently counteracted by the submissions by stating that the matter of regularisation cannot be considered merely on the ground that the Petitioners have completed a long spell in the service and that various imponderables may weigh with the State in the matter of regularisation.

5. It is beyond the pale of controversy that the Petitioners have been performing their duties in unbroken continuity since the date of their respective appointments and they have been allowed to continue due to indispensability of the services in the Nagar Palika Parishad, Modinagar. In the facts and circumstances, inference cannot be resisted that the duties being performed by the Petitioners are of perennial nature and there is necessity for the works, which the Petitioners have been assigned and have been performing since their respective appointments in the Nagar Palika Parishad Modinagar.

6. Before proceeding further, the observation of the Apex Court in *Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others*, , may usefully be recalled. In that case it was observed by the Apex Court that "the Central Government, the State Governments and likewise, all public sector undertakings are expected to function like model and enlightened employers and arguments such as those which were advanced before us that the principle of equal pay for equal work is an abstract doctrine which cannot be enforced in a court of law should till come from the mouths of the State and the State undertakings". In *Dhirendra Chamoli and Another Vs. State of U.P.*, , the Apex Court observed as under:

the Central Government to accord to these persons who are employed by the Nehru Yuvak Kendras and who are concededly performing the same duties as Class IV employees, the same salary and conditions of service as are being

received by Class IV employees, except regularization which cannot be done since there are no sanctioned posts. But we hope and trust that posts will be sanctioned by the Central Government in the different Nehru Yuvak Kendras so that these persons can be regularized. It is not at all desirable that any management and particularly the Central Government should continue to employ persons on casual basis in organizations which have been in existence for over 12 years.

(Emphasis supplied)

7. In *Surya Narain Yadav and Others Vs. Bihar State Electricity Board and Others*, , the Apex Court quintessentially observed that Trainee Engineers of State Electricity Board worked for sufficiently long time and treating them as a distinct class is not proper. Likewise in *R. K. Panda v. Steel Authority of India* (1995 (6) SLR 665 , the Apex Court observing that the Petitioners were doing jobs which are perennial in nature and identical to the jobs which are being done by the regular employees, held that they were entitled to same pay which is being paid to the regular employees and to be treated as regular employees. In a decision rendered by the Division Bench of this Court in *Bimal Chand Pandey and another Vs. Engineer-in-Chief, P.W.D. Lucknow and others*, , it was observed by the Court as under:

When a person is appointed on daily wage or on temporary basis then the authority concerned must make up its mind within two or three years of the appointment whether to confirm the said employee or to terminate his services if he is incompetent, but keeping a person on temporary or on daily wage basis for a long period is arbitrary and not justifiable. Admittedly, the Appellants are doing the same work as regular employees. Hence in our opinion, they are entitled to get the same salary as regular employees on the principle of equal pay for equal work and they are also entitled to be regularized. Moreover, there is discrimination against the Petitioner since similarly placed persons have been regularized and hence Article 14 of the Constitution is being violated.

8. The principle that is distilled from the precedents cited above is that both the Apex Court and this Court have not appreciated prolongation of daily wage employees in a state of uncertainty for an unreasonably long period and have termed it arbitrary and unjustifiable constituting infringement of constitutional philosophy.

9. Reverting to the present case, it would transpire in the instant case that by means of Government order dated 7.5.1992, it was clearly postulated that the services of those employees who have not completed 3 years service on 11.10.1989 but were actually working on the date shall not be dispensed with but they shall be allowed to continue and their services will be regularized in future vacancies on the retirement of employees. Subsequently by means of the Government order dated 29.8.1998, again direction was issued to initiate steps for regularisation of those who have been continuing in service on daily wage

basis unabatedly and without any break upto July 9, 1998. In view of the above directions, it transpires that the Petitioners who were working on that date but had not completed the prescribed period, were mandated to be retained in service and to be regularized in future vacancies. Again direction was issued by means of Government order dated 29.8.1998 that those who have been continuing on daily wage basis upto August 29, 1998 and meet the requirements of relevant service Rules may be reckoned with for regularisation. It has been averred by the learned Counsel for the Petitioners that the matter of regularisation was repeatedly represented to the authorities concerned for regularisation but the same could not be acted upon nor they elicited any response. The learned Counsel has also drawn attention to the resolution adopted for regularisation of the daily wage employees and has also referred to the letter of the District Magistrate dated 24.12.2001 (Annexure-R.A.-2) calling upon the authorities in the Nagar Palika Parishad to furnish list of all such employees as sought by the State Government.

10. The question that forces itself in the forefront for consideration is whether the Petitioners are entitled to regularisation notwithstanding having put in more than 12 years of service as daily wage employees in category III. In connection with this question I feel called to refer to the relevant observations of the Supreme Court in *Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others*, :

We are of the view that such denial amounts to exploitation of labour. The Government cannot take advantage of its dominant position and compel any worker to work even as a casual labourer on starvation wages. It may be that the casual labourer has agreed to work on such low wages. That he has done because he has no other choice. It is poverty that has driven him to that state. The Government should be a model employer.

11. The Supreme Court further observed in the self-same decision dwelling on socialist goal as under:

India is a socialist republic. It implies the existence of certain important obligations, which the State has to discharge. The right to work, the right to free choice of employment, the right to just and favourable conditions of work, the right to protection against unemployment, the right of everyone who works to just and favourable remuneration ensuring a decent living for himself and his family, the right of everyone without discrimination of any kind to equal pay for equal work, the right to rest, leisure, reasonable limitation on working hours and periodic holidays with pay, the right to form trade unions and the right to join trade unions of one's choice and the right to security of work are some of the rights which have to be ensured by appropriate legislative and executive measures. It is true that all these rights cannot be extended simultaneously. But they do indicate the socialist goal.

12. It was lastly observed by the Apex Court dwelling on the aspect of keeping

casual labourers without being regularized for an unreasonably long period of time as under:

of those rights the question of security of work is of utmost importance. If a person does not have the feeling that he belongs to an organization engaged in production will not put forward his best effort to produce more. That sense of belonging arises only when he feels that he will not be turned out of employment the next day at the whim of the management. It is for this reason, it is being repeatedly observed by those who are in charge of economic affairs of the countries in different parts of the world that as far as possible security of work should be assured to the employees so that they may contribute to the maximization of production. It is again for this reason that managements and the Government agencies in particular should not allow workers to remain as casual labourers or temporary employees for an unreasonably long period of time...

(Emphasis supplied)

13. In *Dharwad District P.W.D. Literate Daily Wage Employees Association v. State of Karnataka* 1990 (2) SLR 43, the three-Judge Bench gave expression to the view in the following words:

We have referred to several precedents-all rendered within the current decade-to emphasize upon the feature that equal pay for equal work and providing security for service by regularizing casual employment within a reasonable period have been unanimously accepted by this Court as a constitutional goal to our socialistic polity. Article 141 of the Constitution provides how the decisions of this Court are to be treated and we do not think there is any need to remind the instrumentalities of the State-be it of the Centre or the State, or the public sector-that the Constitution makers wanted them to be bound by what this Court said by way of interpreting the law.

14. In para 14 of the self-same decision, the Supreme Court verbalized its view in the context of constitutional philosophy in the following words:

We would like to point out that the philosophy of this Court as evolved in the cases we have referred to above is not that of the Court but is ingrained in the Constitution as one of the basic aspects and if there was any doubt on this there is no room for that after the Preamble has been amended and the Forty-second Amendment has declared the Republic to be a socialistic one. The judgments, therefore, do nothing more than highlight one aspect of the constitutional philosophy and make an attempt to give the philosophy a reality of flesh and blood.

15. The precedents indicated above do point to the fact that the Apex Court has been issuing various directions to the Government and administrative authorities to take positive action to remove the grievances which have been caused by non-implementation of the Directives as contained in Clause (2) of Article 38 of the Constitution of India which envisages that the State, in particular, shall strive to

minimize the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations and in the above perspective, made observation that the State should not take advantage of their dominant position and should act as a model employer and further that the daily wage and casual labourers should not be kept in uncertainty for an unreasonably long period of time which breeds uncertainty and affect their efficiency due to sense of not belonging to the institution they are serving. In *Daily Rated Casual Labour Employed Under P. and T. Department v. Union of India* (supra), the Apex Court observed that "even though the above directive principle may not be enforceable as such by virtue of Article 37 of the Constitution of India, it may be relied upon by the Petitioners to show that in the instant case they have been subjected to hostile discrimination." In *Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others*, , the Supreme Court laid down that "in view of Directives in Part IV of the Constitution including Article 41, the Government instead of terminating the services of those ad hoc employees who are serving for a reasonably long period and possess the requisite qualification for regular appointments should be regularized." In *V. Markendeya and Others Vs. State of Andhra Pradesh and Others*, , the Apex Court expressed the view that directive principles constitute conscience of the Constitution and together they form core of the Constitution. Upon a consideration of the above decisions and ratio flowing from them, the upshot is that the daily wage and casual labourers cannot be allowed to remain in uncertainty for an unreasonably long period of time which breeds uncertainty and affect their efficiency due to sense of not belonging to the institution they are serving.

16. Another aspect pertains to legitimate expectations. In connection with this proposition, it is necessary to discern whether the Petitioners had nursed a legitimate expectation as consequence of the contents of the Government order aforesaid of their being regularized in future vacancies. The sine qua non for legitimate expectation is that it must be legitimate and there should be legitimate hope and desire of a person to obtain a favourable order. In *R. v. Secretary of State for the Home Department, Ex. parte Ruddock* 1987 (2) AER 518, Taylor, J., held as under:

The doctrine of legitimate expectation in essence imposes a duty to act fairly. Whilst most of the cases are concerned as Lord Roskill said, with a right to be heard, I do not think the doctrine is so confined. Indeed, in a case where ex hypothesi, there is no right to be heard, it may be though the more important to fair dealing with a promise or undertaking given by a minister as to how he will proceed should be kept. Of course such promise or undertaking must not conflict with his statutory duty or his duty as here in the exercise of a prerogative power.

17. In *R. v. Secretary of State, Ex parte Khan* (1985) 1 AER 40 , the Court held that a circular or self-made rule can become enforceable on the application of

persons if it was shown that it had created legitimate expectation in their minds that the authority would abide such a policy/guideline. In *The Gram Panchayat and another Vs. Shree Vallabh Glass Works Ltd. and others*, , the Apex Court observed that the doctrine of legitimate expectation applies only when a person had been given reason to believe that the State will abide by the certain policy or guideline on the basis of which such applicant might have been led to take certain actions. It was further observed by the Apex Court that this doctrine is akin to the doctrine of promissory estoppel and for reference referred to observations of Lord Wilberforce in *I.R.C. v. National Federation*, 1982 AC 617. In para 107 of the decision aforestated, the Apex Court elucidated on the point further to the following effect:

We would also like to refer to one more aspect of the enforceability of the guidelines by persons in the position of the Petitioners in these cases. Guidelines are issued by Governments and statutory authorities in various types of situations. Where such guidelines are intended to clarify or implement the conditions and requirements precedent to the exercise of certain rights conferred in favour of citizens or persons and a deviation therefrom directly affects the rights so vested the persons whose rights are affected have a clear right to approach the Court for relief. Sometimes guidelines control the choice of persons competing with one another for the grant of benefits, largesses or favours and, if the guidelines are departed from without rhyme or reason, an arbitrary discrimination may result which may call for judicial review. In some other instances, the guidelines may prescribe certain standards or norms for the grant of certain benefits and a relaxation or, departure from the norms may affect persons, not directly but indirectly in the sense that though they did not seek the benefit or privilege as they were not eligible for it on the basis of the announced norms, they might also have entered the fray had the relaxed guidelines been made known ...

18. The guidelines contained in the Government order clearly envisage that those who were actually working on 11.10.1989 but had not completed three years of service on 11.10.1989 but actually working on that date would not be thrown out and they would be allowed to continue and their services would be regularized in future vacancies. Again, in Government order dated 29.8.1998, is contained direction that process should be commenced for regularisation of those who had been directly appointed on daily wage basis and who had been working unabatedly upto 9th July, 1998, without any break. Thus, it cannot be refuted that there was element of legitimate expectation and in the facts and circumstances of the case aforestated, the guidelines are enforceable in view of the fact that a circular or self-made rule can become enforceable on the application of persons if it was shown that it had created legitimate expectation in their minds that the authority would abide by such a policy/guideline. The element of legitimate expectation, in the fact and circumstances of the case, is discernible from the guidelines contained in the Government orders aforestated and thus the Petitioners harboured a legitimate expectation that they would

stand regularized in future vacancies.

19. It is thus well-settled that the State must act as a model employer within the framework of the ideals cherished in the Constitution. In the instant case, the hopes and expectations nurtured by the Petitioners from the model employer have remained unabated and unredeemed and this Court does feel that the Petitioners should not be kept in unsettled state of mind and in agitated expectations for an unreasonably long period and there is felt need and necessity that peremptory direction should be issued to the State Government for processing the matter for regularisation of the Petitioners. The Petitioners have been allowed to continue on the post for more than 12 years and thus, it brooks no dispute that their services have been rendered indispensable and there should be sanctioned posts. The work and conduct of the Petitioners during all these years do not appear to have been adjudged to be less meritorious vis-a-vis the regularly appointed employees and in the circumstances, it would amount to flawed logic by any reckoning to keep the Petitioners in uncertain state of affairs any longer.

20. So far as second relief is concerned, judgment discussing all the aspects relating to grant of minimum of the pay scale has been delivered in Writ Petition No. 2093 of 2002 Praveen Kumar v. State of U.P. rendered on 1st September, 2003, in which it was in the ultimate analysis held that the Petitioners in that case were entitled to wages at the minimum of the pay scales on par with regularly appointed employees. The case referred to above does not differ on factual aspects from the facts of this case and therefore, I do not see any difficulty in granting wages to the Petitioners at par with regularly appointed class III employees. It is also worthy of notice that amendment has already been made in the U.P. Regularisation of Daily Wage Appointments on Group "C" Posts (Outside the Purview of Public Service Commission) Rules, 1979 and the same have been made applicable to the local bodies by means of Government order dated 29.8.1998 but neither any Government order was issued nor any scheme was framed for those who were appointed and had completed more than 10 years of service. In the circumstances, it is rendered imperative that requisite direction be issued to the State of U.P. to frame scheme and consider for regularisation of all those who have been working for unreasonably long period in Nagar Palika Parishads/ Nagar Nigams as category III.

21. As a result of foregoing discussion, the petitions are allowed and it is held that the Petitioners and other similarly situated daily wage employees working in the local bodies who have already completed 10 years of service or more are entitled to regularisation. In consequence, it is directed that the State Government shall frame requisite scheme for regularisation in relation to all those employees who have completed 10 years or more and all those employees shall be considered for regularisation against existing posts/vacancies if any in terms of the Government order dated 7.5.1992 and 29.8.1998 preferably within a period of three months from the date of presentation of a certified copy of this

order, taking into reckoning the reservation policy under the Rules/Government order and till then no appointment shall be made in any of the vacant posts till all such persons working in the Nagar Nigams/Nagar Palika Parishads are considered for regularisation. It is further directed that till exercise of regularisation in relation to daily wage employees is taken to some finality, the Petitioners shall be paid wages at the minimum of the pay scale admissible to their regularly appointed counter parts in class III category in various Nagar Nigams/ Nagar Palika Parishads in the State of U.P.