

(2000) 09 SC CK 0160

In the Supreme Court Of India

Case No : C.A. No's. 7174 and 7194-7200 of 1996 and 4454 of 1997

Hindustan Machine Tools and Others

APPELLANT

Vs

M. Rangareddy and Others

RESPONDENT

Date of Decision : 29-09-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1), 38(1), 39, 43

Citation : AIR 2000 SC 3287 : (2000) AIRSCW 3586 : (2000) 87 FLR 793 : (2000) 1 JT 267 Supp : (2001) 1 LLJ 596 : (2000) 6 SCALE 614 : (2000) 7 SCC 741 : (2000) SCC(L&S) 1039 : (2000) 6 Supreme 535 : (2001) 1 UPLBEC 70

Hon'ble Judges : S. Rajendra Babu, J;D.P. Mohapatra, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

D.P. Mohapatra, J.—The Hindustan Machines Tools Ltd. (hereinafter referred to as 'HMT Ltd.'), represented by its Chairman-cum-Managing Director at Bangalore and the General Manager and the Joint General Manager (Personnel Incharge) at Bali Nagar, Hyderabad have filed these appeals by special leave challenging the judgment dated 9th November, 1995 of the Single Judge of the Andhra Pradesh High Court in Writ Petition No. 3425 of 1995, which was confirmed in appeal by a Division Bench of that Court by its Order dated 28th December, 1995 in Writ Appeal No. 1710 of 1995.

2. HMT Ltd. is a Public Sector Undertaking of the Government of India which, as described by the appellants, has grown into a multi-unit, multi-product, multi-technology Company having four business groups and 20 manufacturing units spread over ten different States in the country. The Company engages casual workers on daily rate basis depending upon the need and exigencies of work. Forty two such casual workers engaged in the unit of the Company at Hyderabad filed the Writ Petition with a prayer to issue a Writ or Order or Direction in the nature of a Writ of Mandamus directing the respondents to regularise their services in their respective posts from the date of the initial appointment with all

consequential benefits forthwith. The appellants were arrayed as respondents in the Writ Petition.

3. The writ petitioners alleged inter alia that they have been working as helpers and skilled workers in different departments of the Company for long periods of 3 to 10 years continuously. Their engagement has been treated as casual labour on daily wage basis. Some of them have undergone training course (I.T.I.) as apprentice under the Company. On successful completion of the said training the incumbents were given temporary appointments which continued till the date of filing of the writ petition. The writ petitioners further alleged that though they had been discharging duties similar to those of regular employees of the Company, they were denied the benefit of regularisation of service and other service benefits on that basis. Under such compelling circumstances the casual workers filed the writ petition seeking the reliefs noted above. During pendency of the writ petition, considering the application filed by the writ petitioners seeking interim relief, the High Court passed the order for maintenance of status quo as on the date of the order to ensure continuance of the writ petitioners in service.

4. The respondents in the writ petition refuted the allegations made therein. The gist of the case pleaded by them was that it is necessary for the Company to engage casual workers to cope with the situation arising from absence of regular workers. Engagement of casual workers in such circumstances becomes necessary for continuity of the production line in the units. Engagement of such workers depends on the necessity on a particular day and no assurance of engagement can be given to any casual worker for continuous engagement over a period. The further case pleaded by the Company was that recruitment of casual workers is not according to rules for recruitment which is followed in the case of regular workmen. Therefore, no comparison can be made between the two groups, namely, the casual workers and the regular workmen of the Company. The learned Single Judge of the High Court considered the materials produced by the parties in support of their respective cases and examined the matter in the light of the decisions of this Court in the case of State of Haryana and others Vs. Piara Singh and others etc. etc., and in the case of Niadar and Anr. v. Delhi Administration and Anr., (1992) 4 SCC 112 , and other decisions of the High Court and disposed of the writ petition by passing the following Order:

i) That the respondent Company is directed to evolve a scheme of absorbing the petitioners herein who have completed more than 5 years of continuous service with their establishment within a period of 6 months from the date of receipt of this order.

ii) That the preference may be given to the employees (some of the petitioners herein), who have completed ITI training and the Apprenticeship with the respondents Company; AND

iii) That the respondents are directed to absorb the petitioners herein, who are

found eligible as per the scheme framed by them and who also completed 5 years of continuous service with their establishment. The appointments shall be made strictly according to seniority....

Feeling aggrieved by the judgment/order of the learned Single Judge, the appellants filed the Writ Appeal which was dismissed by the Division Bench by passing a cryptic order which reads as follows:

Heard learned Counsel for the appellant and learned Counsel for the writ petitioner-respondent.

Direction to frame a scheme to absorb who are possessing higher qualifications and who are eligible as per the scheme in respect of casual labour who have put in five years or more of continuous service in our opinion, is in tune with the scheme under Articles 14 and 16(1) of the Constitution of India.

There is no merit in the appeal.

The Appeal is accordingly dismissed.

5. The main thrust of the argument of Shri A.T.M. Sampath, learned Counsel appearing for the appellants was that the Company being burdened with heavy accumulated loss of several crores of rupees has formulated a voluntary retirement scheme for its workmen; in such a situation it is not possible for the appellants to frame a scheme for absorption of the writ petitioners (respondents herein) as regular employees of the Company.

6. Per contra, Shri Nageshwara Rao, learned Counsel appearing for the respondent- workers contended that these workmen have been rendering service to the Company for almost 10 years on daily wage basis without any job security or service benefit and it is not a reasonable attitude of the Company, a public sector undertaking of the Central Government, to express reluctance to even frame a scheme for absorption of these contract workers in the regular work force of the Company, particularly when the unit in which the workers are engaged is continuing. According to Shri Rao, the very fact that the respondent-workers have been continuously rendering service in the Company over a decade or more shows that the work entrusted to them is of a permanent nature and their services cannot be dispensed with.

7. We have carefully considered the contentions raised by learned Counsel for the parties. This Court, in the case of State of Haryana and Ors. v. Piara Singh and Ors. (supra) considered the question of regularisation of ad hoc, work-charged employees and casual labour. Therein this Court observed:

...So far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell-say two or three years - a presumption may arise that there is regular

need for his services. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court, security of tenure is necessary for an employee to give his best to the job. In this behalf, we do commend the orders of the Government of Haryana (contained in its letter dated 6-4-90 referred to hereinbefore) both in relation to work-charged employees as well as casual labour.

The question of regularisation of casual labour specifically came up for consideration before this Court in the case of *Raj Narain Prasad and Others Vs. State of U.P. and Others*, in which this Court, referring to the case of *State of Haryana and Ors. v. Piara Singh and Ors.* (supra), made the following observations:

...To put it differently, therefore, the State has prepared a regularisation scheme so far as work-charged employees are concerned but has expressed its inability to prepare any such scheme for daily-rated/muster-roll employees. We have carefully perused the proposed scheme in regard to work-charged employees and we felt that in Clause 'D' which talks of regularisation as per vacancies arising in regular posts on the establishment, a modification is necessary, in that, there should be a review of the cadre strength from year to year and based on the past requirement and continuity of work-charged employees, the cadre strength should be increased by a certain percentage of the work-charged employees working over a period of time that may be fixed by the Government so that the pace of regularisation is accelerated and is not the same as obtaining in the past. For example, if 100 work-charged/employees have been required throughout a period of time it could reasonably be estimated that even if shedding takes place, a certain percentage of those employees would certainly be retained and a part of them could be absorbed by increasing the cadre strength to that extent. An exercise of review in the cadre strength from year to year, thereafter, becomes necessary because while on the one side the financial difficulties of the State have to be kept in view, on the other side the welfare of the workmen who have served the State on different projects has to be balanced. Concern is also to be shown for those who have worked for a number of years and have become ineligible for any other employment anywhere, be that the private sector or the public sector. Therefore, a balance has to be struck between the two competing interests and that can be struck by a periodical revision of the cadre strength from year to year. We must also impress on the State Government that if work-charged employees have been on the establishment for long periods, the State should be liberal in the matter of revision of the cadre strength so that the benefit of regularisation is available to a reasonably good number of work-charged employees who have been associated with the State Departments for long periods....

8. Tested on the touch-stones of the principles laid down in the decisions noted

above and keeping in mind the mandate of the Constitution under Articles 38(1), 39(e) and 43, we are of the considered view that the directions issued by the High Court to the appellants to frame a scheme for regularisation of services of the writ petitioners does not warrant interference. However, considering the submissions made by learned Counsel for the appellants that the Company is under financial constraints and has decided to reduce its work force, we would like to clarify that while framing the scheme it would be open to the appellant-Company and the officers concerned to assess the requirement of regular work force in its different units, particularly, the units in which the writ petitioners have been engaged over long periods and also the necessity for alleviation of the suffering to which the writ petitioners have been subjected to during all these years and fix the strength of work force so that the workers concerned are able to get the benefit of regular service within a reasonable time. It goes without saying 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.

9. Subject to the above modification, the judgment of the learned Single Judge of the High Court, which was confirmed by the Division Bench, is maintained. The appeals are disposed of accordingly. No costs.