

(1988) 11 OHC CK 0001

In the Orissa High Court

Case No : Original Jurisdiction Case No. 2677 of 1988

Jadumani Satapathy and Others

APPELLANT

Vs

Chief Engineer, Minor Irrigation Orissa and Another

RESPONDENT

Date of Decision : 26-11-1988

Acts Referred:

Citation : (1989) 1 OLR 557

Hon'ble Judges : S.C. Mohapatra, J; R.C. Patnaik, J

Bench : Division Bench

Advocate : J. Patnaik, H.M. Dhal and S.K. Patnaik, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.C. Patnaik, J.—This is an application by certain nominal muster roll employees working in the Stores and Mechanical Division of the Minor Irrigation Department under the State of Orissa rendering various types of skilled, semi skilled and unskilled work for a direction to the opposite parties, to discharge their obligation enjoined by the Constitution of India and for appropriate direction.

2. The Stores and Mechanical Division under the minor irrigation project looks after the repair and maintenance of dozers, tractors, compressors, jeeps, cars, pickups, mini trucks, G.B. Trawlers and other machineries and equipments. It has a fabrication unit. Along with regular and work-charged employees, the organization has been engaging a band of skilled, semiskilled and unskilled employees at a meager consolidated payor on daily rate basis. It is averred that some of the employees have been so engaged for about a decade, but none has rendered service for less than two years. Details of service particulars emoluments entitled have been furnished in Annexure-A in respect of each Petitioner. From the chart, it is evident that the wages paid in respect of particular category of employees are almost 50 per cent of the emoluments received by regular employees discharging same nature of duties. It has been averred that though the nature of the service rendered is of permanent

character, the organization has taken recourse to mode of engaging nominal muster roll employees day after day, month after month and year after year as an exploitive measure contrary to the constitutional guarantee of the notifications and in violation of the constitutional obligations.

3. What is ordinarily blamable if committed by a private employer would be deplorable if indulged in by the State, the model, the enlightened and ideal employer. When such a practice has continued and is being brought to the notice of the Court for eradication even after the Supreme Court had repeatedly deprecated the practice in very strong terms, is deplorable indeed It obligated the State Government at the highest level to issue direction to its departments and other organizations controlled by it to discontinue the practice and retrain from indulging in the exploitive practice any further. In the case of *Nursingha Charan Sahoo v. State of Orissa and Ors.* disposed today by us relating to the nominal muster roll employees in the Lift Irrigation Corporation, we have referred to the decisions of the Supreme Court in *Dhirendra Chamoli and Another Vs. State of U.P., Surinder Singh and Anr. v. Engineer-in-Chief C.P.W.D. and Ors.* (1986) 1 S.C.C 63 and to *Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others*, and have directed the Corporation to forthwith engage in an exercise with a view to eradicating the evil. With a view to impressing on the authorities the urgency of the exercise, we extract a few words from the decision of the Supreme Court in the last mentioned case:

Denial of the minimum pay in the pay scale of the regularly employed workmen even though the Government may not be compelled to extend all the benefits enjoyed by regularly recruited employees 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 starving 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. If a person does not have the feeling that he belongs to an organization engaged in production he will not put forward his best efforts 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 management. It is for this reason it is being repeatedly observed by those who are 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 Governmental agencies in particular should not allow workers to remain as casual labourers or temporary employees for an unreasonably long period of time....

When employees are being engaged for years the argument that there is not enough work is devoid of substance. If there is less work or no work the employees belonging to the category of skilled, semi-skilled and unskilled can be

shifted from one department to another It was held:

...Non-regularization of temporary employees of casual labour for a long period is not a wise policy.

4. Following the aforesaid dictum, we direct the organization having regard to the work-load and requirements to prepare a scheme on rational basis for absorbing as far as possible the Petitioners and other casual labourers who have been continuously working for more than one year in the Department. We do not place a total ban on employment of casual labour. But as the nomenclature indicates the appointment has to be casual or temporary to meet urgent or unforeseen requirements or temporary needs. Where the requirement is permanent or is likely to be permanent, there can be no justification for employing nominal muster roll employees with a view to economies, This practice is being followed while employing in the lower rung. But no one has as yet heard of N.M.R. Chief Engineer or Superintending Engineer on nominal pay. It is stated in the counter affidavit that some of the Petitioners have ceased to be employees under the organization. It is unnecessary for us to specifically decide the case of each of the Petitioners separately. The Petitioners or, such of, them as are under employment shall be paid arrear of wages from 1st August 1988 at the rate as their/his counter part rendering same type of work The payment be made within two months from today. Such of the Petitioners who are not under employment or have ceased to be employees, would not have the benefit of this judgment.

5. With the aforesaid directions and observations, the writ application is allowed. But in the circumstances, there would be no order as to costs.

S.C. Mohapatra, J.

6. I agree.