

(1996) 12 OHC CK 0027

In the Orissa High Court

Case No : Original Jurisdiction Case No. 237 of 1993

Kumari Saraswati Padhi and Another

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 18-12-1996

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1997) 83 CLT 163 : (1997) 1 OLR 102

Hon'ble Judges : P. Ray, J;D.M. Patnaik, J

Bench : Division Bench

Advocate : Jayant Das, B.S. Tripathy, S. Mallik, B.K. Sahoo, K.P. Mishra, A. Das and P.K. Mohapatra, for the Appellant; Additional Standing Counsel for O. P. No. 2, for the Respondent

Judgement

D.M. Patnaik, J.—Petitioners seek direction for regularisation of their services and for fixing their pay on the basis of the principle of equal pay for equal work.

2. Their case is, both joined as Typist-Cum-Junior Clerk on 89 days basis on daily wage of pay of Rs. 15/-. Petitioner No. 1 joined in the post on 26-7-1986 and petitioner No. 2 on 8-1-1990. Their such appointments were extended from time to time with fictional break with the sole purpose of retaining them as temporary employees. The petitioners claim that since their appointments were made against permanent vacancies, denial of absorption on regular basis is illegal.

3. Opp. party No. 2 filed a counter controverting the averments that the petitioners were appointed against any regular vacancies. However, opp. party No. 2 admitted that both of them were temporarily engaged on daily wage basis on 26-7-1986 and 8-1-1990 respectively. It is further asserted that they were engaged on the basis of "pick and choose" method to cope with additional work under NREP and RLEGP anti-Poverty Schemes which were being worked during the 7th Five Year Plan in the rural areas. They were not sponsored by the Employment Exchange nor any interview was made to test their ability for selection.

4. Heard Mr. B. S. Tripathy, learned counsel for the petitioners and learned Additional Standing Counsel for the DRDA (opp. party No. 2).

Learned counsel for the State relied on the decision of the apex Court in the case of Himachal Pradesh State Electricity Board, Shimla and others Vs. Tirath Raj and others, etc. etc.,, and submitted that the DRDA being an agency of the Government and its employees being Government servants this Court has no jurisdiction to entertain the writ petition. Rather, the State Administrative Tribunal is the appropriate forum.

We are unable to accept this contention because, going through the various Clauses of the Dye-laws we find that the affairs of. the Society are governed by the Governing Body of the Society. The Society also is competent to appoint various personnel to the posts-under it, though the posts can also be filled up by deputation from Government. The main function of the Society is to implement various schemes of the Government to ameliorate the miseries of the poorer sections of the society in the rural areas from funds provided by the government. Therefore, it can be said that the Society is a Society which performs public duty and so is amenable to the writ jurisdiction of this Court. That apart, the constitution of its Governing Body with the Collector as its Chairman and others being official members amply shows the pervasive control of the Government over the Society, Since opp. party No. 2 is not a Government organisation the provisions of the Administrative Tribunal Act are not applicable.

Therefore, we are of the view that this Court has jurisdiction to decide the disputes raised in this case.

5. Mr. Tripathy referring to various annexures submitted that the petitioners have been able to make out a case for their regular absorption and also for equal pay for equal work. But before examining the above two contentions it would be appropriate to first find out as to whether the services of both the petitioners stood terminated on 21-1-1993 as claimed by the opposite parties.

It is the admitted case of opp. party No. 2 that the petitioners were initially appointed temporarily as Junior Clerk-cum-Typists on ad hoc basis with effect from 26-7-1986 and 8-1-1990 respectively on daily wage basis, vide Annexure-1 series. While the petitioners claim to have been still continuing in service, it is the case of opp. party No. 2 that their services were terminated on 21-1-1993 after-noon in pursuance of the Panchayat Raj Department letter No. 8762/DR dated 24-11-1992 under Annexure-A/2 (same as Annexure-2 in the writ petition).

6. Annexure-2 points out the irregularities in the ad hoc appointment by the DRD As, in the State in violation of the existing rules and instructions of the Government. There is a direction for removal of the two petitioners from service with immediate effect. The petitioners moved this Court on 12-1-1993 and in Misc. Case No. 260 of 1993 vide order dated 14-1-1993 this Court passed an interim order not to terminate services of the petitioners till 21-1-1993 without orders of the Court. This interim order continued till 1-2-1993 vide order dated

25-1-1993. On 4-2-1993 the learned Government Advocate received notice on behalf of both the opposite parties and was directed to file counter-affidavit within three weeks. On the same day the interim order was passed allowing the petitioners to continue until otherwise ordered. This interim order seems to have been issued to opp. party No. 2 on 5-2-1993 as is found from the office note. The services of both the petitioners were terminated on 21-1-1993. It is asserted by the petitioners in their rejoinder-affidavit that opp. party No. 2 was aware of the interim order of the Court. We are unable to accept this contention since we are of the view that the interim order "not to terminate their services" was not communicated to opp. party No. 2 nor it could be said, opp. party No. 2 was aware of the order because the State Counsel received the copies of the writ petition only on 4-2-1993 whereas, the order of termination was passed on 21-1-1993 and issued on 5-2-1993. Therefore, we accept the fact that their services stood terminated from 21-1-1993. That apart, the petitioners in the rejoinder-affidavit have admitted that the interim order was put up before the Additional Project Director on 22-1-1993. For this reason we hold that the petitioners were not in service of opp. party No. 2 after 21-1-1993.

7. The grievance of the petitioners are two-fold, firstly they should be regularised against the above posts and secondly they should be allowed equal pay for equal work like their counter-parts working under opp. party No. 2.

So far as the question of regular absorption is concerned, no doubt petitioner No. 1 having been appointed in 1986 worked till 1993 i. e., for more than six years and therefore as per the law laid down by the apex Court in the case of State of Haryana and others Vs. Piara Singh and others etc. etc., and of this Court in the case of Dhruba-nanda Mishra and others v. Vice-Chancellor Utkal University and Ors.; 77 (1994) CLT 70, she has made out a case for consideration for regular absorption. But then such regular absorption can be made only when the ad hoc appointment is against a regular post. Opp. party No. 2 has come forward with a case that the petitioners were not appointed against any regular and substantive posts and their appointments to the said posts were only to cope up with the extra work-load which opp. party No. 2, the DRDA was undertaking as per the 7th Five Year Plan and after completion of that period, the scheme had been closed and merged with the Jabahar Rojagar Yojana, We accept this part of the case of the opposite parties that the petitioners were not appointed against any regular and substantive vacancies and we also accept their case that the scheme has been closed though the same has merged with the Jabahar Rojagar Yojana. No material has been placed before this Court by the petitioners that any post in the Jabahar Rojagar Yojana is available at present. Therefore, relying on the decision of the apex Court in the case of State of Himachal Pradesh, through the Secretary, Agriculture to the Govt. of Himachal Pradesh Vs. Nodha Ram and others, cited by the counsel for the opp. party No. 2. we do not direct for the regular absorption of petitioner No. 1, but we observe that since she had completed more than six years of continuous service by the time of termination of her appointment on 21-1-1993, her case may be considered against any

future vacancy keeping in view her seniority among Ors. such temporary employees working with her and the length of service and experience. The formality of her name being sponsored by the Employment Exchange for filling up of such future vacancy shall not be insisted upon nor age bar would stand on her for such consideration.

So far as petitioner No. 2 is concerned, she had completed only just three years of service as on 21-1-1993 and therefore she has failed to make out a case for consideration for her regular absorption. But we dispose of her case by observing that her case should be considered against any future vacancy on its own merit, of course giving due weightage to her experience and length of service rendered. The . other conditions such as her name being sponsored by the Employment Exchange and/or age bar should not stand on her way.

8. So far as their claim for equal pay for equal work is concerned, the same cannot be allowed now, that is after 21-3-1993 since we have already held that their services were terminated from that date. But the question arises whether they are to be paid for the post period i.e., petitioner No. 1 for six years and petitioner No. 2 for three years.

Dealing with this type of inequality of pay of casual and temporary employees compared to those regular appointees, the Supreme Court in the case *Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others*, . following its decision in the case of *Dhirendra Chameli v. State of U.P.* reported in (1986) 1 SCC 617, held that even though services of temporary employees could not be regularised because of absence of sanctioned posts, yet it would not be justifiable to deny casual employees the same salary paid to regular employees doing same type of job. It was observed by the Court that it must be remembered that in this country where there is so much unemployment, the choice for the majority of people is to starve or to take employment on "whatever exploitive terms are offered by the employer." It further held that the fact that the employees accepted employment with full knowledge that they will be paid only daily wages and they will not get the same salary and conditions of service as other Class-IV employees, cannot provide for an escape to the Central Government to avoid the mandate of equality enshrined in Article 14 of the Constitution of India. The Court observed with emphasis as follows :

"It makes no difference whether they are appointed in sanctioned posts or not. So long as they are performing the same duties, they must receive the same salary conditions of service as Class-IV employees."

In the case of *Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others*, , the daily rated casual labourers who had rendered service for one year and some of whom for about ten years were denied equal pay as their counter-parts. Dealing with this inequality in the pay the apex Court held that denial of equal pay amounted to exploitation of labour and it was further observed that the Government could not take advantage of its

dominant position and compel any worker to work even as a casual labourer on "starving wages" even though the casual labourer had agreed to work on such low wage.

9. The petitioners have not placed before this Court particulars of a comparable scale of pay which they claim instead of their daily wage of Rs. 15/- (i.e., Rs. 450/- per month). Therefore, we are unable to grant the relief on that score. However, we are of the view that payment of Rs. 15/- per day for the work of a Clerk-cum-Typist amounted to grave social injustice which should not be encouraged. We feel it appropriate to follow the principles laid down by the apex Court in the case of *Griha Kalyan Kendra Workers' Union Vs. Union of India and others*, .

In the above case many casual and temporary employees were asked to work on a very low honorarium and some of them were paid on piece-rate basis. They moved the apex Court for regular absorption and for equal pay for equal work. The Court referred the matter to the former Chief Justice Mr. Y.V. Chandrachud for his report and recommendation. The former Chief Justice recommended that those persons who could not be regularised because of absence of any sanctioned post, but had completed five or more years of service on such consolidated honorarium, their pay should be enhanced by 70 per cent and those who had completed service up to five years, their pay should be enhanced by 60 per cent until both these categories were paid regular scale of pay on their being permanently absorbed.

In the case at hand, admittedly both the petitioners were paid Rs. 450/- per month (vide Annexure-1 series). Therefore, keeping the principle laid down by the apex Court in the case of *Griha Kalyana Kendra workers' Union* (supra), the petitioners should be paid at the rate mentioned above for the period of service they have rendered.

10. In the result, the writ petition is allowed in part. The prayer of the petitioners for regular absorption is disallowed. However, they shall be paid the arrear wage as indicated above and this should be done within a period of three months from the date of communication of this order. Steps for communication of the order be taken within seven days. No cost.

Pradipta Ray, J.

11. I agree.