

(2003) 05 P&H CK 0055

In the Punjab And Haryana At Chandigarh

Case No : Writ Petition No's. 13650 of 1999, 1732 and 5179 of 2000 and 3294 of 2002

Maninder Kaur and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 15-05-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 39

Citation : (2003) 2 ILR (P&H) 329 : (2004) 1 LLJ 570

Hon'ble Judges : Swatanter Kumar, J;S.S. Saron, J

Bench : Division Bench

Advocate : K.L. Arora, Urvashi Arora, Arun Palli and Dinesh Kumar, for the Appellant; Ashok Aggarwal, Addl. A.G., for the Respondent

Final Decision : Allowed

Judgement

Swatanter Kumar, J.—By this judgment we shall dispose of C.W.P. Nos. 5179 of 2000, 1732 of 2000, 13650 of 1999, 3294 of 2002, 8029 of 2002, 11211 of 2002, 3527 of 2003, 13719 of 2002, 912of2003, 1038 of 2003, 1351 of 2003, 2073 of 2003, 15615 of 2002, 16987 of 2002, 82 of 2003, 5484 of 2003 and 6225 of 2003.

2. Known precept for achieving any "constitutional goal" enshrined in our Constitution is that State should formulate its policy and methodology in providing employment to its people which would fall in comity to the object of defined goal. The Constitution places a fundamental duty on the State to fulfil its obligations arising from fundamental rights read in conjunction with the directive principles of State policy, in favour of the people of the democratic welfare State. The State is to provide employment to its people by due adherence to the standards of equality, social dignity and respect for employer-employee relationship. The State and its instrumentalities are ideopraxists to attain the object of constitutional mandate of socio welfare policy, including the employment. This obligation of the State attains wider dimensions when it has to

deal with the persons employed by it on casual or daily wage basis for years together. Such persons serve the State on dictated terms to ensure their existence and do work continuously for number of years uninterruptedly without any benefit or assurance of continuity of their service in that department.

3. Fairness in State action must not only be done but must also appear to have been done. "Whether the employees who have served the State and people at large, for years together to the satisfaction of all concerned and possess requisite qualifications can claim relief of regularisation of their services and equal pay for equal work" are the precise questions that fall for determination for the Court in this bunch of writ petitions.

4. The petitioners in all these writ petitions who are working in different departments of the State and particularly Punjab Public Works Department, as Pump Operators, Mali-cum-Chowkidars, Patrol Man, Bill Distributors, Fitters, Ledger Clerks, Complaint Clerks, Meter Readers, Bill Clerk-cum Ledger Clerk and Beldars etc. for the last more than 6 to 16 years, have claimed following reliefs in the afore referred writ petitions:

1. Regularisation of their service in their respective posts.
2. Grant of equal pay for equal work i. e. minimum of the regular pay scale with all allowances.

5. The learned counsel appearing for the petitioners while relying upon the various Judgments of the Hon''ble Apex Court and Full Bench of this Court, contended that despite having framed a policy for regular isation the State is not making any constructive efforts to implement its policies and are continuing to make further appointments on daily/casual basis. While vehemently pressing their claim for grant of the reliefs prayed for, the learned counsel also submitted that the judgment of the Division Bench of this Court in the case of Devinder Singh and Anr. v. State of Punjab 2001 (6) S LR 408 (C.W.P. No. 14591 of 1995) was affirmed by a detailed order of the Supreme Court in Civil Appeal No. 4942 of 1997 State of Punjab v. Devinder Singh etc. on July 21, 1997 (reported in 1999 AIR SCW 4859 wherein the relief of equal pay for equal work was allowed. However, the payment of the past arrears was restricted to a period of three years immediately preceding the filing of the writ petition. It is contended that there is a patent discrimination in the action of the respondents in denying the same reliefs to the petitioners despite the fact that they are similarly situated like the petitioners in Devinder Singh's case which even relate to the same department of the Government.

6. On the other hand, the learned counsel appearing for the State while relying upon a recent judgment of the Supreme Court in the case of State of Orissa v. Balram Sahu 2002 3 LLJ 1115 contended that the petitioners are not identically placed like regular employees of the department and thus, cannot claim and in fact are not entitled to equal pay for equal work i. e. regular pay scale with allowances in view of the law enunciated. In regard to the claim of regularisation,

it was contended on behalf of the State that the petitioners are entitled to any relief, however, the State has already framed a policy for regularisation of its ad hoc/casual labourers dated January 23, 2001 and it is implementing the said policy in phases. It was also emphasised that as there does not exist any regular vacancy the services of the petitioners cannot be regularised for non-availability of permanent vacancies.

7. Before we proceed to discuss the merits of these contentions in view of the well enunciated principles of law, reference to certain basic facts as they emerge from the record and to which there is hardly any dispute may be useful. (Reference to the facts relates to Civil Writ Petition No. 5179 of 2003, C.W.P. No. 3294 of 2002, C.W.P. No. 912 of 2003 and C.W.P. No. 8029 of 2002). In these writ petitions the petitioners were working as Bill Clerks, Ledger Keepers in Division No. 2, P.W.D. Public Health S.A.S. Nagar, Mohali from 1994-95 continuously. In the present writ petition it has been specifically stated that the petitioners are performing the same duties as are being performed by their counterparts of the regular cadre. In fact the duties/posts of the petitioners are also inter-changeable with other persons. They claim to possess the requisite qualifications for the posts in question. The pay scales of the regular incumbent to this post were revised with effect from January 1, 1996 to Rs. 3120-5160 with a starting salary of Rs. 3220. A Civil Writ Petition was filed before this Court titled as Gurmukh Singh and Anr. v. State of Punjab (C.W.P. No. 4412 of 1999) which was allowed by a Division Bench of this Court on August 27, 1999 in terms of Kulbir Singh's case. The judgment of this Court in Kulbir Singh's case was assailed before the Hon'ble Apex Court in Civil Appeal No. 13421 of 2002 which was dismissed vide order dated February 4, 2002. The petitioners have also annexed to the writ petition the judgments of Devinder Singh's case (supra). Thus, the petitioners in this petition and other similar petitioners claim the relief of equal pay for equal work. According to them they must get minimum of the pay scale with all allowances i.e. admissible and payable to their counterparts working as members of the regular cadre.

8. In this petition 25 petitioners pray that respondents be directed to consider the case of the petitioners for regularisation of their service in view of the policy dated January 23, 2001 Annexure P. 1 to the writ Petition. All these petitioners are working in the department of PWD Public Health Division No. 2 Bhatinda Circle Bhatinda as Pump Operators, Beldars, Malis, Mali-cum-Chowkidars, Fitters and petrolmen. They were appointed during the period April 1, 1989 to January 1, 1996. As such these petitioners have worked for about 10 to 16 years in the respective posts. Despite the fact that the Punjab Government has issued policies for regularisation of services, their services were not regularised on the ground of non-availability of vacancies. The Government again framed the policy dated January 23, 2001. Despite such policy and charter of demand Annexure P-4 dated December 7, 2001 having been served by the petitioner upon the respondents their services have not been regularised thus compelling them to approach this Court. The petitioners claim that they have been working against

specific posts and the work is of the nature which is to continue indefinitely and thus, there is no occasion for the respondents to deny regularisation to the petitioners on a non-existent ground of non-availability of vacancies.

Civil Writ Petition No. 1723 of 2000

9. Sixteen petitioners in this petition claim the relief of regularisation as well as equal pay for equal work. They are working on the post similar to the post in Civil Writ Petition No. 912 of 2002 in the P.W.D. Public Health Division No. 1 S.A.S. Nagar Mohali. According to these petitioners they are performing the same functions and duties and their working hours are identical to the ones being performed by the regular counterpart. Their posts are even interchangeable from time to time. They satisfy all the requirements which would entitle them to get equal pay for equal work as well as regularisation as they have been working in the post for the last more than 10 to 15 years. The policy of the Government for all these years has indicated minimum service of 3 to 5 years for regularisation. As such, they cannot be denied either of the reliefs claimed in the writ petition. Written Statement has also been filed in these cases. As already noticed the facts are not in much dispute. The main plank of submissions on behalf Of the State is that they do not have regular vacancies against which the services of the petitioners can be regularised in the written statement.

10. C.W.P. No. 3294 of 2002 and particularly in Annexure attached to the writ petition, it has been stated that there is quite a distinction between a casual/daily rated worker and the regular employee. As such they cannot get equal pay for equal work. These reasons relate to source of recruitment, qualifications administrative and disciplinary control over the employees.

11. C.W.P. No. 8029 of 2002 It is stated that petitioners are daily wagers and are being paid as per Minimum Wages Act/Common Schedule Rates described for this purpose. In regard to regularisation, it has been stated that in terms of the policy of the Government a number of workers including some of the petitioners have already been regularised and as and when vacant post in the respective cadre becomes available equal number thereof would be considered and made regular against such posts. Equal pay for equal work

12. Before we advert ourselves to discuss the legal principles applicable to the facts and circumstances of the present case, at the very outset we must notice that the learned counsel appearing for the State submitted that all the petitioners possess essential qualifications prescribed for appointment to the respective post; that the petitioners at the posts to which they are appointed have been working continuously and the State has framed the policy for regularisation dated January 23, 2001 which is being implemented. In any of the written statements, it is also not denied that the petitioners are discharging the same functions and duties like their counterparts in the regular cadre.

13. In the light of the above undisputed facts now we proceed to decide the

claim of the petitioners in relation to equal pay for equal, work.

14. The learned counsel appearing for the State did not dispute that various judgments of the Hon''ble Apex Court had granted the relief of equal pay for equal work i. e. the minimum of the regular pay scale with allowances and thereafter, the relief was modified to the extent that under the principle of equal pay for equal work persons like the petitioners would be entitled to the minimum of the pay scale only with dearness allowance. However, while relying upon the judgment of the Hon''ble Apex Court in the case of Balram Sahu (supra) contended that the petitioners cannot be granted equal pay for equal work. The decision of the Apex Court in this case was primarily based on two factors as observed by their Lordships of the Supreme Court in paragraph 13 of the judgment. Firstly "the fact that no materials were placed before the High Court as to the nature of duties of either of the categories should have been viewed as disentitling factor so far as the works are concerned". It was felt by their Lordships that the order of the High Court was like a bargain embarking upon an inquiry in the abstract without any factual basis. Secondly their Lordships did not hold that the concept of equality was not applicable as a principle of law in case their Lordships held "to claim a relief on the basis of equality it is for the claimants to substantiate a clear cut basis of equivalence and the resultant hostile discrimination before becoming eligible to claim rights on par with the group vis-a-vis as alleged discrimination". Thereafter, relying upon the principles stated in State of Haryana Vs. Jasmer Singh and others, , their Lordships declined the relief to the respondents therein for equal pay for equal work. Before we revert to the facts of the present case, we may notice some judgments of the Larger Benches of the Hon''ble Apex Court it appears were not brought to the notice of their Lordships of the Supreme Court. In this regard a reference may first be made to a Full Bench 2 of this Court in the case of Vijay Sharma v. State of Punjab 2002 3 LLJ 858 had the occasion to answer a reference involving the same question. The question framed by the Bench seeking a Reference to the larger Bench 2 reads as under at p. 859:

"3. Whether the petitioners who are working on daily wages as Chowkidars are entitled to the minimum of pay scale, which is admissible to a regularly employed Chowkidar?"

The question was answered by the Full Bench after relying upon certain principles of the judgment which are as under at p. 877:

"50. Having discussed the general principles controlling the various aspects of these cases, it will be appropriate for us to refer to the view taken by the Hon''ble Apex Court in various judgments, spreading over a period of more than 20 years, sufficiently indicates the essentials which need to be satisfied for entertaining a claim founded on the principle of equal pay for equal work or equality. Thus, we may concisely state these essentials:

(a) The petitioners ought to be employed by the State as casual or daily rated

workers;

(b) The employee ought to have worked as such for a fairly reasonable time satisfying the ingredients of continuity in service;

(c) The functions being discharged and work being performed by such employees should be similar (of course not by mathematical formula), as that being done by a regular employee of the same department.

(d) work performance of the employees should be satisfactory.

"55. In view of our detailed discussion above, we answer the question formulated in the reference order as under:

"The petitioners, who are working as Ledger Clerks, Ledger Keepers, Pump Operators, Mali-cum-Chowkidars, Fitters, Patrol Men and Surveyor etc., and are satisfying the above stated essential ingredients are entitled to the minimum of the pay scale (basic pay and dearness allowance alone) admissible to their counterparts working on regular basis in the same department"

56. The reference is answered accordingly and matters be listed before the regular Bench for disposal in accordance with law, subject to orders of Hon''ble the Chief Justice"

15. While answering the reference as afore noticed, the Full Bench had placed reliance amongst others upon the Larger Benches. (Three Judges Bench) of the Hon''ble Apex Court and number of other Judgments of the Apex Court granting the relief to the petitioners of the principles of equal pay for equal work to restricting it to minimum of the pay scale along with dearness allowance alone.

16. In Vijay Sharma's case (supra) a reference was made to the case of Randhir Singh Vs. Union of India (UOI) and Others, Three Judges Bench of the Supreme Court) it held as under at p. 347 of LLJ:

"7. Is well known that there can be and there are different grades in a service, with varying qualifications for entry into a particular grade, the higher grade often being a promotional avenue for officers of the lower grade. The higher qualifications for the higher-grade, which may be either academic qualifications or experience based on length of service, reasonably sustain the classification of the officers into two grades with different scales of pay. The principle of equal pay. for equal work would be an abstract doctrine not attracting Article 14 if sought to be applied to them".

17. Besides, in Sandeep Kumar and others Vs. State of Uttar Pradesh and others, (Three Judges Bench of the Hon''ble Supreme Court), it was held as under;

"The main dispute canvassed in these writ petitions is two fold: (1) regarding the appropriate salary for the work done, and (2) regularisation of service. From the papers placed before us and submissions advanced at the bar we find that the regular employees are being paid at the rate of Rs. 1400/- for diploma holders

and Rs. 1800/-for degree holders whereas the petitioners who are employed on casual basis are being paid at the rate of Rs. 1800/-(for degree-holders) and Rs. 1280/- (for diploma holders). The distinction maintained has been explained by saying that since they are not regular employees no payment is being made for the holidays when no work is taken. It is difficult to accept this contention. The petitioner degree holders are paid at the same rate as the regular degree-holders. There is no reason to make distinction between petitioner diploma holders and the regular diploma holders. Besides, even under the Minimum Wages Act a paid day of rest in every period of seven days is mandatory. The diploma degree holders among the petitioners should therefore be paid Rs. 1400/- per month".

18. In *Bhagwati Prasad Vs. Delhi State Mineral Development Corporation*, (Three Judges Bench of the Hon"ble Supreme Court) it was as under at p. 322 of LLJ:

"6. Since the petitioners before us satisfy the requirement of three years service as calculated above, we direct that 40 of the senior-most workmen should be regularised with immediate effect and the remaining 118 petitioners should be regularised in a phased manner, before April 1, 1991 and promoted to the next higher post according to the standing orders. All the petitioners are entitled to equal pay at par with the persons appointed on regular basis to the similar post or discharge similar duties, and are entitled to the scale of pay and all allowances revised from time to time for the said posts....."

19. The Full Bench in *Vijay Sharma* 's case (supra) had also considered the various facets raised by the respondents even in the present written statement. The administrative/ disciplinary control being different between the two classes i. e. regular and casual workers can hardly be a ground for denying the relief to the petitioners. In fact the Bench had noticed that Government exercising a greater and harsher administrative and disciplinary control over the casual workers than the regular incumbents and in any case it was being done by the State as a matter of choice. The Bench also had the occasion to consider the financial burden on the State as a result of grant of relief to the petitioners. There are three kinds of wages which are being paid by the State to the persons similarly situated like the petitioners. Minimum wages under the Minimum Wages Act, Common Schedule Rate fixed and the minimum of the pay scale. This disparity is unexplained and cannot be justified on any ground. To illustrate this hostile discrimination copy of the Muster Roll of the work Khurban was placed on record. One Avtar Singh who is working as a Patrolman got a salary of Rs. 2279 while Shri Daljit Singh working in the same post in the same project gets Rs. 3904/- for the month of August 2002. This demonstrably shows that the respondent-State is not adopting a fair measure for payment of wages to the workman.

20. In the present case, there is sufficient material before the Court to come to the conclusion that claim of the petitioners for grant of equal pay for equal work atleast in terms of the judgment of the Apex Court and this Court is sustainable in law. The petitioners have been able to establish on record and in fact it is not

disputed that their working hours, conditions of service, performance of duties, qualifications are identical to their regular counter parts and further more they have the same qualifications or atleast possess essential qualifications provided for such appointment. In addition to this, the petitioners have been working in those posts for years together ranging between 7 to 16 years which itself shows that the appointments are need based and are not merely casual. These undisputed facts bring the case of the petitioners within the exception stated by their Lordships of the Supreme Court in Balram Sahu's case (supra).

21. Another important factor which the Court must notice is that number of writ petitions which were filed before this Court claiming the relief for equal pay for equal work were granted the basic minimum salary with dearness allowance alone, out of which some judgments of this Court were assailed in appeals before the Apex Court and specially the petitions preferred by the State were dismissed. In this regard reference can be made to the case of Devinder Singh. Even prior to the case of Devinder Singh, large number of petitioners were granted relief of equal pay for equal work belonging to the same department like the petitioners. Such orders have also attained finality after they were assailed by the respondent-State before the Hon''ble Apex Court. It is true that Judgment of a Court can hardly be challenged on the plea of resultant hostile discrimination. This by itself may not be an absolute ground for granting relief to the petitioners but it certainly would have pervasive value and would also further the cause of equality between the persons similarly situated. Number of persons occupying the post identical to the petitioners would get a much higher salary than the petitioners just because the petitioners did not approach the Court on earlier occasions. We are unable to contribute to the view that the petitioners should not be granted relief by the department only because they did not approach the Court on an earlier occasion. The State is expected to grant relief to the persons identically situated, like the petitioners, in those cases where the judgments have attained finality and bind the State. It certainly is a reasonable expectancy on behalf of the employees to hope that the department would grant them the similar relief which has been granted to their fellow employees identically placed, at its own, and would not compel such person to go to Court of law.

22. We are of the considered view that the conditional precedents spelled out by the Hon''ble Supreme Court in the case of State of Orissa v. Balram Sahu (supra) have been entirely satisfied in the present case. The claimants have placed material on record which is even hardly in dispute to invoke the principle of equality to its nadir. The Full Bench of this Court in Vijay Kumar's case (supra) while following the consistent view of the larger Benches of the Hon''ble Supreme Court had stated certain ingredients which the claimants like the petitioners herein ought to satisfy before raising a claim founded on the principle of equal pay for equal work, This principle can be invoked in the facts and circumstances of a given case, of course, subject to its limitation in law. The differentiation between regular incumbents on the one hand and casual/daily rated workers on the other, can be justified on the basis of reasonable classification, as they per

se, cannot be clubbed together into one class. It has been argued that the petitioners are performing same duties and responsibilities, their working hours are same and even the posts are interchangeable with the regular incumbents. This by itself may not be a sufficient ground for allowing the petitioners to receive the same salary and allowances as their regular counterparts are receiving. Some element of discrimination would have to be accepted between these two classes.

23. In any event, there is definite and hostile discrimination between the dentially placed persons i.e. between casual/ daily rated workers working at different districts, but under the same Department, and even between the people working in the same district/project and same district. This disparity indicates clear and apparent discrimination which even we have demonstrated by making reference to the records or the respondents, in earlier part of the judgment demonstrated the same by making reference to records of the respondents.

24. The cumulative effect of the above discussion is that the petitioners are still not entitled to the same pay as their regular counterparts are receiving, apparently for the reason that their conditions of service are not the same and a regular employee by lapse of time has earned number of regular increments and other ancillary allowances and benefits being member of the regular cadre. In other words, a daily rated or casual worker, who has put in service for 10 years, cannot get identical salary which is being paid to an employee on regular cadre who might have put in the same years of service in terms of the relief granted by the Full Bench of this Court. We are of the opinion that petitioners would not be entitled to get identical pay of their regular counterparts, but would get the minimum basic salary of the scale with dearness allowance alone. As such they would be getting comparatively much less salary and other benefits and allowance than the regular incumbents of the similar post, This differentiation is inevitable. Thus, the petitioners would be entitled to this limited relief on the principle of equal pay for equal work.

25. Claim of Regularisation It is not necessary for us to repeat the facts and the circumstances leading the petitioners to claim this relief. According to the petitioners they have been performing the duties and functions of the respective posts to which they were appointed for a number of years varying from 7 to 16 years. Their working hours and conditions are the same and are similar to that of the regular employees of the department. They have been working to the satisfaction of all concerned honestly and sincerely. They possess the essential qualifications provided under the rules for recruitment to the said post. The nature of the duties and work they are performing is such which is bound to in any case likely to continue for indefinite period. There is definite need for their jobs. Thus, the State has no reason to deny them the relief of regularisation of their service to the post on which they are working for number of years.

26. As already noticed these facts are hotly controverted. The case of the State is that they cannot be regularised despite policy of the State in that regard for

non-availability of vacancies.

27. Reference to certain judgments of the larger Benches of the Hon'ble Apex Court may be necessary to analytically examine the development of law in this field by judicial pronouncements recognising the claim for regularisation, as a legitimate right of such employees, of course, subject to the limitations imposed therein. In *Randhir Singh v. Union of India* (supra) where the Court introduced the principle of equal pay for equal work as a constitutional goal on interpretation of Article 39(d) read with Articles 14 and 16 of the Constitution of India. Their Lordships also referred to avoidance of inequality amongst the equal in regard to employment. In case of *Bhagwati Prasad v. Delhi State Mineral Development Corporation* (supra), the Apex Court granted the relief of regularisation and did not approve the contentions of the respondents that the service of the petitioner could not be regularised/confirmed as they did not possess essential qualifications. While granting the relief of regularisation held as under:

"The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view three years experience, ignoring artificial break in service for short period/periods created by the respondents, in the circumstances, would be sufficient for confirmation".

(emphasis applied by us)

28. Again in the case of *Chief Conservator of Forests and another, Vs. Jagannath Maruti Kondhare, etc. etc.*, another Bench of Hon'ble three Judges of the Apex Court applied the principle enunciated in *State of Haryana and others Vs. Piara Singh and others etc. etc.*, and granted the relief of permanency despite serious objections of the respondent-State with regard to financial implications and nature of the work. Their Lordships in the judgment held as under at p. 1229 of LLJ:

"26. Therefore, what was stated in the aforesaid case cannot be called in aid at all by the appellants, according to us, the case is more akin to that of *State of Haryana v. Piara Singh and others* 1993 2 LLJ 937, in which this Court favoured the State Scheme for regularisation of casual labourers who continued for a fairly long spell say two or three years. As in the cases at hand the concerned workmen had, by the time they approached the Industrial Courts worked for more or less 5 years continuously, no case for interference with this part of the relief has been made out"

(emphasis applied by us)

29. In *Piara Singh's* case (supra) still another Bench of three Judges of the Apex Court has clearly stated the principle that 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 service. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. The authorities ought to adopt a positive approach coupled with an empathy for the person.

30. A Full Bench of this Court in the case of *Surjit Singh v. State of Punjab* 2000 (2) SCT 279 though expressed certain divergent view on certain issues but their Lordships expressed unanimity that wherever the Government has framed a policy of regularisation in that event the employees can seek regularisation of service subject to fulfilment of conditions.

31. In the light of the above enunciated principles of law, it will be appropriate to refer and spell out the conditions which can be considered by the competent authorities while entertaining request of an employee for regularisation of his services;

(a) While considering the claim of regularisation the persons raised such a claim ought to be employed by the State as casual or daily rated workers.

(b) The employee ought to have worked in that capacity for a fairly long period, satisfying the ingredients of Continuity in service.

(c) The circumstances and job requirement should indicate in definite terms the need for continuation of such posts in future.

(d) The functions being discharged and work being forced by such employees should be similar to that being performed by their regular counterparts of the same department. The work and performance of the employees should be satisfactory.

(e) Wherever the State has framed the policy for regularisation and has specified norms, the employee(s) should satisfy all such norms as well.

32. All other conditions are primarily satisfied in the present case favourably to the petitioner. The only ground for denying them the relief of regularisation as pleaded by the State before the Court is lack of permanent vacancies. The State has been framing policy for regularisation of such casual/daily rated workers now for quite sometime and the last policy framed by the State is dated January 23, 2001 Annexure P-1 to the writ petitions. State of Punjab framed this policy with the object of reviewing the policy of regularisation of work charged/daily wagers and even other categories of employees. The main feature of this policy is that each Department is to prepare a list of work charged/daily wagers who have completed three years service and such list may be up-dated from time to time. The lists are to be prepared strictly as per seniority. The claim for regularisation is to be considered against the available vacancies in the department to which these vacancies belong. The policy in its terms intends to give precedence to its contents over the departmental circulars for recruitment.

33. The State Government in order to implement the policy more effectively provided two specific Clauses in the policy which read as under:

"(i) No new posts are ordinarily to be created to absorb and regularise existing workcharged/daily wage and other categories of workers. Wherever the full circumstances of the particular situation warrant that new posts may be created, the case should be thoroughly examined. Finance Department should be consulted and approval of the CMM should be obtained.

(ii) Each department may prepare a list of workcharged, daily wage and other categories of workers who have completed 3 years service and these lists may be updated from time to time. The lists should be prepared strictly as per seniority.

(iii) Out of the lists prepared thus, workers should be absorbed/regularised only against regular posts existing in each department. In the first instance workcharged workers should be regularised in the order of seniority. Only when all eligible persons of that category have been accommodated cases of daily wage and other categories of workers who, have completed three years of service in the department may be taken up. The basic idea is that workers belonging to particular department should be considered for regularisation only against available regular vacancies in that department. The claim of workcharged/daily wage/other categories of workers for regularisation will extend only against available vacancies in the department to which these workers belong.

(iv) For accommodating workcharged / daily wage/other category workers as per the above policy against the existing vacancies the existing instructions requiring permission of the Department of Personnel and Department of Finance for filling up the vacancies would not apply. Wherever for the absorption/regularisation of workers as per the above policy any Departments own Recruitment Rules come in the way such provisions of the recruitment Rules will stand relaxed.

2. Attention is also invited to Government letter No. 4/64/98-4PP3/5011, dated May 4, 1999 vide in which a complete ban on recruitment of daily wage/work charged workers was imposed. Wherever any person was employed in violation of these instructions the Department may take suitable action against the defaulting officer.

It shall be the responsibility of the Head of each Department to ensure that no worker employed in violation of the above instruction is allowed to continue".

34. The learned counsel appearing for the State during the course of arguments fairly stated that the restrictions placed on creation of posts under Clause (1) is not an absolute bar. The purpose of the Clause is not to permit the department to create the posts unnecessarily and without concurrence of the Department of Finance. Despite a ban having been made under Clause (2) of the said policy as per the document placed before us some of the departments are still continuing to engage daily rated/ casual workers in addition to the existing strength. We would quite agree with the submission made before us that the purpose of this

policy is not to place prohibition for creation of posts but the concerned authorities have been cautioned to act carefully in this regard. We are equally aware of the situation where it may be necessary for the department to engage casual or daily rated workers in emergent situations. Such situation would normally be extraordinary and would be a rare exception to the rule of not engaging such workers till the scheme has been fully and finally implemented. The purpose of the scheme is to discharge constitutional obligation of the State in conformity with the provisions of equality by protecting the socio economic goal of providing security of tenure to hundreds of these workers and families dependent upon them. The policies are intended to improvise an effective and lasting solution to prevent unfair labour practices which any State of a democratic system can ill afford.

35. The State at its own with the intention to clarify and amplify scope of its own then existing policies of regularisation issued a clarification dated January 22, 1997 which stipulated as under:

"Some of the eligible employees could not be regularised for want of regular post in some of the Departments of Government. It has therefore, been decided that in order to regularise the services of the eligible employees belonging to work charged and daily wagers /casual labour the requisite: number of posts should be created by the Finance Department as arrears were personal to them. They were, therefore, requested to take immediate step for sending a proposal in regard to creation of posts for these eligible employees belonging to work charged and daily wagers/casual labour in their subordinate departments/offices whose services are required to be regularised as per instructions letter No. 11 /35/94/4PP. III/1790 dated March 2, 1995, No. 11/35/ 94/4PP. III/20872 dated October 13, 1995 and No. 11/35/94-00. III/18402 dated October 29, 1996 of Department of Personnel & Administrative Affairs."

36. The above discussion clearly justifies the prayer of the petitioners for regularisation of their service before this Court. The State policy for regularisation exists. The apparent function of the State being full implementation of the policy and not partially would obviously require the State to take certain effective steps with utmost expedition to remove the uncertainty in the mind of the workman which has been lurking in their minds now for a sufficiently long period. The stand taken by the State before us appears to be fair and does not indict the State of adopting unfair labour practice.

37. An ancillary but most pertinent question which we must deal with now is in regard to the stand of the State of denying regularisation to the petitioners on the ground of non- availability of permanent vacancies.

38. Expression cadre has been given definite connotation in service jurisprudence. It primarily indicates the number of posts in a particular service. In other words, it means the strength of service or part of the service sanctioned as separate unit and it is so definite under ,the Punjab Civil Service Rules. A

permanent vacancy is referable to a post or a vacancy available in the regular Cadre. Examined even in another parlance a vacancy is normally referable to the discretion of the authority to create a post. The administration would normally create a post when the State has the financial capacity to pay and there is sufficient work for that post. In other words, creation of a vacancy is correlated to the job requirement and financial position. The learned counsel appearing for the State fairly stated that these two factors would persuade the State to create posts and fill up the vacancies in accordance with the service rules or its policies. In the present cases, the material on record clearly shows that the work has been in existence and the State has been paying salary though on different rates to the employees for a period as long as 7 to 16 years. This, in our view is sufficient to show that there is every likelihood for the work to continue. The continuation of these posts is certainly need based and it is so conceded by the State, Most of the petitioners are doing the works like maintenance, complaints of essential supply, buildings, gardens, drivers, while other class of employees like Ledger Keeper and Bill Clerks for calculation of Government revenue are the jobs which are only likely to increase rather than decrease in the days of development.

39. The learned counsel appearing for the petitioners relied upon a view of the learned single Bench of this Court in the case of Kulwant Singh and others v. State of Punjab and others C. W.P.No. 17345 of 2000 decided on December 10, 2002 to contend that the concept of "Deemed vacancy" would be attracted in the present case and Court will have to presume existence of vacancies.

40. It may not be possible and practically acceptable to concur with the said view as an absolute preposition of law. What should be noticed is that the judgment sufficiently indicates the actions or duties which the respondent should perform in the larger public interest and in discharge of its constitutional obligations. Even in the case of Piara Singh (supra) the Hon"ble Apex Court applied the principle of fair presumption to aid its ultimate conclusion. Their Lordships clearly stated "if a casual labourer is: continuing for fairly long span say two or three years, a presumption may arise that there is regular need for his service" (Emphasis applied by us). In the case of Dhirendra Chamoli and Another Vs. State of U.P., , their Lordships while granting the relief of equal pay for equal work to the petitioners and rejecting the contention of the, State on the plea of estoppel and appointments being not against sanctioned posts, held as under at p. 135 of LLJ:

"2. This argument lies ill in the mouth of the Central Government for it is an all too familiar argument with the exploiting class and a Welfare State committed to a socialistic pattern of society cannot be permitted to advance such an argument. 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 exploitative terms are offered by the employer....."

xx xx xx

"These employees who are in the service of the different Nehru Yuvak Kendras in the country and who are admittedly performing the same duties as Class IV employees, must, therefore, get the same salary and conditions of service as Class IV employees. 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 and conditions of service as Class IV employees."

(emphasis applied by us)

41. In Vijay Sharma 's case (supra), a Full Bench of this Court also held as under 2002 III LLJ858 :

"41.The catena of judgments afore-noticed specifically repels the various limitations put forward by the State to avoid its liability to give equal pay for equal work or even minimum of the pay scale. Leaving aside the various two Judges Benches judgments of the Apex Court apart, the three Judges Benches dealt with these limitations and were answered against the State in the following manner:

a) In the case of Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, , the plea of the State that the daily rated casual workers do not possess the requisite qualifications was rejected while holding that long experience is a substantial compliance of the prescribed qualifications, more particularly when they have worked to the satisfaction of all concerned;

b) The ground of financial limitations / financial burden of the State was repelled in the case of Jagannath Maruti Kondhare case 1996 I LLJ 1227 (supra):

c) The plea that method and manner recruitment being distinct and different and thus, State was not liable to adhere to the principle of equality was not accepted in the case of Sandeep Kumar AIR 1992 SC 613. (supra) (two Judges Bench in Jaipal and Others Vs. State of Haryana and Others, , Bhagwan Dass and Others Vs. State of Haryana and Others, ;

d) That no sanctioned posts are available for recruitment of the workers, non-availability of sanctioned posts, was held to be no excuse for denying equal pay for equal work, directions for regularisation passed in the case of Dharendra Chamoli (supra)."

42. In consonance with the above judicial pronouncements the policy of the State itself gives a legitimate right to a work charged employee for raising claim of regularisation in the event the workman has completed three years of service. This period of three years is a fair precept to the sufficiency of reasonable period for which a workman should have worked as work-charged/ daily rated before raising such a claim. Where the above factors have found approval of the Courts in various pronouncements, there the stand of the Government that services of the workman cannot be regularised for non-availability of permanent vacancy has been turned down by the Courts in large number of cases. Further more it is creation of the State founded on no reasonable ground and has no nexus to the

object of the State policy. Admittedly, the work exists, the State is incurring the expenditure quite close to the expenditure which the State would incur in the event they are called upon to regularise the services of the petitioners. Furthermore, there is no dispute that the petitioners are discharging similar duties, functions, work for the same: hours and they possess essential qualifications prescribed for appointment to the posts which their regular counter parts are possessing.

43. The rule of public necessity would require, particularly in the facts and circumstances of these cases, the State to act without delay, effectively and meaningfully, implement its policies of fair employer-employee relationship. This would even help in dispelling the plea of injustice and unfair labour practice by the State, as pleaded by the petitioners.

44. Clear enunciation of law, continuous and increasing demand of work, the fact that the State is already incurring expenditure quite close to the financial consequences, which would arise from regularisation of service of such persons, would render the submission of the State of non-availability of vacancies obdurate. To maintain the pristine of the underlying object of State welfare policy, it is need of the hour that concerned authorities should analytically examine and intellectually identify the spheres and rudiments for regularisation of services of the persons who have worked in various departments of the State for considerably long period, as a continuous process. It can hardly be disputed and rightly so has not been disputed, that this source of employment is kind of a regular source for providing employment to a particular strata of the society.

45. We allow these writ petitions holding that the petitioners would be entitled to the minimum of the pay scale with dearness allowance only. Further, we direct the State Government to implement its policy of regularisation dated January 23, 2001 and consider the cases of all the petitioners for regularisation of their service in accordance with rules and without unnecessarily emphasizing on the objection of the State that no vacancies are available at this stage. Exceptions apart, we would expect the State not to raise such objection, particularly where the work is available and there is every likelihood of such work continuing in future and employees have been working for years together.

46. The writ petitions are accordingly allowed to the above extent while leaving the parties to bear their own costs.