

(1991) 03 RAJ CK 0002
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3564 of 1989

Om Prakash Meghwal and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 27-03-1991

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (1991) WLN 112

Hon'ble Judges : A.K. Mathur, J

Bench : Single Bench

Judgement

A.K. Mathur, J.—All the writ petitions mentioned in the Schedule are disposed of by the common order as they involve similar question of law. For the convenient disposal of all the writ petitions, the facts given in S.B. Civil Writ Petition No. 3564 of 1989 are taken into consideration.

2. This writ petition and those mentioned in the annexed schedule involve a complex human problem that employees serving in various departments having continued in service for number of years, still they are treated as casual employees and are being paid at the rate of daily wages. In spite of putting in number of years service they are still insecure about their job as well as their economic condition. This problem has received a serious consideration by the Hon'ble Supreme Court in various decisions which I will have an occasion to discuss at appropriate place. However, the fact remains that the Government has not paid much attention to this human problem, which has resulted in large number of petitions in this Court. Therefore, in order to lay down general guidelines which has emerged from the various decisions of the Hon'ble Supreme Court, all these cases are disposed of by this common order.

3. Petitioners in this writ petition are casual labour employees of the Public Health Engineering Department, for short, PHED. Some are working as Pump Drivers (Gr. II) and others on various posts on daily wages. The petitioners are continuing in service right from 1985 onwards, therefore, the petitioners by this

writ petition have prayed that the respondent State of Rajasthan be directed to regularise the services of these daily wage employees in terms of Rule 3(3) of the Rajasthan PWD (B&R) including Gardens, Irrigation, Water Works & Ayurvedic Departments Work charged Employees Service Rules, 1964 (hereinafter referred to as "the Rules"). The Rules of 1964 define "Work charged Employee" under Rule 2(a) which reads as under:

2(a) "Work-charged Employee" means any person actually employed for or on the execution and/or supervision of works both original and maintenance, supervision of departmental labour, stores, machinery and works, etc. paid on daily or monthly basis."

Rule 3 lays down the categorisation which reads as under:

(1) Work charged employee (including the regular technical staff of Water Works Department) for the purpose of these rules shall be divided in to the following three categories:

- (i) Permanent Status,
- (ii) Semi-Permanent Status, and
- (ii) Casual:

Provided however, that nothing in these rules shall entitle any work-charged employee, categorised permanent or semi-permanent to claim the status or benefits of permanency or semi-permanency to which a regular Government employee is entitled under the Rajasthan Service Rules.

(2) Employees, who have been in service for ten years or more, shall be eligible for the status of permanent work charged employees provided their record of service, in the opinion of the competent authority, is satisfactory.

(3) Employees in continuous service for two years or more except those covered by Sub-rule (1) shall be eligible for the status of semi-permanent work charged employees or of semi permanent regular technical staff, provided their record of service in the opinion of the competent authority, is satisfactory.

(4) No employee shall acquire the status specified in Sub-rules (2) and (3) without the prior sanction of the competent authority, as may be notified by the Head of the Department from time to time.

Clarification : - It has been observed that in the matter of declaring of semi-permanent and permanent status of work charged employees under rule 3 of the Rajasthan Public Works Department (P & R) including Gardens, Irrigation, Water Works and Ayurvedic Department Work charged Employees service Rules, 1964, a uniform policy is not being adopted by the departments where work charged employees are engaged. The casual Work-charged employees are declared as semi-permanent and allowed regular pay scales with other benefits like leave, medical facilities, traveling and daily allowance etc., as soon as they complete 2

years under the plea that it is obligatory to declare them semi permanent on completion of 2 years according to Rule 3 of the above said Rules.

It is clarified that Rule 3(3) only mentions that an employee becomes entitled to be declared as semi permanent on completion of 2 years" service provided his service record is satisfactory and sanctioned post is available besides other condistions, such as age at the time of recruitment and medical fitness etc., are fulfilled. It is, therefore, enjoined upon all the concerned departments that the casual workers should not be declared semi permanent on completion of 2 years service only and allowed pay-scales unless other conditions mentioned above are also fulfilled, (vide D.O.P. Notification No. F. 5 (11) DOP (A-11)174 dated 19.9.1980.

The principal submission of the learned Counsel for the petitioners in all these writ petitions is that under Rule 3(3) of the Rules the employees who have put in two years continuous service are eligible for the status of semi-permanent and a direction should be given that all these employees may be declared as semi-permanent after completion of two years" service.

4. The learned Counsel for the petitioner has also invited my attention to the decision given by this Court in the case of Rashtriya Nal Mazdoor Sangh v. State of Rajasthan and Ors. decided on May 21, 1987 and the decision of this Court in Kamal Kumar v. State and Ors. D.B. Civil Writ Petition No. 1319/87 decided on April 19, 1988 and a decision given in the case of Vinod Kumar and Ors. v. State and Anr. S.B. Civil Writ Petition No. 1116/90, decided on December 01, 1990. The learned Counsel also invited my attention to a decision given in Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others,

5. As against this the stand of the State Government is that Rules 3(3) of the Rules only makes a person eligible for the status of semi permanent & it has to be read with Rules 3(4) of the Rules which says that a prior sanction of the competent authority as notified by the Head of Department from time to time has to be taken for declaring them semi permanent. A clarification has also been issued by the State Government under this Rule which already been quoted above.

6. The effect of declaring the incumbent semi-permanent carries with it certain benefits i.e., he shall be given a pay scale as given in Rule 12 and will be entitled to increment under Rules 13 and dearness allowance etc. under Rule 14. Similarly, he is entitled, to benefits of leave as given in Rule 15 and necessary other facilities like medical facility under Rule 21 and Provident Fund under Rule 22. Learned Addl. Government Advocates submitted that it involves financial implication therefore it is not automatic that after the completion of 2 years service incumbent can acquire a status of semi permanence.

7. The Additional Government Advocate have pointed out that the State Government had earlier issued a communication dated November 1, 1985 and directed that those incumbents who have put in two years" or more service on

1.4.1985 and whose services are satisfactory then they may be declared semi-permanent with effect from 1.4.1985 and be allowed regular pay-scale. The notification is place on record. Which reads as under:

Government of Rajasthan

Public Health Engineering Department

The Chief Engineer, PHED

Government of Rajasthan,

Jaipur.

No. F.21(1)/PHE/85

Dated : 1st November, 1985

Sub : - Declaration of work-charged employees as semi-permanent and permanent in Public Health Engineering Department.

Sir,

I am directed to say that not with standing provisions of Rule 3(3) of the Rajasthan Public Works Department (B. & R.) including Gardens, Irrigation, Water Works and Ayurvedic department, Work Charged Employee's Service Rules 1964 and in Department of Personnel (A-II) Circular No. F. 5(11)DOP/A-II/74 dated 26.6.92, it has now been decided that.

(1) All the work-charged employees covered under the above Rules, who have been continuously working on work-charged posts and completed 2 years or more service on 1.4.85 and their work being satisfactory during the above period, may be declared semi-permanent w.e.f. 1st April, 1985 and allowed regular pay scales w.e.f. 1st April, 1985.

(2) All the work-charged employees who have been continuously working on work-charged posts and have completed 10 years or more service on 1.4.85 and their service record being satisfactory during the above period, may be declared permanent work-charged employees w.e.f. 1st April 1985.

This issues with the concurrence of Finance Deptt. vide their I.D.N.2039/FD.Exp-IH/85 dt. 17.10.85 and of Department of Personnel (A-II) vide J.D.No. 6121/SSP/85 dated 1.11.85.

Yours faithfully,

Sd/-

(Gurdev Singh)

Special Secretary of Govt.

8. It is submitted by him that in the decision given in the S.B. Civil Writ Petition

No. 1116/90 decided on December 01, 1990, the financial aspect was not considered. Likewise, in the case of Kamal Kumar v. State and Ors. decided by D.B. Bench at Jaipur, there also the effect of Sub-rule (4) of Rule 3 of the Rules was not considered.

9. I have considered the rival submissions of the learned Counsel at length.

10. Sub-rule (3) of Rule 3 of the Rules of 1964 lays down certain eligibility criterion i.e., a person who has put in two years' continuous service and whose work is satisfactory, then he can be declared a semi-permanent provided his record is satisfactory. A clarification has been issued under this Rule which further qualifies that the incumbent who has completed two years' service and whose record is satisfactory then he can only be declared semi-permanent if sanctioned post is available and he satisfies other conditions such as age at the time of recruitment, medical fitness, etc. The Rule 3(3) lays down the eligibility criteria for declaring the status of semi-permanence but the clarification which has been issued by the State Government under this Rule cannot override the statutory rules framed by the Governor under the proviso to Article 309 of Constitution. Sub-rule (3) of Rule 3 only says that the incumbent who has put in two years of continuous service is eligible for the status of semi-permanence but this is not been circumscribed by any other rider of sanctioned post. The clarification which has been much emphasized by the learned Addl. Government advocate cannot supersede the statutory rules. This is only an administrative instruction & such administrative instruction cannot circumscribe the rules framed under the proviso to Article 309. Likewise, Sub-rule (4) of Rule 3 of the Rules of 1964 does not talk about the financial sanction in respect of the posts. The Sub-rule 4 only says that a prior sanction has to be taken of the competent authority to be notified by the Head of Department from time to time. Therefore, it is held that Sub-rule (4) of Rule 3 also does not talk about the so-called financial sanction which has been much emphasized before me. The sub-rule 4 only requires that the declaration of a semi-permanent status is to be given by a competent authority. It is not necessary that in every case the competent authority should be the Head of Department. This power can be delegated by the Head of Department to any person whom he thinks proper for the exercise of such power. Therefore, sub-rule (3) of Rule 3 is not circumscribed by financial sanction. This Court, when the matter first came before it for consideration in the case of Rashtriya Nal Mazdoor Sangh v. State of Rajasthan, had examined this aspect though in a different context that is equal pay for equal work and after reviewing the cases on the subject available at that time observed:

Rule 3(3) provides that if these casual/daily wages work-charged employees have completed two years service or more they shall be eligible if in the opinion of the competent authority their services are satisfactory. This rider has been put for acquiring semi-permanent status. Thus, a casual or daily wages worker cannot as a matter of right acquire the status of a semi-permanent employee. The eligibility is that he should have worked as casual or daily wages for a period

of two years. Thereafter his satisfactory work has to be judged by the competent authority then and then only he can be given a status of semi-permanent.

11. Similar question also came before the Division Bench At Jaipur and in that case it was held as under:

We have referred to the Sub-rule (3) of Rule 3 above and at the cost of repetition It may further be said that any work charged employees in continuous service for two years or more except these covered by Sub-rule (1) shall be eligible for the status of semi-permanent work charged employees. There is nothing in the rule that he is only entitled to the confirmment of the aforesaid status only on the post he was initially appointed, all that is required is that he must have continuous service for two years or more.

12. Recently, in the case of Vinod Kumar and Ors. v. State and Anr. S.B. Civil Writ Petition No. 1116/90, the matter was examined and it was observed:

The only embargo provided under Sub-rule 2 & 3 is that the record of service in the opinion of the competent authority must be satisfactory.

13. The argument of the State regarding financial sanction was negated.

14. In the case of Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others, number of persons were serving in different disciplines and they claimed that they were appointed through the Employment Exchange. They contended that they had been compelled to approach the Court as their services were likely to be terminated. It was continued that till the notification dated July, 30, 1988 was issued amending the rules there was no question of the Authority consulting the P.S.C. and, therefore, the appointment made prior to that cannot be termed as irregular or unauthorised. They were threatened with termination, therefore, they approached the High Court and the matter ultimately reached the Hon''ble Supreme Court. It was continued supra, the Hon''ble supreme Court that certain guidelines for regularisation of the services of such persons should be laid down so that these low-income group employees may not be forced to suffer hardship resulting from job insecurity and constant threat of impending termination. Therefore, it was submitted that let a scheme be formulated by the apex court so that all the litigation which might arise in future could be cut short. In that context, the Hon''ble Supreme Court examined the matter and laid down the general criteria as to how the services of the incumbents should be regularised. Hon''ble Supreme Court reviewed the earlier cases on the subject and thereafter laid down the following proposition for regularisation of the employees who are temporarily appointed and working for a considerable time as daily wage work-charged employee. It was observed as under:

(1) The Authority will with immediate effect regularise the services of all ex-PHED employees as per ifs resolution of 30th January, 1987 without for State Government approval.

(2) The services of workers employed by the Authority between 1st April, 1984

and 4th August, 1986 will be regularised with immediate effect if they possess the requisite qualification for the post prescribed on the date of appointment of the concerned workers.

(3) The services of workers appointed after 4th August, 1984 and possessing the requisite qualifications should be regulated in accordance with Act 19 of 1970 provided they have put in continuous service of not less than one year, artificial breaks, if any, to be ignored. The Kerala Public Service Commission will take immediate steps to regularise their services as a separate block. In so doing the Kerala Public Service Commission will take the age bar as waived.

(4) The Kerala Public Service Commission will consider the question of regularisation of the services of workers who possess the requisite qualifications but have put in less than one year's service separately. In doing so the Kerala Public Service Commission will take the age bar as waived. If they are found fit they will be placed on the list along with the newly recruited candidates in the order of their respective merits. The Kerala Public Service Commission will be free to rearrange the list accordingly. Thereafter fresh appointments will issue depending on the total number of posts available. If the posts are inadequate, those presently in employment will make room for the selected candidates but their turn arrives in regular course. The list will ensure for such period as it is permissible under the existing rules.

(5) The Authority will be at liberty to deal with the service of the workers who do not possess the requisite qualification as may be considered appropriate in accordance with law.

(6) Those workers whose services have been terminated in violation of this court's order in respect of which contempt petition No. 156 of 1990 is taken out shall be entitled to the benefit of this order as if they continue in service and the case of each worker will be governed by the clause applicable to him depending on the category to which he belongs and if he is found eligible for regularisation he will be restored to service and assigned his proper place. This order will regulate the services not only of the parties to the present petitions but also all others similarly situated including those who may be parties to other proceedings pending in different courts.

15. Mr. Ojha and Mr. Acharaya, learned Counsel for the respondents submitted that the ratio laid down in the aforesaid cases is not applicable in the present case because the Government has already framed the Rules known as the Rajasthan P.W.D. (B & R) including Gardens, Irrigation, Water Works & Ayurvedic Departments Work-charged Employees Service Rules, 1964 (referred to hereinafter as "the Rules of 1964") and a scheme has been formulated that the incumbents who have put in 10 years of service shall also be eligible for permanent status and likewise the incumbents who have completed two years of service shall also be eligible for semi-permanent status. Learned Counsel have also invited my attention to the circular dated 1.11.1985 issued by the

Government of Rajasthan whereby a general direction has been given by the Government that all the employees who have completed two years of service or more on 1.4.1985 and their work being satisfactory during this period they may be declared semi-permanent w.e.f. 1.4.1985 and they may be allowed regular pay scales. It has also been mentioned that those work-charged employees who have been continuously working on work-charged posts and have completed 10 years or more service on 1.4.1985 may be made permanent.

16. Thus, the learned Counsel submitted that the Government itself has framed the scheme and issued the circular that all those incumbents who have completed 10 years of service and their work is satisfactory then they may be made permanent and those who had two years satisfactory service may be made semi-permanent.

17. Learned Counsel has also invited my attention to the observations of their Lordships of the Supreme Court made in the case of *The Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others, etc. Vs. State of Karnataka and others etc.*, which read as under:

We can well realise the anxiety of the petitioners who have waited too long to share the equal benefits mandated by Part IV of the Constitution in respect of their employment. At the same time, we cannot overlook the constraints arising out of or connected with availability of State resources. Keeping both in view and reposing our trust in the relevant instrumentalities of the State that may be connected with the implementation of the scheme to act with a sense of fairness, anxiety to meet the demands of the human requirements and also anxious to fulfil the constitutional obligations of the State, the directions which we give below will give a final shape to the scheme thus:

1. The casual/daily rated employees appointed on or before 1.7.1984 shall be treated as monthly rated establishment employees at the fixed pay of Rs. 780/- per month without any allowance with effect from 1.1.1990. They would be entitled to an annual increment of Rs. 151- till their services are regularised. On regularisation they shall be put in the minimum of the time scale of pay applicable to the lowest Group D cadre under the Government but would be entitled to all other benefits available to regular government servants of the corresponding grade.

Those belonging to the B or C Groups upon regularisation shall similarly be placed at the minimum of the time-scale of pay applicable to their respective groups under government service, and shall be entitled to all other benefits available to regular government servants of these grades.

2. From amongst the casual and daily rated employees who have completed ten years of service by 31.12.1989, 18,600 shall Immediately be regularised with effect from 1.1.1990 on the basis of seniority-cum-suitability.

There shall be no examination but physical infirmity shall mainly be the test of

suitability.

3. The remaining monthly rated employees covered by the paragraph 1 who have completed ten years of service as on 31st December, 1989, shall be regularised before 31st December, 1990, in a phased manner on the basis of seniority-cum-suitability, suitability being understood in the same way as-above.

4. The balance of casual or daily rated employees who become entitled to absorption on the basis of completing ten years of service shall be absorbed/regularised in a phased manner on the same principle as above on or before December 31, 1997.

5. At the point of regularisation, credit, shall be given for every unit of five years of service in excess of ten years and one additional increment in the time scale of pay shall be allowed by way of weightage. There was a direction that the claims on other heads would be considered at the time of final disposal. We have come to the conclusion that apart from these reliefs no other would be admissible.

18. It is true that the Apex-Court was conscious of the human agony of these daily rated/wages bread earners who have continued in service for considerably long time and they are still on the paltry sum without any security of the job. The Hon'ble Supreme Court was also conscious of the financial constraints of the State Governments therefore, they gave a phased direction. But after the issuance of this circular dated 1.11.1985 the State Government remained silent and no further orders in this regard have been issued redressing the agony of these daily rated employees. If the Government was conscious enough then perhaps it would have issued the order in line issued on 1.11.85. I am also conscious of the financial constraints of the State Government, but at the same time. I cannot ignore the impact of Chapter IV of the Constitution and the decisions delivered by their Lordships of the Supreme Court referred to above. The provision of Rule 3(2) has already been interpreted by the Division Bench at the Jaipur Bench of this Court but this clarification which has been given below the rule was not brought to the notice of the Hon'ble Judges constituting the Division Bench, Even if this clarification has been brought to the notice of Division Bench the interpretation would not have been different as the clarification which has been issued by the authorities in exercise of their administrative power would not override Statutory Rules. According to the view taken by the Division Bench it is clear that the incumbents after having completing 10 years of service and their work being found satisfactory are entitled to be treated as permanent and likewise those incumbents who have completed two years of service with satisfactory record of service are entitled to be treated as semi-permanent. It is true that under Sub-rule (4) of Rule 3 a positive order has to be passed by the competent authority and if the competent authority has been conscious enough and has realised the aspirations of these lowly paid employees then perhaps they would have issued the further circular in line with circular issued on 1.11.1985. But no such realisation has been dawn upon the Government and this anguish has been ventilated before this Court.

19. Therefore, in this view of the matter I hold that the incumbents who have completed 10 years service or more till this date may be declared permanent if their record is satisfactory and those incumbents who have complete two years service or more and their record is satisfactory, may also be given the semi-permanent status and other incumbents, who have completed less than two years of service may be progressively regularised.

20. This writ petition alongwith the writ petitions mentioned in Schedule appended with this judgment accordingly disposed off.