
(1999) 09 PAT CK 0107
In the Patna High Court
Case No : C.W.J.C. 6478/1988 and Others

Pramod Jha and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 22-09-1999

Acts Referred:

Citation : (1999) 09 PAT CK 0107

Final Decision : Dismissed

Judgement

B.P. Singh, J.—The petitioners in these writ petitions are persons who were engaged to work on the project known as "The Dakranala Pump Irrigation Project" which is an irrigation project of the Government of Bihar, designed to pump water out of river Ganga with a view to irrigate lands in the area with the aid of canal net work. The main work site of the project is located in the District of Munger near the confluence of rivers Dakranala and Ganga. The project was approved by the Central Water Commission, New Delhi, in the year 1966 and was accorded administrative approval from the Water Resources Department of the Government of Bihar. Under the project, 43.20 kms. of main canal, 76.86 kms. of distributory canals and 151.06 kms. of village channels were to be constructed in the first phase of the project. Thereafter, in the second phase, 22.23 kms. of branch canals, 26.25 kms. distributory canals and 30 kms. village channels were to be constructed. The project also involved installation of nine pumps for lifting the water from river Ganga and distributing the same to the fields through a network of canals. The project sought to provide irrigational facilities to 54,000 acres of land. The work on the project commenced in the year 1978.

2. For the execution of the works under the said project, a circle know as the "Ganga Pump Canal Circle, Munger, was created under a Chief Engineer. The said circle was divided into four sub-divisions, namely, Ganga Pump Canal Division I, Ganga Pump Canal Division II, Ganga Pump Canal Division, Suryagarha, and Ganga Pump Canal Division, Sultanganj. In connection with the execution of the

works under the project, large number of persons were engaged, including the petitioners. The petitioners in C.W.J.C. No. 6478 of 1988 were employed between the years 1979 and 1981, while petitioners in C.W.J.C. No. 7575 of 1995 claim to have been employed in the years 1984 and 1985. So far as the petitioners in C.W.J.C. No. 6520 of 1995 are concerned, there is considerable dispute as to the dates on which they were appointed. Petitioner No. 1 claims that he has been working as a Chowkidar since January 1, 1991 while petitioner No. 2 claims that he has been working as a Chowkidar since November 1, 1989. The respondents have disputed their claims and according to the respondents, they were engaged much later. This aspect of the matter will be considered later.

3. It appears that in the State of Bihar a very large number of persons were being engaged in the Department of the Government on daily wage basis by the appointing authorities, and this practice was discouraged by the State Government. Rather than making regular appointments against the sanctioned posts, the appointing authorities illegally made appointments on daily wage basis in an illegal manner which gave rise to claim for regularisation in future. Despite the efforts of the State of Bihar to stop this practice, the appointing authorities observed the directions of the Government in their breach. Ultimately a stage was reached when the Government had to take the decision to terminate all employments on daily wage basis/ appointments on muster roll with a view to do away with the pernicious practice. The directions issued by the Governments for the termination of the employment of those engaged on daily wage basis related really to the employment granted on such basis in the various Departments of the Government. So far as the projects are concerned, by the very nature of the work, the engagement must come to an end when the work of the project is completed. A Full Bench of this Court in *Bijoy Kumar Bharti and Others Vs. State of Bihar and Others*, , held, following the judgment of the Supreme Court in *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others*, , that the Department of irrigation of the Government of Bihar shall be deemed to be an "industry" within the meaning of the Industrial Disputes Act, since it was involved in activity for satisfying human needs which were analogous to trade and business.

4. For the execution of the project, large number of persons were engaged on daily wage basis. However, in the year 1981, the Government of Bihar took a policy decision to adjust the services of the persons working in the work charge establishments in the regular establishments and as a result thereof, as many as 482 employees working in the work charge establishments under the Chief Engineer were adjusted in the regular establishment of the Department. According to the petitioners, about 175 posts in the regular establishment remained vacant under the aforesaid Chief Engineer, but he took the view that there was no need of engaging persons on muster roll after the aforesaid adjustment of the services of large number of persons against regular establishment. He, therefore, by this letter dated December 7, 1981 directed his subordinates to discontinue the engagement of persons on muster roll. According

to the petitioners, this caused inconvenience as requisite number of hands were not available for execution of the project. The officers of the sub-divisions, therefore, informed the Chief Engineer of the difficulties faced by them. However, the Chief Engineer by his Memo No. 463 dated February 8, 1982 directed his subordinates to immediately terminate all the daily wage employees working in the Munger Subdivision. Pursuant to the said direction of the Chief Engineer, all the daily wage employees in the Munger Circle were disengaged. It is the case of the petitioners that in the absence of sufficient number of hands to look after day to day work in the divisions, the Executive Engineers posted in the divisions were compelled to engage persons on daily wage basis despite the directions of the Chief Engineer. The petitioners in C.W.J.C. No. 7575 of 1995 were thus engaged in the years 1984-1985.

5. It appears that 80 daily wage employees challenged the termination of their engagement by filing a writ petition being C.W.J.C. No. 1613 of 1982. Vide judgment and order dated January 4, 1986, the said writ petition was disposed of. It was urged before this Court that the petitioners in that writ petition had worked for more than 240 days in a year and therefore, they were entitled to continue in service and to be absorbed on regular basis if and when vacancies arose. Counsel for the State accepted the position that if they had worked for more than 240 days continuously in a calendar year, they were entitled to be regularised in case vacancies arose. The Court found it difficult to record a categorical finding as to whether the concerned petitioners had or had not worked for 240 days in a year. In these circumstances, the matter was remitted to the Chief Engineer, Irrigation Department, Bhagalpur for consideration of the cases of the petitioners who was directed to examine the records and take a decision in accordance with law.

It is the case of the petitioners that pursuant to the order of the Court, the aforesaid retrenched employees were re-engaged in the month of September, 1986.

6. In the year 1986, the State Government took a policy decision not to engage persons on daily wage basis, but to fill up the aforesaid posts in a regular manner and also to retrench persons engaged on daily wage basis. It was decided that those daily wage employees who were engaged after August 1, 1985, shall be retrenched. And that the services of those engaged prior to that date shall be regularised. The grievance of the petitioners is that despite the policy decision of the State Government, no steps were taken to regularise the persons engaged prior to the cut off date, or to fill up the available vacancies in the regular manner. This led to an agitation and ultimately the different employees' unions of Class III and Class IV employees resorted to strike in the years 1991 and 1992. In February, 1992 an agreement was arrived at and thereafter a detailed circular laying down the procedure of absorption/retrenchment of the daily wage employees was issued vide circular No. 5940 dated June 18, 1993. In accordance with the circular, daily wage employees who

had worked at least for 240 days prior to the cut off date were to be given preference in the matter of employment, other things being equal. A departmentwise panel as per the reservation policy of the State Government was to be prepared. Those engaged on daily wage basis after the cut off date were to be retrenched after complying with the provisions of Section 25F of the Industrial Disputes Act. Pursuant to the decision of the State Government, the Chief Engineer directed his subordinates vide letter No. 1455 dated May 24, 1993 to terminate the services of the daily wage employees engaged after the cut off date. The directions issued by the Chief Engineer were not carried out for different reasons including the fact that these employees had to be paid their compensation and arrears of wages for which fund had to be sanctioned. When the matter came to the notice of the Government in May-June, 1995, the requisite fund was made available to the Chief Engineer, who by his order contained in Memo No. 823 dated June 27, 1995 directed his subordinates to terminate the engagement of daily wage employees who had been engaged after the cut off date. The termination was to be made effective from August 1, 1995 and necessary steps were to be taken from July 1, 1995. The subordinates were also told in clear terms that after August, 1995, no funds would be made available by the Department for payment of wages to employees engaged on daily wage basis after the cut off date.

7. The concerned Executive Engineers issued a notice to the petitioners on July 1, 1995 to show cause why they be not retrenched in accordance with the provisions of Section 25F of the Industrial Disputes Act. It appears from Annexures 23, 24 and 25 series that notices were issued to the concerned daily wage employees on June 30, 1995 stating that on account of curtailment of the project and reduction of financial allocation, the work on the project had been reduced and therefore, there was no need to continue their engagement on daily wage basis. Accordingly, a notice was given u/s 25F of the Act that the engagement shall be terminated with effect from August 1, 1995. By another notice issued on July 1, 1995, for the same reasons the concerned daily wage employees were called upon to show cause why their services be not terminated following the procedure laid down u/s 25F of the Industrial Disputes Act. The show case, if any, had to be filed on or before July 7, 1995. Annexure 26 series are the representations made by the concerned daily wage employees. After consideration of the show cause/representations filed, a decision was taken to retrench the daily wage employees u/s 25F of the Act. The order finally passed had not been annexed in C.W. J.C. No. 6478 of 1988, but a copy of the same has been filed as Annexure-11 in C. W. J.C. No. 7575 of 1995. Stating the same reasons as were stated in the notice dated July 1, 1995, the concerned workmen were informed that they shall stand retrenched u/s 25F of the Industrial Disputes Act with effect from August 1, 1995. The amount payable to the concerned workmen u/s 25F of the Industrial Disputes Act was lying in the office of the sub-divisional office, divisional office in the form of banker's cheque and the concerned persons should definitely receive the same before August 1, 1995

from the divisional cashier. This order is dated July 28, 1995.

8. In C.W.J.C. No. 6478 of 1988, which was filed prior to the passing of the retrenchment order, the retrenchment order had not been challenged, but the petitioners were permitted to amend their writ petition with a view to challenge these orders.

9. Having noticed the broad facts, the plea of the petitioners in their writ petitions may now be noticed.

C.W.J.C. No. 6478 of 1988

There are 55 petitioners in this writ petition who claim to have been appointed on daily wage basis between the years 1979 and 1981 as would be evident from the chart, Annexure-1, filed by them. Petitioners 1 to 19 were appointed on daily wage basis in the Ganga Pump Canal Division, Suryagarha, while petitioners 20 to 33 were working under the Ganga Pump canal division No. 1. Similarly petitioners 34 to 44 were engaged in connection with the works under Ganga Pump Canal division No. II while petitioners 45 to 55 were working under the Ganga Pump Canal Division, Sultanganj. The writ petition was filed on August 29, 1988. In the writ petition as originally filed, the petitioners claimed that they should be given the same pay scale and other consequential benefits which were being given to the regular employees working in the Department from the dates of initial appointment of the petitioners. Secondly, it was prayed that the respondents be directed to absorb the petitioners in regular service. Thirdly, it was prayed that the respondents be directed to make payment of the salaries to the petitioners for the period from March 1982 to August 11, 1986 during which period they were illegally disengaged. Lastly, the petitioners prayed for cost.

During the pendency of the writ petition, when notices were issued to the petitioners for their retrenchment u/s 25F of the Industrial Disputes Act and an order was ultimately passed retrenching them under the aforesaid provision, they prayed for amendment of the writ petition and prayed for quashing of these orders.

10. The petitioners have referred to the creation of the Ganga Canal Pump circle under a Chief Engineer for the execution of the project and have claimed that while petitioner No. 1 was engaged on the post of work Sarkar, a Class III post, the remaining petitioners were engaged to work against Class IV posts. They have referred to decisions of the State Government dated September 23, 1967, May 16, 1970 and June 13, 1974 deciding to regularise the services of casual workers who had worked for 240 days in a calendar year. They have referred to the fact that large number of vacancies existed in the regular establishment, but the decision of the Government was not implemented, which gave rise to disputes. They have referred to the order of the Chief Engineer dated December 7, 1981 directing disengagement of workers appointed on daily wage basis. The difficulties created by such an order were brought to the notice of the Chief Engineer, but he insisted on the implementation of his order, and issued another

Memo dated February 8, 1992 to the same effect. Pursuant to the aforesaid two orders of the Chief Engineer, the petitioners were disengaged with effect from March 1, 1982. The petitioners and some others filed a writ petition before this Court being C.W.J.C. No. 1613 of 1982 challenging the orders of the Chief Engineer directing retrenchment and contending that since the petitioners had completed more than 240 days of continuous service, they could not be removed as per the provisions of the Industrial Disputes Act. The said writ petition was disposed of by judgment and order dated January 4, 1986 as earlier noticed, and the matter was remitted to the Chief Engineer for passing an order in accordance with law. Since, it was found that the petitioners had worked continuously for more than 240 days in a calendar year, the Chief Engineer by order dated August 9, 1986 passed an order for the employment of 54 petitioners of C.W.J.C. No. 1613 of 1982. The remaining 8 petitioners were also similarly appointed and they all joined on various dates between August 12, 1986 and September 15, 1986. Despite the fact that the sanctioned posts were lying vacant in the Munger circle, the petitioners were denied employment between March, 1982 and August, 1986, and therefore, the petitioners claim that they were entitled to payment of wages for this period as well.

11. The petitioners also represented that their services should be regularised. No regular appointments have been made since the very creation of the Munger circle and the petitioners and others were made to work on daily wage basis. This resulted in the exploitation of the petitioners who were being paid wages less than those being paid to the regularly appointed employees of the State Government despite the fact that they performed similar duties and shouldered similar responsibilities. There was no justification for engagement of the petitioners on daily wage basis with lesser wages than those regularly appointed by the Department discharging the same duties and responsibilities. The petitioners, therefore, claim that they should be given the same pay scale as was admissible to regularly appointed employees of the State Government and also claim that they should be regularised against the posts in the regular establishment. Unfortunately, the State Government took a decision on October 30, 1986 that there was no need to employ persons on daily wage basis and that their engagement should be terminated after complying with the provisions of Section 25F of the Industrial Disputes Act. The said order of the Government dated October 30, 1986 addressed to the Chief Engineer, Irrigation, Bhagalpur has been annexed as Annexure-10 to the writ petition. Pursuant to the order as contained in Annexure-10, the Chief Engineer, Irrigation, Bhagalpur directed his subordinates to terminate the engagements on daily wage basis after complying with the requirement of Section 25F of the Industrial Disputes Act. That order has been annexed as Annexure-11. Both these orders, Annexures 10 and 11 were challenged before this Court in C.W.J.C. No. 5472 of 1986, but the same was dismissed by this Court in limine vide its order dated December 5, 1986. The petitioners then moved in the Supreme Court in SLP No. 16016 of 1986. The SLP was disposed of by the Supreme Court on April 29, 1988 vide Annexure-12. It

appears from the order of the Supreme Court that Counsel for the State informed the Court that 61 appellants before the Court were already employed on daily wage basis as per the directions of the High Court. In this view of the matter, the Court quashed the order dated October 30, 1986, but observed that the order had been made without prejudice to any of the powers of the State Government to deal with the appellants as daily rated employees in accordance with law and also without prejudice to the rights of the appellants, if any. In view of the order of the Supreme Court, the petitioners continued to work against their post on daily wage basis. They claimed equal pay and regularisation and made several representations, but since their grievances were not redressed by the State Government, they were compelled to file the instant writ petition.

12. As noticed earlier during the pendency of the writ petitions, notices for retrenchment and orders of retrenchment were passed compelling the petitioners to amend the writ petition with a view to challenge those orders. This Court permitted the petitioners to amend the writ petition and to challenge the notices and orders of retrenchment passed on June 30, and July 1, 1995 which took effect from August 1, 1995.

C.W J.C. No. 7575 of 1995

13. There are two petitioners in this writ petition who have challenged the notice issued u/s 25F of the Industrial Disputes Act dated July 1, 1995 and the order of retrenchment dated July 28, 1995 which are Annexures 7 and 11 to the writ petition, and are in the same terms as similar orders passed in respect of the petitioners in C.W.J.C. No. 6478 of 1988. The petitioners have stated the facts relating to the execution of the Dakranala Pump Irrigation Project. After referring to the directions of the Chief Engineer, Irrigation, Bhagalpur dated December 7, 1981 and February 8, 1982 directing his subordinates to retrench employees on muster roll, the petitioners have averred that in view of the difficulties faced by the Executive Engineers in the concerned divisions; they employed persons on daily wage basis with a view to protect the properties etc. of the Government which had been kept for the execution of the works. The case of the petitioners is that petitioner No. 1 was engaged on July 2, 1985 as a Chowkidar on daily wages while petitioner No. 2 was engaged as a work Sarkar, a Class III post, on May 20, 1984. The petitioners have referred to the facts relating to the filing of the writ petition which has been noticed earlier in, this judgment and have also referred to the policy decision of the Government taken in the year 1986 to retrench daily wage employees employed after August 1, 1995 and to regularise those employed before the cut off date. They have also referred to the circular dated June 18, 1993 laying down the procedure for retrenchment and for absorption of daily rated employees. They have thereafter referred to the directions of the Water Resources Department dated January 21, 1993 and April 26, 1993 (Annexures 4 and 5) directing retrenchment of daily wage employees. Pursuant to these directions, the Chief Engineer directed by letter dated May 24, 1993, the Executive Engineers to terminate such engagement. Even though difficulties

faced by the Executive Engineers in the divisions were brought to his notice, by order Annexure-6 dated June 27, 1995 the Chief Engineer again directed them to terminate such engagements with effect from August 1, 1995 and to commence the process from July 1, 1995. Pursuant to his directions a notice was issued on June 30, 1995 followed by a show cause notice dated July 1, 1995, and after consideration of the show cause/representations filed by the petitioners an order was passed on July 28, 1995 retrenching the petitioners in accordance with the provisions of Section 25F of the Industrial Disputes Act. The petitioners referred to some other writ petitions filed before this Court in which an order was passed for maintaining status quo. The benefit of such order was extended to the petitioners as well so that they continued to work. The petitioners have also produced some documents to show that they were engaged from a date prior to August 1, 1985.

C.W.J.C. No. 6520 of 1995

14. In this writ petition, there are two petitioners who have challenged the order of retrenchment passed u/s 25F of the Industrial Disputes Act and have also claimed payment of salary for the period they had actually worked. It is averred in the writ petition that petitioner No. 1 has been working as a Chowkidar with effect from January 1, 1991 while petitioner No. 2 has been working as a Chowkidar since November 1, 1989. The post against which they have been working exist, since they are of permanent nature. A notice was issued to them by the Executive Engineer on July 1, 1995 which purported to be a notice u/s 25F of the Industrial Disputes Act, against which they had represented, but they had come to know that the authorities had taken a decision to terminate their engagement with effect from July 31, 1995 and the issuance of the notice was a mere eye wash. They had therefore, approached this Court with a prayer to restrain the respondents from terminating their services u/s 25F of the Industrial Disputes Act. Subsequently when a counter-affidavit was filed and the orders of retrenchment were brought on record by the respondents, the petitioners prayed for quashing of the orders of retrenchment passed against them which were annexed as Annexure A and B to the counter affidavit filed on behalf of the respondents.

15. In C.W.J.C. No. 6478 of 1998 the respondents have opposed the writ petition pleading that the petitioners were not in the regular employment of the State, but had been engaged to work on daily wage basis. Since they had been engaged on daily wage basis, the question of regularisation of their services under the regular establishment did not arise. All posts in the regular establishment have to be filled up by following the normal procedure of inviting applications from eligible candidates and through employment exchange etc.. In fact, the petitioners had filed a writ petition being C.W.J.C. No. 5472 of 1986 for regularisation of their services and for other reliefs, but that writ petition was dismissed by this Court on December 5, 1986. The petitioners had referred an appeal before the Supreme Court, but the same was disposed of without

prejudice to any of the powers of the State Government to deal with the petitioners as daily rated employees in accordance with law. The case of the respondents is that the Supreme Court did not grant them the reliefs prayed for, namely, that they be regularised against the posts in the regular establishment. The petitioners were paid their wages in accordance with the prescribed rates and there was, therefore, no discrimination. It was also contended that since the petitioners had not worked from March, 1982 to August 1986, they were not entitled to any wages for that period. The respondents also relied upon a letter issued by the State Government dated July 21, 1975 banning recruitment in work charge establishments.

By an additional counter-affidavit filed in reply to the amended writ petition, it has been brought to the notice of the Court that 70% of the work in connection with Dakra Nala Pump canal has been completed. On account of non-availability of funds, there is no possibility of allocation of fund in near future for this scheme. The Ganga Pump Canal Division Nos. I and II have been declared non works division.

16. In C.W.J.C. No. 7575 of 1995, the case of the respondents is that the petitioners therein were engaged under the Suryagarha Pump Canal Scheme where the work has been virtually completed and there is no need to engage the petitioners in connection with the works. The petitioners refused to accept the orders of retrenchment dated July 28, 1995. In a supplementary affidavit filed by the respondents it has been stated that though petitioner No. 1 was initially engaged on daily wage basis on July 2, 1985, his engagement was discontinued and thereafter he was again engaged on July 26, 1990 whereafter he has continued to work till October 12, 1995. He was not thereafter engaged.

Similarly petitioner No. 2 was initially engaged on May 20, 1984. Thereafter he was disengaged, but he has been working continuously from November 1, 1991 till October 12, 1995. Both have been paid wages up to August 1, 1995 and they had to be paid, their wages only for the period subsequent to their retrenchment i.e. for the period August 1, 1995 to October 12, 1995.

17. In C.W.J.C. No. 6520 of 1995 it has been averred by the respondents in their: counter-affidavit that both the petitioners were engaged on daily wages purely on temporary basis and were paid wages at the rate sanctioned by the Labour Department. On account of paucity of fund due to cut in plan outlay, the work of the scheme has been reduced and therefore, it was not possible to continue the engagement of the petitioners. That is why a retrenchment order was passed following the procedure prescribed by Section 25F of the Industrial Disputes Act.

It is further averred that petitioner No. 1 was engaged as a Chowkidar after October, 1984 for a period of three months during Kharif irrigation and for two months during Rabi irrigation. Some other work was given to him during the remaining period. So far as petitioner No. 2 is concerned, he was engaged at

Ajgaiby Shirsh Asthal, but the work never started due to paucity of fund. There was no possibility of starting the work in near future, and therefore, there was no need to engaged petitioner No. 2. The work which was earlier being done by regular employees of the department. Since the work in connection with which petitioner No. 2 was engaged never started, there was no need to continue the engagement of petitioner No. 2. It has also been averred that the emergency revert pump are operated for only five months in a year and that work is being done by the regular employees of the Department.

18. In the facts of these cases, the question which arises for consideration is whether the petitioners are entitled to regularisation as claimed by them. A question also arises as to whether their retrenchment u/s 25F of the Industrial Disputes Act is in accordance with law. The other issue which requires consideration is whether the petitioners are entitled to any other relief. It is not in dispute that all the petitioners were engaged in connection with the execution of the project known as "Dakranala Project". They were not appointed on daily wage basis in any Department of the Government, and therefore, their claim has to be considered in the light of the nature and purpose of their engagement on the project.

19. The term "regularisation" is well known to service jurisprudence, but over the years its meaning and import has undergone a change. The earlier judgments of the Supreme Court clearly spelt out the legal position that regularisation was not a mode of recruitment. It did not connote permanency in service. Regularisation only corrected the irregularity which may have crept into the process of making the appointments. What was irregular could be regularised, but what was void or patently illegal being in breach of constitutional provisions or the laws applicable were void and therefore could not be regularised. Any non-compliance with procedure or manner, not going to the root of the matter could be corrected by taking appropriate action and thereby regularising that which was otherwise irregular, (see R.N. Nanjundappa Vs. T. Thimmiah and Another,). In some later judgment of the Supreme Court where a claim for regularisation was made, the Court granted limited relief by directing that those working on daily wage basis for long years be given atleast the basic minimum of the scale without other benefits. Such daily wage employees were considered to be regularized by granting to them the minimum of the regular pay scale.

In recent years, however, regularisation is understood to mean absorption in service so that the persons regularised are entitled to all the benefits of a regularly employed Government servant.

20. Even in the matter of regularisation as has been held by the Supreme Court, the principles enshrined in Articles 14 and 16 of the Constitution of India cannot be ignored. Ad hoc regularisation has been discouraged, and it has been held that if there is a need for regularisation in the facts and circumstances of the case, a scheme must first be framed and all persons eligible for consideration under the scheme must be considered for regularisation. If regularisation means

absorption in service, there must be a sanctioned post against which such an employee may be regularised. Obviously, if there is not sanctioned post, there can be no regularisation. (See State of Haryana and others Vs. Piara Singh and others etc. etc.,).

21. The claim for regularisation has invariably been made by persons employed on daily wage or temporary basis in the permanent establishments of the Government. Where sanctioned posts exist, law does not favour appointments made on daily wage, ad hoc, or temporary basis. The Courts have insisted that sanctioned posts must be filled up in the regular manner by following the Rules, otherwise it gives rise to corruption and nepotism, apart from discrimination.

22. While considering a case for regularisation, one cannot lose sight of the nature of engagement and the purpose for which such an engagement is offered. Where permanent posts exist, they must be filled up in accordance with the Rules. However, where the employment is granted in connection with a work of temporary nature of engagement and obviously a claim for regularisation, in the sense of absorption or permanency in service, cannot be entertained. The need for employment comes to an end when the work ceases and therefore, a person employed for a temporary work cannot claim permanency by the method of regularisation. This distinction has to be borne in mind while considering a claim for regularisation.

23. In the instant cases, the parties have referred to various directions/circular issued by the Government from time to time directing the appointing authorities not to make appointments on daily wage basis and to terminate the appointments so made. Those directions are general in nature, and were really meant for appointments made in the various Government Departments where sanctioned posts existed and yet appointments were sought to be made on daily wage basis without following the Rules. We can take judicial notice of the fact that in the State of Bihar, despite the directions of the State Government, the appointing authorities at the lower level never cared to act in accordance with the directions. A very large number of appointments were being made on daily wage or ad hoc or temporary basis on the basis of their personal approach. No advertisements were issued for filling up the vacancies nor where the candidates subjected to any known process of selection. The appointing authorities virtually played a fraud on the Rules. The modus operandi was to first make appointments on daily wage basis for a short duration, then to grant extension of the term, followed by appointment on temporary basis. After continuing such appointments for a few years, a proposal was then sent for the regularisation of the services of such appointees. Thus they achieved their objective indirectly, which they could not achieve directly. By this process large number of back door entrants have found place in the various services of the State. Apparently, the appointments were made on extra legal considerations. This pernicious practice has also attracted very strong criticism by the Apex Court. In *Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others*, , the

Court went to the extent of holding that where appointments are made in gross violation of the Rules, the Court may take judicial notice of the fact that such appointments are made on monetary consideration and are illegal. The circulars and the directions issued by the Government of Bihar to which reference has been made by the parties must be understood in this background. Those circulars were not issued specifically in relation to the project in question, but were general directions mainly meant to stop the practice of making appointments on daily wage/ad hoc basis even where regular vacancies existed which could be filled up after following the procedure prescribed by the Rules.

24. Engagement in connection with the execution of a project stands on a different footing, than engagement on daily wage basis in a Government Department where sanctioned posts exist and the existing vacancies have to be filled up in accordance with the procedure established by law. By the very nature of the engagement in connection with the work of a Project, it must come to an end when the Project is completed. At the same time it is not necessary that all persons engaged in connection with the execution of a Project will become surplus at one time. In a project, there are different types of works and as and when those works are completed the persons engaged in connection therewith may be rendered surplus. With the reduction in work, it becomes necessary for the project authorities to retrench surplus employees. Similar, if the work is reduced on account of financial crunch or for any other good reasons, the surplus employees may have to be retrenched. If the work on a Project comes to an end, those employed in connection with the execution of the project cannot claim continuity of service and their engagement must also come to an end with the project. These considerations do not arise in cases where appointments are made in Government Departments where regular posts exist on a permanent basis.

25. In the cases before us, it cannot be disputed that the petitioners were appointed against the posts sanctioned for the execution of the Project and were not appointed against any permanent post in a Government Department. The petitioners were engaged to perform specific works. The petitioners knew that the very nature of their employment was such that after the completion of the Project, they could not continue in employment. The question is whether in such circumstances, these petitioners can claim that they should be regularised in service, meaning thereby that they should continue in employment permanently, like any other regularly appointed Government servant, who holds a sanctioned post. The decisions of the Supreme Court hold that in case of such engagements, Courts will not be justified in directing regularisation of such employees. This takes me to a consideration of the decisions cited at the bar.

26. In *Jawaharlal Nehru Krishi Vishwa Vidyalaya, Jabalpur, M.P. Vs. Bal Kishan Soni and Others*, , the petitioners who were class IV employees employed in connection with a Scheme sponsored by Indian Council of Agricultural Research claimed regularisation of their service which was allowed by the High Court.

Allowing the appeal, the Supreme Court held that such relief could not be granted to them. The Court observed:

"It is not in dispute that Scheme is sponsored by the Indian Council of Agricultural Research and, therefore, permanent posts cannot be created. The posts are coterminous with the Scheme. On abolition of the Scheme, the posts also necessarily stand abolished. We are informed that the Scheme may continue to be in force; but it depends upon the Scheme being sponsored and the posts made available by the Indian Council of Agricultural Research. Therefore, the direction to regularise the services is violative of their, right to posts. The order of the High Court to that extent is modified. On whatever posts the respondents are working and discharging their duty, the scale of pay of the said post is directed to be paid."

27. In *State of Himachal Pradesh Vs. Suresh Kumar Verma and another*, , the Court held that appointment on daily wage basis is not an appointment to a post according to Rules. The appointment on daily wages cannot be a conduit pipe for regular appointments which would be a backdoor entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption. Work charged employees who perform the duties of transitory nature are appointed not to a post but are required to perform the work of transitory and urgent nature so long as the work exists. The Court while allowing the appeal observed:

"It is seen that the Project in which the respondents were engaged had come to an end and that, therefore, they have necessarily been terminated for want of work. The Court cannot give any directions to re-engage them in any other work or appoint them against existing vacancies. Otherwise, the judicial process would become other mode of recruitment dehors the Rules.

28. In *Sandeep Kumar and others Vs. State of Uttar Pradesh and others*, , the petitioners were employed on daily rate basis in connection with a Project of slum clearance financed partly by the State of Uttar Pradesh and partly by the World Bank. After considering the facts of the case, the Court observed:

"From the facts placed before us, it appears that the Scheme under which the petitioners are working is of a very specific nature. There is no permanent need for the work and since it is a Project for a particular purpose, it will not be possible to direct that the petitioners may be regularised in service. From the materials, however, it appears that similarly qualified engineers when employed for the work which the petitioners are called upon to do, on regular basis are paid a minimum grade pay of Rs. 1,400/-. We see no justification to discriminate between the petitioners and the regularly employed Junior Engineers who on appointment receive Rs. 1,400/-. Accordingly, we direct that the petitioners shall be paid a sum of Rs. 1,400/- per month instead of Rs. 1,000/- as at present and since the pay shall be for the month the question of holidays will not taken into account."

The Court further directed that the petitioners will be entitled to regularisation of

their service by recruitment through the State Public Service Commission for vacancies other than employment under the Project and as and when such vacancies arise and are duly notified the claim of the petitioners be considered for appointment subject to their satisfying the requisite qualifications prescribed therefore under the Rules.

29. In *Union of India and others Vs. Dinesh Kumar Saxena and others*, , the Court held that persons employed in connection with census work could not be regularised because of the nature of work in connection with which they were employed.

30. In *Ghaziabad Development Authority and others Vs. Sri Vikram Chaudhary and others*, the appellant had impugned the judgment of the High Court in which while rejecting the relief of regularisation, the learned Judge had given direction to follow the principles in Sections 25F and 25G of the Industrial Disputes Act. The direction was challenged on the ground that the appellant was not an industry, and that therefore, the principles contained in *pari materia* provisions in the local Act had no application.

Their lordships after going through the judgment observed that the learned Judge did not intend to lay down that the appellant was an industry, and that the principles contained in the Industrial Disputes Act were attracted. The learned Judge only intended to lay down that so long as the appellant had work on hand, the appellant had no power to terminate the contingent employees engaged on daily wages and that in the event the appellant needs to terminate their services, the principle of last come first go should be followed. In the event of there being need for employment, preference be given to the displaced respondents. Repelling the argument that the judgment by implication compelled the appellant to keep engaged the respondents, even though there are no projects on hand. The Court observed:

"That apprehension also does not appear to be correct. The appellant needs to take the services of the persons according to the requirement in the Projects on hand. On completion of the existing Projects in which the respondents are working, if the appellant undertakes any fresh Project, instead of taking the services of fresh hands at the place of the new Project, the appellant needs to take the services of the existing temporary daily wage respondents. In the event of the appellant not having any Project on hand, the obligation to pay daily wages to the respondents does not arise. However, the appellant shall maintain the order of seniority of the daily wage employees and shall take the services of the senior most persons in the order of seniority according to the requirement of work."

31. In *State of U.P. and others Vs. U.P. Madhyamik Shiksha Parishad Shramik Sangh and another*, , the challenge was to the judgment of the High Court which had found that the respondents had been regularly working for over 15 years doing similar work on par with the regular class IV employees. It was, in these

circumstances that the High Court had directed the appellants to pay equal pay for equal work and also regularisation of their services by creating appropriate posts. These directions were set aside by the Supreme Court and it was held:

"It is an administrative procedure that creation of a post is a condition for filling up the post on permanent basis. The exigencies of the administration and the need for the creation of number of posts are matters of executive policy by the appropriate Government. It is stated in the SLP filed in this Court that during the examinations conducted by the Board, when the exigencies demand for doing the manual work like lifting of bundles, pasting of envelopes and shifting of answer books etc. The daily wagers are engaged and a sum of Rs. 25/- per day was being paid as fixed by the District Magistrates of Allahabad under the Minimum Wages Act. Unless the posts are created, they are not entitled to be fitted into any regular post. The performance of the manual duty may be like the duty of regular class IV employees. However, they are not entitled for the payment of equal wages so long as there are no posts created in that behalf. We can understand that if there are vacant posts available in class IV and they are filled up by appointing them to these posts on daily wages performing the same duties of regular employees, perhaps there may be justification for issuing directions for regularisation of their services according to Rules and payment of the salary to the post to which they are fitted. But in view of the fact that no posts are created or existing, we cannot uphold the direction issued by the High Court to pay equal wages or to regularise their services."

32. In C.A. Shankar Prasad and Ors. v. Karnataka State Adult Education Council and Ors. AIR 194 SC 216, the Supreme Court had to consider the claim of the petitioners for regularisation in connection with a Central Sector Scheme known as "Rural Functional Literacy Programme" in the State of Karnataka. The petitioners were appointed against class IV post in connection with a project and they claimed that they be absorbed on regular basis and they be treated equally in all respect with other employees under the control of the Adult Education Council. However, during the pendency of the writ petition, the Scheme came to an end, and therefore the services of the petitioners were rendered surplus and they were no longer required to work in the Project Centres. In these circumstances, the Court directed the Adult Education Council to utilise the services of these petitioners if and when some vacancies are made available, keeping in view their eligibility and experience. A direction was also issued that the State of Karnataka keeping in mind the useful services rendered by the petitioners for more than 10 years will try to absorb them in vacancies which may arise in the Education Department or any other Department of the State Government where the petitioners could be absorbed in accordance with law.

33. In Dr. V.L. Chandra and others Vs. All India Institute of Medical Sciences and others, , the petitioners were appointed on ad hoc basis in connection with a Project and after completion of that Project, were again engaged in another Project. In this way, they continued for more than 10-15 years when ultimately

their services were discontinued on the ground of absence of other Projects. The Supreme Court has not laid down any principles with regard to regularisation of such appointees, but having regard to human problem of deprivation of source of sustenance as with the advancement in age, the petitioners had become disentitled to jobs, in Government or public sector undertakings, the Court directed that a Scheme be evolved for building up a team of researchers in co-ordination with Health Ministry in which the petitioners could be appointed as researchers.

34. These decisions of the Supreme Court lay down the principles that where the very nature of the employment is temporary, no permanency can be claimed by the method of regularisation. The posts are coterminous with the Scheme and consequently on abolition of the Scheme, the posts also necessarily stand abolished.

35. In the instant cases, the petitioners knew that they were being engaged in connection with the execution of the project and, therefore, once the project came to an end, their services may no more be required. By the very nature of their engagement, it could not be continued beyond the completion of the Project. I am, therefore, of the firm view that having regard to the nature and purpose of their engagement, the petitioners cannot claim regularisation in service, though some directions may be issued to give them a preferential treatment in the matter of employment in future.

36. The next question that arises for consideration is whether the petitioners have been retrenched after due compliance of the requirements of Section 25F of the Industrial Disputes Act. It is not disputed before us that a Full Bench of this Court in the judgment reported in *Bijoy Kumar Bharti and Others Vs. State of Bihar and Others*, ; held that the Department of Irrigation is an "Industry" within the meaning of the Industrial Disputes Act. Counsel for the State faintly urged, relying upon some decisions of the Supreme Court, that the Department of Irrigation cannot now be treated as an industry in view of these decisions, namely *Executive Engineer (State of Karnataka) Vs. K. Somasetty and others*, . No doubt, these decisions did take a view which supports the contention of the Counsel for the State. However, the subsequent decisions of the Supreme Court have clarified the issue and overruling the view expressed in these decisions held that the said view was in direct conflict with the seven Judges Bench decision in *Bangalore Water Supply and Sewerage Board v. Rajappa and Ors.* (supra). The decision in *Bangalore Water Supply* case is binding upon the smaller Benches of the Court and it was, therefore, not permissible to take a view contrary to that in *Bangalore Water Supply*, or to by pass that decision so long as it held the filed. It was held that the decisions which took a view to the contrary could not be treated as a laying down the correct law. In *All India Radio Vs. Shri Santosh Kumar and Another*, the same view has been reiterated. This Court is, therefore, bound to proceed on the basis that the Department of Irrigation is an "industry" and, therefore, the provisions of Section 25F of the Industrial Disputes Act will

apply, if the workmen working in the project are to be retrenched by the Department.

37. As noticed earlier, the stand of the State is that in the changed circumstances, the petitioners have been rendered surplus on account of reduction in allocation of fund on the project and curtailment of the work of the project. Almost 70% of the work in connection with Dakranala Pump Canal has been completed, and on account of non-availability of fund and there being no possibility of allocation of fund in near future for this Scheme, it was not necessary to continue the engagement of the petitioners. Ganga Pump Canal Division Nos. I and II had been declared non-works division. The work under the Suryagarha Pump Canal Scheme had been virtually completed. On account of completion of a major part of the work, and on account of paucity of fund due to cut in plan outlay, the work of the Scheme had been reduced. It was, therefore, not possible to continue the engagement of the petitioners and therefore, it became necessary to retrench them in accordance with law after following the procedure prescribed by Section 25F of the Industrial Dispute's Act. Though such a decision was taken as early as in the year 1993, since the concerned workmen had to be compensated in terms of Section 25F of the Industrial Disputes Act, and funds had not been made available, the decision could not be implemented. This was brought to the notice of the Government in May-June, 1995 and thereafter the requisite fund was made available to the Chief Engineer. The Chief Engineer by his order dated June 27, 1995 directed his subordinates to terminate the engagement of daily wage employees with effect from August 1, 1995 and further directed them to take necessary steps from July 1, 1995. It was made clear that no funds would be made available by the Department for payment of wages to employees engaged on daily wage basis after the cut off date. Pursuant to the order of the Chief Engineer steps were taken by the concerned authorities.

38. It is not disputed that a notice was issued to the concerned daily wage employees on June 30, 1995 disclosing the reasons and stating that for the reasons stated in the notice there was no need to continue their engagement on daily wage basis. This notice is Annexure-23 in C.W. J.C. No. 6478 of 1988.

The notice mentions that in connection with the project and according to need, the workers had been employed on daily wage basis, but on account of reduction of work and reduction of financial allocation for the project, the work had been considerably reduced, and therefore, there was no need to continue the engagement of daily wage employees. The concerned employee was, therefore, informed that he shall stand retrenched with effect from August 1, 1995 after following the provisions of Section 25F of the Industrial Disputes Act. This notice was to be treated as one month's advance notice as required to be served u/s 25F of the Industrial Disputes Act. This notice is dated June 30, 1995.

39. Annexure-24 is another show cause notice issued on the following day, i.e. on July 1, 1995, calling upon the concerned workmen to show cause why they be not retrenched u/s 25F of the Industrial Disputes Act for the reasons stated in

the notice. The reasons stated in this notice are substantially the same as those stated in Annexure-23. The concerned employees were called upon to file their show cause by July 17, 1995.

40. Pursuant to the notice issued on July 1, 1995 some of the concerned employees had filed their representation and after considering the same an order was issued on July 28, 1995 which has been filed as Annexure-11 in C.W.J.C. No. 7575 of 1995. This order states the same reasons for retrenchment as have been stated in the notice u/s 25F of the Industrial Disputes Act. By this communication dated July 28, 1995, the workmen were communicated the decision that they shall stand retrenched u/s 25F of the Industrial Disputes Act with effect from August 1, 1995. The amount payable to them u/s 25F of the Industrial Disputes Act was kept in the Divisional Office in the form of banker's cheque and the employees were requested to personally appear and receive the payment from the Divisional cashier by July 31, 1995.

41. It would appear from the facts noticed above that one month's notice u/s 25F was duly served upon the petitioners and after considering their representation, a decision was taken to retrench them u/s 25F of the Industrial Disputes Act with effect from August 1, 1995. The compensation payable to them had been kept in the Divisional office in the form of banker's cheque which the concerned employee was requested to receive on or before July 31, 1995, since the retrenchment was to take effect from August 1, 1995.

42. Counsel for the petitioners submitted that this did not amount to compliance of the requirements of Section 25F of the Industrial Disputes Act because they were not personally handed over the amount of compensation to which they were entitled u/s 25F of the Industrial Disputes Act. According to them, a mere offer of payment of compensation was not sufficient and it should have been followed by tender of the amount in person to the concerned employee. On the other hand, Counsel for the State submitted that the requirement of Section 25F must be substantially complied with and a bona fide offer of the amount of compensation payable should be made to the workmen so that they receive the amount before the retrenchment takes effect. The State had offered the compensation amount to the concerned workmen well in advance and they could receive the amount if they so wanted before their retrenchment took effect. It was submitted that in all cases, it was not necessary that the amount should be tendered in person to the concerned employee, and as long as the offer was made bona fide and the retrenchment compensation was receivable by the concerned employee before the order of retrenchment took effect, the requirements of Section 25F were complied with.

43. Section 25F prescribes the conditions precedent to retrenchment of workmen. It provides that no workmen employed in any industry who has been in continuous service for not less than one year shall be retrenched until he has been given one month's notice in writing communicating the reasons for retrenchment and the period of notice has expired, or the workman has been

paid in lieu of such notice, wages for the period of notice, and that the workman has been paid at the time of retrenchment compensation equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months. In the instant case, the petitioners do not dispute that one month's notice in writing communicating the reasons for retrenchment was served upon them. The only dispute is whether by following the procedure that the State did, it complied with the requirements of Section 25F(b) of having paid at the time of retrenchment the compensation payable to them. In *All India Radio Vs. Shri Santosh Kumar and Another*, , the Supreme Court held that the law does not mean that the wages for one month should have been actually paid. An employer could only tender the amount before the retrenchment, but could not force the employee to receive it. It was, therefore, held that if the workman was intimated that he was to be paid the compensation in accordance with the Section and that he should report immediately to the Accounts Officer at the head office to receive the payment, that would amount to compliance of Section 33(2)(b) of the Act, which fell for consideration in that case. If the workmen refused to receive the payment, that did not matter, because the tender was made before the retrenchment came into force, and the wages would have been paid to him if he had cared to receive that. It was observed at p. 461:

"The proviso does not mean that the wages for one month should have been actually paid, because in many cases the employer can only tender the amount before the dismissal but cannot force the employee to receive the payment before dismissal becomes effective. In this case the tender was definitely made before the order of dismissal became effective and the wages would certainly have been paid if Hari Chand had asked for them. There was no failure to comply with the provision in this respect."

44. In *National Iron and Steel Co. Ltd. Vs. Third Industrial Tribunal, West Bengal and Others*, , a learned Judge of the Calcutta High Court held that an unconditional offer for payment, preceding retrenchment may be equivalent to payment. In that case, the notice called upon the retrenched workmen to receive the payment following their retrenchment. The notice of retrenchment was posted on September 1, 1960 the very day when the retrenchment was to take effect, and the workmen were asked to call at the office for receiving payment either on the same day or on any subsequent date. In these facts, there was little chance for the workmen to receive the letter on September 1, 1961 and call for payment. The notice really amounted to a call to receive payment subsequent to retrenchment and that made the offer bad and consequently retrenchment order became incompetent.

45. Counsel for the State submitted that this case was clearly distinguishable on facts, because in the instant case, the workmen were informed in advance to receive the payment before July 31, 1995 by issuance of order dated July 28, 1995. The offer was, therefore, made well in advance so that the concerned

workmen could receive the payment which was kept ready in the form of banker's cheque, before the order of retrenchment took effect.

46. Counsel for the State also relied upon a decision of the Supreme Court in *Strawboard Manufacturing Co. Vs. Gobind*, and submitted that though that was a case where the employer had taken action u/s 33(2)(b) of the Industrial Disputes Act, the same principles will apply so far as payment of retrenchment compensation was concerned. In that case, the Supreme Court observed that when an employer took action u/s 33(2)(b) dismissing or discharging an employee, he should immediately pay him or offer to pay him wages for one month. Relying upon the use of words "offer to pay him" it was submitted that what has been emphasised by the Supreme Court is the necessity of making a bona fide offer of payment so that such payment is received by the concerned workmen at least before the order of retrenchment takes effect. It was submitted that Section 25F of the Act seeks to achieve the objective of seeing to it that compensation payable to a retrenched employee must be paid before the order of retrenchment takes effect so that after retrenchment he is able to support himself from out of the compensation amount paid to him, and he is not forced to beg his employer to pay him the compensation. The payment of retrenchment compensation provides some financial help to the retrenched employee in his bad days.

47. The judgment of the Supreme Court in *Delhi Transport Undertaking (supra)* no doubt supports the view canvassed by Counsel for the State. There may be large number of employees who may be retrenched, and an employer may find it impracticable and sometimes impossible, to approach each one of them personally to tender or offer the payment. In such circumstances, he may call upon them well in advance to receive the payment from the designated office. There should be certainty as regards payment, and it should not be, that despite the offer, payment is refused when a workman approaches the office to receive payment. In the instant case, it appears to me that the petitioners were informed in advance that they should receive the payment before July 31, 1995 since the order of retrenchment took effect from August 1, 1995. Moreover, the notice itself stated that the payment was ready in the form of banker's cheque so that it could not be doubted that necessary arrangement for payment had not been made. Where the payment is to be made in the form of banker's cheque, one can hardly dispute the genuineness of the offer. I am, therefore, persuaded to hold in the facts and circumstances of the case that the State offered to pay the retrenchment compensation to the workman well in advance, and before the date from which the retrenchment took effect. If the petitioners so wanted, they could receive the payment before the order of retrenchment took effect. To put the matter beyond controversy, the State had arranged the payment to be made through banker's cheque which strongly supports the plea of the State that the payment was ready and the petitioners had only to go and receive it. I am, therefore, satisfied that the requirements of the Section have been fully complied with by the State and, therefore, the petitioners stood validly retrenched with

effect from August 1, 1995.

In C.W.J.C. No. 7575 of 1995, it is stated in paragraph 33 of the counter-affidavit that the notice issued vide Memo No. 266 dated July 28, 1995 u/s 25F of the Industrial Disputes Act was refused by the petitioners. It was, therefore, submitted that if the petitioners refused to receive the notice that amounted to refusal on their part to receive the compensation. Therefore, they should not be heard to complain that Section 25F was not complied with. I have already held that the State has fully complied with the requirements of Section 25F and therefore, it is not necessary to go into this question.

In C.W.J.C. No. 6474 of 1988 it was faintly submitted that even after the date of retrenchment, the petitioners have continued to work and, therefore, it must be held that the retrenchment order never took effect. The submission ignores the fact that the State did not of its own permit the petitioners to continue after July 31, 1995. It was pursuant to an order passed by this Court on July 28, 1995 directing it to maintain status quo that the petitioners were not disturbed. That order of status quo was continued by order dated September 12, 1995. Since the engagement of the petitioners continued in obedience to an order of this Court, it cannot prejudice the claim of the State that it had validly retrenched the petitioners with effect from August 1, 1995. In Committee of Management, Arya Nagar Inter College, Arya Nagar, Kanpur, through its Manager and another Vs. Sree Kumar Tiwary and another, the respondent claimed the benefit of his continuation in service pursuant to an order of stay for the purpose of regularisation, but the Court rejected the claim holding that he continued in service not by virtue of his own right under an order of appointment, nor did he continue in office with the permission of management. It was under an order of stay obtained by him that he was continued in service. The benefit of service rendered by him under the order of stay, was not extended to the respondent.

In C.W.J.C. No. 6478 of 1998, Dr. S.N. Jha, Senior Counsel, submitted that if the Court came to the conclusion that the retrenchment has not been done in accordance with Section 25F of the Industrial Disputes Act, the order of retrenchment should be quashed and as a consequence the petitioners should be deemed to have been in continuous service retaining their seniority. He further stated that the petitioners were not pressing their claim for wages for the period they had not worked, but they should be given the minimum of scale in case their retrenchment is found to be invalid. He relied upon several decisions in support of this proposition. It is not necessary for me to consider the submission, because I have found that the order of retrenchment has been passed in accordance with law and is not invalid.

48. The question then arises as to whether the petitioners are entitled to any other relief. I have already noticed the various decisions of the Supreme Court wherein the Supreme Court while refusing the prayer for regularisation, directed that the concerned employees should be given some sort of preference in case of future employment and to grant relaxation in the matter of age, if necessary.

Having regard to the interest of justice, I feel that the petitioners, though they are not entitled to regularisation, since they were employed in connection with a project, they are certainly entitled to preference in case regular vacancies occur in future which have to be filled up and for which the petitioners are eligible. The project has been substantially completed and as it appears from the stand of the State Government that the remaining work may be completed in due course, but it is not known how much time that will take, because the financial allocations are meager. However, it cannot be denied that for the maintenance of the project, the State may have to employ many persons. It is true, as submitted on behalf of the State, that the regular employees of the Irrigation Department are looking after the maintenance work. However, it may be that in future vacancies may occur or new posts may be created, against which persons have to be appointed. The State is, therefore, directed that in case vacancies occur in future in connection with the maintenance of the project, the petitioners shall be entitled to 50% of such vacancies to be filled up from amongst them having regard to continuous length of service rendered by them as daily wage workers. Such preference has to be shown category-wise, and for this purpose, the State must prepare a list of such retrenched employees category-wise so that when vacancies occur in future in any particular category the person with the longest length of service in that category is offered that appointment. The retrenched employees shall also be entitled to seek appointment against the remaining 50% vacancies on their own merit, and in both cases they shall be entitled to relaxation in the matter of age to the extent of continuous service rendered by them as daily wage earners. Should it become necessary for the State to employ persons on daily wage basis to complete the remaining works of the project, the retrenched employees of the project should be given the preference to which they are entitled under the provisions of the Industrial Disputes Act.

49. Subject to these directions, these writ petitions are dismissed.

P.K. Parkar, J.

I agree.