
(1998) 02 AHC CK 0013

In the Allahabad High Court

Case No : C.M.W.P. No's. 15744, 15745, 15746, 15813 and 15949 of 1996

Prayag Narain and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 24-02-1998

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 226, 39

Citation : (1998) 3 AWC 1755 : (1998) 3 UPLBEC 2175 : (1998) 3 UPLBEC 2125

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : Amit Saxena and P.N. Saxena, for the Appellant;

Judgement

O.P. Garg, J.—All the petitioners in these five writ petitions, under Article 226 of the Constitution of India, are employed as class IV employee in the Public Works Department in district Fatehpur. They are working on the posts of Beldar/Meths or Chaukldar. All of them were Initially engaged on dally wage basis but subsequently, they were brought on temporary Muster Roll and in some cases as would be Indicated below, they were brought on permanent Muster Roll. The grievance of the petitioners is that there is a striking disparity in the emoluments which are payable to the petitioners as well as their counterparts who are in regular employment and that they are also being denied the benefits of medical leave, earned leave, leave encashment or bonus, provident fund and the Employees State Insurance Scheme as are admissible to the regular employees. In all the five writ petitions. It is prayed that respondents be directed to pay equal emoluments for equal work. i.e., equivalent to the employees who are working on regular basis as well as other benefits which are admissible to the regular employees.

2. Since the setting in all the writ petitions is quite familiar as also the submissions and the reliefs claimed are Identical, it is proposed to decide all the five writ petitions by this common Judgment.

3. With a view to grasp the controversy in hand, it would be proper to give in brief the facts of each one of the petitions.

4. The Writ Petition No. 15744 of 1996 has been filed by Prayag Narain and 12 others with the allegations that they were Initially appointed as Beldar "on dally wage basis and were paid wages on monthly basis. They were brought on temporary Muster Roll and were promoted as Meths. Their names were placed in permanent Muster Roll in the year 1989. They are being paid the salary in the regular scale of Meths but the respondents have put selling at Rs. 1,700 with the result the petitioners are being paid a sum of Rs. 1,825 per month while their counterparts who are employees in the department on regular basis are getting Rs. 2,224. Obviously, the prayer of the petitioners is that they may be paid the same amount of salary which is being paid to the regular Meths as there is no distinction in the work and the circumstances in which two types of the Meths are placed.

5. On almost Identical allegations made in Writ Petition No. 15744 of 1996. Suresh and 3 others have filed Writ Petition No. 15949 of 1996. In the said petition, four petitioners are on temporary Muster Roll and are being paid the wages at the rate of Rs. 36 per day. They were engaged sometimes during the period 1983-88.

6. The Writ Petition No. 15745 of 1996 has been Instituted by Radhey Shyam and 12 others alleging that they were engaged as Beldars on dally wage basis. They have been brought on temporary Muster Roll during the period 1972-86. According to them they are being paid the wages at the rate of Rs. 35 per day while the regular Beldars and the Beldars who are on permanent Muster Roll are drawing their salary in the pay-scale of Rs. 750-940. They claim the same salary as is payable to a regular Beldar or the Beldars who are on permanent Muster Roll. To the same effect is the relief claimed in Writ Petition No. 15813 of 1996 which has been instituted by Pratihvi Pal and 32 others, who were brought on permanent Muster Roll in the year 1989. They being the Beldars on permanent Muster Roll are being paid a sum of Rs. 1,825 while the regular Beldars are drawing a consolidated amount of Rs. 2,164 as salary.

7. The Writ Petition No. 15746 of 1996 filed by Ram Prasad and 2 others concerns the engagement of the Chaukldars on dally wage basis. The three petitioners were brought on permanent Muster Roll during the period 1988-89. A Chaukldar on permanent Muster Roll is getting Rs. 1,825 as salary while regular Chaukldar 19 getting Rs. 2,164 per month as salary. It is alleged that there is no Justification for the aforesaid disparity and there is hardly any distinction between the work and circumstances in which the two types of employees are placed.

8. Inspite of the fact that sufficient time was allowed to flick counter-affidavits, respondents have not filed counter-affidavits in Writ Petition Nos. 15744 of 1996, 15745 of 1996 and 15949 of 1996. The respondents have, however, filed counter-

affidavit in Writ Petition Nos. 15745 of 1996 and 15746 of 1996. Rejoinder-affidavits have also been filed in these writ petitions. In short, the pleas taken in the counter-affidavits are that the petitioners were appointed and are working not against the regularly created posts and there is no budgetary allocation for creation of posts on which the petitioners may be absorbed. It is also alleged that the employees on the permanent Muster Roll are regularised in course of time in pursuance of well-considered scheme against the vacancies which occur from time to time.

9. Heard Sri P. N. Saxena assisted by Sri Amit Saxena learned counsel for the petitioners as well as the learned standing counsel on behalf of the respondents.

10. The moot point which arises for consideration is whether the petitioners are legally entitled to equal pay for equal work and other benefits and privileges as are admissible to the other regular employees of the department of the same category/cadre or should there be a distinction in the emoluments of the employees working on Muster Roll basis and the regular employees of the department?

11. To begin with, it may be mentioned that the petitioners have put in more than a decades" continuous service. They are not casual workers. They have been taken on temporary or permanent Muster Rolls and their capacity as a daily-rated workers has ceased to exist. What the departments generally do is that they keep on a sizeable number of their employees/workers on temporary or permanent Muster Rolls with an avowed object of denying them the benefit of equal salary admissible to regular employees and the allowances admissible to them. The matter, therefore, gives rise to equities which have bothered the Courts every now and then. The submission of the learned standing counsel on behalf of the respondents that there are no posts and no budgetary allocation to pay the emoluments to the petitioners equivalent to the emoluments admissible to the regular employees has nothing to do with the controversy in hand, though it may be pointed out that the continuance of the petitioners in service for more than a decades" period is proof of the fact that there is permanent need for the Jobs they perform. This aspect of the matter was considered in *State of Haryana and others Vs. Piara Singh and others etc. etc.,* . In which it has been held that the very fact that the casual workers have been performing their duties for 2-3 years continuously Justifies their continuance on the ground that the department-needs them. Similar view was expressed 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.,* . Therefore. It is no gainsaying that there are no vacancies or posts against which the petitioners may be allowed to draw their regular salary. It is only a farce device of the department to continue the petitioners on lesser wages than the regular employees.

12. The doctrine of "equal pay for equal work" enshrined under Article 39(d) of the Constitution of India has been held enforceable in a Court of law and not to be only an abstract doctrine though it is not a fundamental right under the

Constitution ; it is a constitutional goal which must colour the Interpretation of Articles 14 and 16, so as to be elevated to the rank of a fundamental right, denial of which must result in an "Irrational classification". See *Randhir Singh Vs. Union of India (UOI) and Others*, and *P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others*,

13. In *Union Territory, Chandigarh Vs. Krishan Bhandari*, , it was observed that principle of "equal pay for equal work" is a facet of principle of equality in the matter of employment guaranteed under Articles 14 and 16 of the Constitution of India. The right to equality can only be claimed where there is discrimination by the State between the two persons who are similarly situated. It is true, the said principle cannot be invoked in cases where discrimination sought to be shown is between acts of different authorities functioning as "State" under Article 12 of the Constitution. The principle of "equal pay for equal work" is attracted only when two sets of employees are similarly situated and are discharging the similar functions, yet are getting different pay scales. In *State of U.P. and others Vs. Ramashyaya Yadav and another*, , though the claim of Investigators-cum-computers, who were appointed temporarily having lower qualifications for equal pay with the regularly appointed Investigator-cum-computers having higher qualifications was disallowed, the Apex Court held that there can be no discrimination with regard to the payment of the emoluments between two categories of employees if they are discharging similar function and performing the similar duties.

14. In the case of *State of W.B. and Others Vs. Hari Narayan Bhowal and Others*, . the Supreme Court observed as under :

"..... the principle of "equal pay for equal work" can be enforced only after the persons claiming satisfy the Court that not only the nature of work is identical but in all respects they belong to the same class and there is no apparent reason to treat equals as un-equals unless a very clear case is made out and the Court is satisfied that the scales provided to a group of persons on the basis of material produced before it amounts to discrimination without there being any Justification, the Court should not take upon Itself the responsibility of fixation of scales of pay."

In another case. *Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others*, the Supreme Court was faced with the twin aspects of the matter, namely, "equal pay for equal work" and continuing casual employment for too long. In that case, the petitioners who were employed by the Central Public Works Department on daily wage basis and who had been working for several years, demanded that they should be paid the same wages as permanent employees employed to do identical work. They took the stand that even if it is not possible to employ them on regular and permanent basis for want of suitable number of posts, there is no reason, whatsoever, why they should be denied "equal pay for equal work". Continuing to deal with the matter, the Apex Court observed as follows :

"One would have thought that the Judgment in the Dhirendra Chamoli and Another Vs. State of U.P., . concluded further argument on the question. However. Sri V. C. Mahajan, learned counsel for the Central Government reiterated the same argument and contended that the doctrine of "equal pay for equal work" was a mere abstract doctrine and that it was not capable of being enforced in a Court of law. He referred us to the observations of the Court in Kishori Mohanlal Bakshi Vs. Union of India, . We are not a little surprised that such an argument should be advanced on behalf of the Central Government 36 years after the passing of the Constitution and 11 years after the Forty-second Amendment proclaiming India as a socialist republic. The Central Government like all organs of the State Is committed to the Directive Principles of State Policy and Article 39 enshrines the principle of "equal pay for equal work". In Randhir Singh Vs. Union of India (UOI) and Others, , this Court has occasion to explain the observations in Kishori Mohanlal Bakshi v. Union of India and to point out how the principle of "equal pay for equal work" is not an abstract doctrine and how it is a vital and vigorous doctrine accepted throughout the world, particularly by all socialist countries. For the benefit of those who do not seem to be aware of it, we may point out that the decision in Randhir Singh case has been followed In any number of cases by this Court and has been affirmed by a Constitution Bench of this Court in Abu Khan and Others Vs. Union of India (UOI) and Another, The Central Government and the State Government and likewise, all public sector undertakings are expected to function like model and enlightened employer and arguments such as those which were advanced before us that the principle of "equal pay for equal work" is an abstract doctrine which cannot be enforced in a Court of law should not come from the mouths of the State and the State Undertakings".

15. The most Important case on the point is Daily Rated Casual Labour Employed under P &T Department through Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others, , in which it was observed that it may be true that the petitioners in that case have not been regularly recruited but many of them had been working continuously for more than a year in the department and some of them have been engaged as casual labours for nearly 10 years. It was found that the denial of the privilege of equal pay for equal work is nothing but subjecting the workers to hostile discrimination. The Apex Court was of the view that such denial amounts to exploitation of labour. The Government cannot take the advantage of dominant position and compel any worker to work even as a casual labourer on starvation wages. It may be that casual labourer has agreed to work on such low wages that he has done because he has no other choice. It is poverty that has driven him to that stage. Government should be a model employer. The Supreme Court was of the view that on the facts and in the circumstances of the case, the classification of employees Into regularly recruited employees and casual employees for the purpose of paying less than the minimum of pay payable to the employees in the corresponding regular cadres, particularly in the lowest

rungs of the department, where the pay scales are the lowest. Is not tenable. in the context of the present controversy, the Supreme Court in Dharwad District P.W.D.'s case (supra) took into consideration the authority of the larger Bench In His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, , where the Court said "the dominant objective in view was to ameliorate and Improve the lot of the common man and to bring about a socio-economic Justice".

16. There is a plethora of decisions of the Supreme Court as well as this Court to fortify the conclusion that "equal pay for equal work" for both the men and women has been accepted as constitutional goal capable of being achieved through constitutional remedies. Without unnecessarily burdening this Judgment, it would be proper to make a passing reference to these authorities. They are : R.D. Gupta and Others Vs. Lt. Governor, Delhi Admn. and Others, ; Bhagwan Dass and Others Vs. State of Haryana and Others, ; Jaipal and Others Vs. State of Haryana and Others, ; Dharwad Dtstt. P.W.D.L.D.W.E.A. v. State. JT 1988 (3) SC 120 ; U.P. Income Tax Department Contingent Paid Staff Welfare Association Vs. Union of India (UOI) and Others, ; Bhagwan Sahai Carpenter and others Vs. Union of India and another, ; State of U. P. v. J. P. Chaurasta. AIR 1989 SC 19 and Sandeep Kumar and others Vs. State of Uttar Pradesh and others,

17. The authority in Sandtp Kumar and others (supra) is quite near the controversy in hand. It was a case in which dally rated Junior Engineers in U. P. Bridge Corporation were being paid salary at the rate of Rs. 1,400 per month treating the holidays as unpaid while the regular ones were being paid at the rate of Rs. 1,800 per month. The Supreme Court took the view that legally such a distinction between daily-rated and regular Junior Engineers was without any reason and was, therefore. Irrational and untenable.

18. In the instant case, it was urged on behalf of the respondents that a selling was put by the Government on the total emoluments payable to the employees who are either on the temporary or permanent. Muster Rolls, and, therefore, the department cannot pay the amount which exceeds the selling limit. This again is a fact which offends the sense of propriety. In this connection, a reference may be made to the pertinent observations made by Supreme Court in the case of Kamataka State Private College Stop Gap Lecturers Association v. State of Kamataka and others. (1992) 2 UPLBEC 110, In which it was observed :

"Another obnoxious part is the emoluments that have been paid to the temporary teachers. The order provides that the teacher shall be paid a fixed salary which is ten rupees less than the minimum payable to regular employees. This method of payment s again beyond comprehension. An appointment may be temporary or permanent but the nature of work being same and the temporary appointment may be due to exigency of service, non-availability of permanent vacancy or as stop-gap arrangement till the regular selection is completed, yet there can be no Justification for paying a teacher, so appointed, a fixed salary by adopting a different method of payment than a regular teacher. Fixation of such emoluments is arbitrary and violative of Article 14 of the Constitution. The evil

Inherent in it is that apart from the teachers being at the beck and call of the management are in danger of being exploited as has been done by the management committees of State of Kamataka who utilised the services of these teachers for 8 to 10 years by paying a meagre salary when probably during this period If they would have been paid according to the salary payable to a regular teacher they would have been getting much more. Payment of nearly eight month's salary by resorting to clause 5, and, that too fixed amount, for the same job which is performed by regular teachers is unfair and unjust. A temporary or ad hoc employee may not have a claim to become permanent without facing selection or being absorbed in accordance with rules but no discrimination can be made for the same Job on basis of method of recruitment. Such injustice is abhorrent to the constitutional scheme."

In *Vtshwanath and others v. State of U. P. and others*. 1986) UPLBEC 313 . it has been held by a Division Bench of this Court that dally wagers performing the same duties and functions as are being performed by regular class IV employees are entitled to the same salary and allowances and it is not open for the Government to practice discrimination by paying lower wages to the daily wagers. The Division Bench has further observed that dally wage workers who have no security of tenure of their service, but if they are performing same duties and functions as are being carried out by regular class IV employees, they would be entitled to same salary and allowances, which are being paid to regular class IV employees. This aspect of the matter also came to be considered by this Court in *Ram Chandra Yadav and others v. Regional Manager U.P.S.R.T.C. and Sichai Mazdoor Sangh Vs. State of U.P. and Others*, . In the case of *Ram Chandra Yadav (supra)*, the learned single Judge, Hon"ble R. B. Mehrotra, J. has held that part-time chaukidars doing the same work which their counterparts on regular basis were doing and performing the same duties, which the regular chaukidars in the department were performing, were entitled to get the same benefits as the regular chaukidars were getting in the department. Directions were issued by the Court accordingly for payment of salary and other allowances at par with those payable to regular chaukidars.

19. In the instant case, there is no dispute whatsoever, about the fact that the petitioners who are either on temporary or permanent Muster Rolls are performing the same duties and shouldering the same responsibilities as their regular counterparts in the department. There is no distinction, whatsoever. In the duties and the responsibilities of the Muster Roll employees and the employees working on regular basis. In the counter-affidavit filed in the two writ petitions, mentioned above, it has not been denied that the petitioners are engaged in performing the same duties as are entrusted to the regular employees. In other three writ petitions, no counter-affidavits were filed. The non-filing of the counter-affidavit is clearly Indicative of the fact that the respondents are not In a position to challenge the assertions made in the writ petitions. Therefore, I have no hesitation in recording a finding that all the petitioners whether they are Beldars, Meths or Chaukidars on Muster Roll basis--

temporary or permanent--are performing and discharging the same work and duties as their counterparts. There is no earthly reason for putting a selling on the emoluments of such employees, particularly when the regular employees performing the same duties and discharging the same functions have been allowed the benefit of a particular pay scale with increments without any selling limit as well as other privileges of medical leave, leave encashment, protection of employees' Insurance scheme, etc., etc. The petitioners, therefore, cannot be made the victim of discrimination by State. The State, of necessity, in the background of the law, as said above, is required to pay equal emoluments without selling to the petitioners as are admissible to their counterparts who are in the regular employment.

20. In conclusion, all the five writ petitions succeed and are allowed. It is hereby directed that the petitioners shall be entitled to the same salary and allowances, which are being paid to their counterparts, who are regularly appointed, with all consequential benefits. Parties shall bear their own costs.