

(1994) 01 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : Civil Writ. Petition No. 1634 of 1993

Rakesh Kumar and Another

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 10-01-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 32

Citation : (1994) 1 ShimLC 391

Hon'ble Judges : L.S. Panta, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Sandeep Kaushik, for the Appellant; C.L. Sharma, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

Devinder Gupta, J.—There is no dispute that Petitioners in this case have been engaged on daily rate basis for performing Class IV duties. They have not been engaged through Employment Exchange, but in fact are performing same and similar duties, which are being performed by the other daily rated Class IV employees deployed through Employment Exchange after getting approval from the Finance Department. Petitioners, are being discriminated against in the matter of payment of wages for the work performed by them. They are being presently paid their wages at the rate of Rs. 22 per day. but the other daily rated workmen engaged by the Respondents for performing Class IV duties, who have been engaged through Employment Exchange after sanction of the Finance Department are being paid their wages at the rate of Rs. 42.40 paise per day effective" from 1st June, 1992. For redressal of their grievance, the Petitioners have filed this writ petition under Article 226 of the Constitution of India for striking the action of Respondents treating the two set of daily rated employees differently in the matter of payment of wages, though performing same and similar duties but on the ground of the source and manner of their engagement.

2. The case of the Respondents in treating differently the two set of daily rated

employees in the matter of payment of wages is that the persons, who have been engaged on daily wages through Employment Exchange and against the posts sanctioned by the Finance Department are to be given the enhanced wages and not the one who have neither been sponsored by the Employment Exchanges, nor engaged against the sanctioned posts though they may be performing same and similar duties and discharging same and similar functions.

3. On the fact of it, this appears to have no relevance in so far as the payment of wages is concerned. Wages are to be paid for the nature of work performed for which the source of and the manner in which the persons are engaged is not at all relevant. Division Bench of this Court in *Tirath Raj and Ors. v. H.P. State Electricity Board and Ors.* ILR 1987 HP 485 after referring to a number of decision of the Supreme Court considered such type of discriminatory treatment meted out to the daily rated employees engaged by the H.P. State Electricity Board (hereinafter referred to as "the Board") and held that this criteria is not at all relevant in the matter of payment of wages and daily rated workers cannot be discriminated against. The Board had deployed number of workmen as T. Mates (a Class IV post) on daily rate basis, but were required to perform the duties of Clerks, which in fact they have been performing. They were being paid their wages as T. Mates only, namely, as Class IV daily rated employees. The Board had also other set of workmen, who were deployed on daily wages as Clerk through Employment Exchanges after completing all codal formalities and against proper sanction and were paid higher wages. Both set of employees were performing same and similar duties. These facts the Court noticed in para 22 of its report as follows:

From the admitted facts stated above in respect of these two categories of daily-rated workmen, the distinguishing feature, if any, which surfaces is that one set of workmen is employed as T-Mates but is required to perform the duties of Clerks and is actually paid the minimum wages of daily paid Clerks, whereas the other set of workmen is employed against the vacant posts of Clerks through Employment Exchanges after completing all the codal formalities and against proper sanctions and is paid at different rates. Although both the sets of workmen are employed on daily-rated basis and are performing the same duties, the first set of workmen is getting paid at a much lower rate than the second category, inasmuch as the former is paid at the rate of Rs. 628.50 per month whereas the latter at Rs. 1062.00 per month.

4. The stand of Board in paying to the two set of their daily rated workmen the wages differently was same and similar as in the instant case, namely, that the daily rated T-Mates though performing same and similar duties as daily rated Clerks had neither been deployed through Employment Exchanges, nor against any sanctioned posts, whereas the daily rated Clerks had been so engaged. This discrimination was held to be arbitrary and the ground of discrimination was held to be having no relation in the matter of payment of wages. The Court held:

The Court finds that neither the Central Government nor the State Government

makes any distinction in the rates of wages payable to the daily-rated employees performing the same duties, while fixing the minimum rates of wages, on the basis of the source or method of recruitment. In other words, all daily-rated employees performing identical duties in respect of whom minimum rates of wages are fixed are entitled to such wages irrespective of whether the employees have been recruited through the Employment Exchange or otherwise, or whether their employment is made after completing the codal formalities or otherwise.

Against the aforesaid background, the Court is unable to discern the rationality of the distinction made in the matter of payment of wages on the basis of the source/method of recruitment, especially when the Board has conceded the claim of the applicants, who are employed as T-Mates on daily wages but who are performing the duties of Clerks, to the payment of minimum wages of daily-rated Clerks as notified by the Respondent-Pored from time to time.

5. The same Division Bench, which decided the aforementioned case of Tirath Raj, in another decision in Miss Vidya Sharma and Ors. v. State of Himachal Pradesh CWP No. 314 of 1988, decided on 23rd August, 1988 had also an occasion to deal with similar question. The claim of Petitioners in that case, who had been engaged on daily rate basis was for wages and allowances at the rate equivalent to the remuneration and allowances paid to the regularly appointed Clerks including all other facilities available to the regularly appointed Clerks. They had been denied the wages and other facilities and the stand of State Government was same as is in the instant case. There was no denial of performing same and similar duties.

6. Constitutional provisions were examined on the justiciability of the doctrine of equal pay for equal work. The Court said:

In a series of decisions, the apex Court has examined the doctrine of "equal pay for equal work" against the background of the aforesaid constitutional provisions and considered the justiciability of the claim advanced on the basis of the said doctrine and evolved certain principles and applied them against the backdrop of varied set of facts.

7. After examining the principles laid down in a series of decisions, namely, Kishori Mohanlal Bakshi Vs. Union of India, ; State of Punjab Vs. Joginder Singh, ; Unikat Sankunni Menon Vs. The State of Rajasthan, ; Randhir Singh Vs. Union of India (UOI) and Others, ; D.S. Nakara and Others Vs. Union of India (UOI), ; P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, ; P. Savita and Others Vs. Union of India (UOI), Ministry of Defence (Department of Defence Production), New Delhi and Others, ; Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others, ; Union of India (UOI) and Another Vs. R.G. Kashikar and Another, ; Dharendra Chamoli and Another Vs. State of U.P., ; Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others, ; U.P. Income Tax Department Contingent Paid Staff Welfare Association Vs. Union of India (UOI) and Others, ; Delhi

Municipal Karamchari Ekta Union (Regd.) Vs. P.L. Singh and Others, ; Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others, ; Jaipal and Others Vs. State of Haryana and Others, the Court held:

The aforesaid comprehensive survey of the case law on the subject discloses that within a period of a quarter of a century the doctrine of "equal pay for equal work" has passed through a conscious process of reformation and refinement as a result of the gradually forward looking posture of the apex Court. What was regarded once as a mere golden thread running through the Preamble and the Directive Principles of State policy and probably believed to be a sheer rhetoric or demagogic slogan and not a right enforceable as such, has now been woven(sic) into the fabric of Fundamental Rights guaranteed by Articles 14 and 16 and hence a constitutional goal attainable by resort to the constitutional remedies provided by Articles 32 and 226, the former being a Fundamental Right in its own turn. The right can be invoked and enforced through the judicial process in cases of unequal pay or scales of pay based on no classification or irrational classification, though those drawing the different wages or different scales of pay do the same or broadly similar work.

8. Since in the instant case, Petitioners are performing same and similar jobs, which are being performed by the other Class IV employees, who have been, according to the Respondents, engaged through Employment Exchanges and against the sanctioned posts, we see no reason why the Petitioners be not paid same wages as per the Government's Notification dated 20th June, 1992 (Annexure-III) and are also paid wages as enhanced with respect to all Class IV employees from time to time.

9. Consequently, we allow the writ petition and direct the Respondents to pay the enhanced wages to the Petitioners as per Annexure III dated 20th June, 1992 on or before the date when such wages were paid to the Class IV employees, namely, 1st June, 1992. Arrears of wages will be worked out and paid to the Petitioners within two months.