
(1993) 11 GUJ CK 0006
In the Gujarat High Court

Reserve Bank of India and Another	Vs	APPELLANT
C.D. Chauhan and Others		RESPONDENT

Date of Decision : 30-11-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 26(b)
Industrial Disputes Act, 1947 — Section 25F, 25F

Citation : (1994) 1 GLR 35

Hon'ble Judges : S. Nainar Sundaram, C.J;M.S. Parikh, J

Bench : Division Bench

Judgement

M.S. Parikh, J.—This Letters Patent Appeal illustrates how justice is truth in action.

2. 35 daily wage labourers described herein and known as ticca mazdoors filed under Article 226 of the Constitution, petition being Special Civil Application No. 4669 of 1987 against the Reserve Bank of India, appellant herein. The facts concerning these ticca mazdoors may be recapitulated and briefly stated:

3. The Reserve Bank of India has a specific cadre of Mazdoors in the Cash/Issue Departments to assist the coin-note examiners, the ratio being 4 coin-note examiners to 1 mazdoor. Minimum and maximum qualifications required of the mazdoors are Standard IV to IX. The other cadres are those of peons and darwans. Minimum and maximum required qualifications of peons are Standard VII to Matriculation. Darwans have a special responsibility in that they are entrusted with the work of guarding the Bank's property and with other duties. Therefore, recruitment to the cadre of Darwans is made exclusively from ex-servicemen. It is the say of the Reserve Bank of India that due to wide absentism in the cadre of mazdoors, it is required to engage on purely casual basis daily rated mazdoors whom it describes as ticca mazdoors - who also have to attend to the work of assisting coin-note examiners. At times they are given work of peons and darwans during their absentism. However, when they are given such work they cannot perform the following functions of peons:

- (i) Delivery of vouchers to Deposit Accounts Department, etc.
- (ii) taking cash for booking of air-tickets, etc., in respect of officers for official work.
- (iii) delivery of payment order to T.C.I.
- (iv) collecting railway tickets on behalf of officials of the Bank in whose cases arrangement for booking of rail tickets for official purpose has been made with T.C.I.
- (v) handling the cases which are of secret/confidential nature.

The names of the ticca mazdoors in this case came to be sponsored by local Employment Exchange, Ahmedabad upon the requisition of the Reserve Bank of India Applications were invited in the prescribed form requiring details regarding age, educational qualifications, previous experience, etc., supported by copies of original documents/certificates. Candidates were then called for personal interview and based on their age, educational qualifications and performance at the personal interview they were selected for being waitlisted for the post of ticca mazdoors, and after their selection they were called upon to undergo medical fitness examination and upon having been found fit medically, they were waitlisted in the waiting list of daily wage mazdoors, i.e., ticca mazdoors. It was communicated to them that it would be at the sweet will and discretion of the Bank to decide as to when they should be employed and as to when they should be thrown out. It is in this fashion that the ticca mazdoors herein have worked as such in the Reserve Bank of India since 1984 till date. They are required to remain present at about 9-30 a.m. for the purpose of ascertaining whether work is available to them.

4. When the Reserve Bank of India tried to fill in the posts of Class IV employees by giving fresh advertisement and by preparing list of 120 persons in total disregard of the claims of the petitioners for regularisation, they approached this Court by way of the aforesaid petition.

4A. The learned single Judge who heard the petition, finally found that the petitioners who were waitlisted to work as daily wage mazdoor - ticca mazdoors after undergoing due selection process, were identically situated with regular mazdoors, who are also appointed by the Reserve Bank after following the self same process of selection. Relying upon the decisions of the Hon"ble Supreme Court 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., and Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others, , he held that the claim of the petitioners for regularisation of their services as replar mazdoors in Class IV employment of Reserve Bank of India was undefendable and any attempt to thwart such claim would be an attempt to perpetuate exploitation. He observed that it was expected of the Reserve Bank as model employer to see that the petitioners were regularised at

the earliest and be provided the same equal treatment as they would be entitled to under the constitutional frame work. He, therefore, directed the Reserve Bank to regularise the petitioners - ticca mazdoors to the post of regular mazdoors in the regular employment of the Bank, to grant them all other benefits flowing from such regularisation, to regularise such persons as the ticca mazdoors on expiry of at least a period of one or two years from the date of their initial engagement and to regularise the petitioners as Class IV regular mazdoors with effect from 1-10-1987 and finally to pay to the petitioners all the benefits flowing from such regularisation. The Reserve Bank was directed to effect such regularisation by 31-5-1991. It is this decision of the learned single Judge which has been brought under challenge before this Court under Clause 15 of the Letters Patent.

5. Mr. Vakil, learned Counsel appearing for the Reserve Bank -the appellant has made following broad submissions:

(1) The petitioners had not approached the Court for regularisation in the post of mazdoors whereas contrary to their claim the learned single Judge has directed regularisation in the cadre of mazdoors.

(ii) Regularisation with retrospective effect conferred upon the petitioners would be bad in law.

(iii) Even on facts concerning the respective petitioners regularisation en bloc would not have been ordered.

(iv) Regularisation without recourse to availability of vacancies would be bad, and

(v) The subsequent event in the form of settlement ultimately leading to regularisation of ticca mazdoors in future according to the terms and conditions of the settlement should result in appropriate modification in the directions issued by the learned single Judge.

6. We would club the last four submissions while dealing with the question of regularisation. However, it would be appropriate to first dispose of the preliminary objection contained in the first submission. For the purpose of substantiating this submission Mr. Vakil, learned Counsel for the Reserve Bank read before us the whole petition which resulted on account of the action of the Reserve Bank in starting the process to appoint and recruit persons in Class IV cadre of peons and darwans. According to his submission, there was no attempt on the part of Reserve Bank to appoint regular mazdoors so that the petitioners could claim regularisation in the post of regular mazdoors. Thus, according to Mr. Vakil, the petition lacked required pleadings for the petitioners being regularised as mazdoors in the permanent cadre of mazdoors in the Reserve Bank. Mr. Vakil referred to a decision of the Hon'ble Supreme Court in the case of Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others, . In that case the plaintiffs had throughout maintained that the temple was not a public temple but it belonged only to a certain community. It was not the case of the

plaintiffs that the temple was a private temple. It was admitted that the temple came within the purview of the Madras Temple Entry Authorisation Act (5 of 1947, before amendment by Act 13 of 1949) as amended, but it was contended that as the temple was a denominational one, the plaintiffs were entitled to the protection of Article 26(b) of the Constitution of India. The plaintiffs sought to raise a new plea for the first time in the appeal before the Supreme Court by contending on the basis of the documents and other evidence on record of the case that the temple was a private one and was not within the purview of the Act. The Supreme Court expressed that such a submission could not be endorsed as the object of requiring a party to put forward his pleas in the pleadings was to enable the opposite party to controvert them and to adduce evidence in support of his case. It is in the light of the aforesaid state of making of a new submission in the appeal before the Supreme Court, it was held that it would be neither legal nor just to refer to evidence adduced with reference to a matter which was actually in issue and on the basis of that evidence, to come to a finding on a matter which was not in issue, and decide the rights of parties on the basis of that finding.

7. In reply Mr. Padiwal, learned Counsel for the respondents submitted that the prayer for regularisation is general in nature and when facts remained undisputed with regard to similar nature of work and duty required to be attended to by ticca mazdoors and regular mazdoors and similar nature of process for enlistment of ticca mazdoors and appointment of regular mazdoors, there was no reason why the petitioners be not regularised in the permanent cadre of mazdoors.

8. In our opinion, the principle in Venkataramana's case would not be applicable to the facts of the present case for the petitioners did claim regularisation in general terms as can be seen from relief (B) which pertains to regularisation, and which reads as under :

The Hon'ble Court be pleased to direct the respondent-Bank to regularise the petitioner's services and to declare that the respondent-Bank has no power or authority to induct persons from the list of 120 employees bypassing the claim of petitioners for work, wages and seniority.

Even in relief (A) the petitioners have prayed that the action of the respondent-Bank of depriving the petitioners of the wages of permanent employees, whenever work is given to them, be declared as illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India. Besides the principle noted above pertaining to pleadings in a suit before a Civil Court would not strictly be applicable in a writ jurisdiction of the High Court. In this connection, reference has been made on behalf of the ticca mazdoors to a bench judgment of this Court in the case of Consumer Education and Research Centre and Others Vs. State of Gujarat and Others, . Relying upon number of decisions of the Supreme Court, the bench found that in exercise of the extra-ordinary powers under Article 226 of the Constitution of India, it would be open to the High Court to

mould the relief to meet with peculiar and complicated requirements so as to make granting of the relief effective and that wide powers have been conferred on the High Court to reach injustice wherever it is found.

9. We, therefore, reject the first submission made by Mr. Vakil, learned Counsel for the Reserve Bank.

10. The rest of the submissions touch the question of regularisation.

Regularisation

11. It has now to be seen whether regularisation can be ordered and if yes what directions can be issued. It would be appropriate to reproduce broad principle recently laid down by the Hon''ble Supreme Court in the case of State of Haryana and others Vs. Piara Singh and others etc. etc., . It can be found succinctly stated in paragraph 10 of the citation. We may conveniently divide it into two parts. The first part would read:

Ordinarily speaking, the creation and abolition of a post is the prerogative of the Executive. It is the Executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be exercised either by making rules under the proviso to Article 309 of the Constitution or (in the absence of such rules) by issuing Rules/ instructions in exercise of its executive power.

The second part of the principle reads:

The Court comes into the picture only to ensure observance of fundamental rights, statutory provisions Rules and other instructions, if any, governing the conditions of service. The main concern of the Court in such matters is to ensure the Rule of law and to see that the executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must be a model employer. It is for this reason, it is held that equal pay must be given for equal work, which is indeed one of the directive principles of the Constitution. It is for this very reason it is held that a person should not be kept in a temporary or ad hoc status for long. Where a temporary or ad hoc appointment is continued for long the Court presumes that mere is need and warrant for a regular post and accordingly directs regularisation.

12. The principle so stated provides an appropriate guide to deal with variety of fact situations while considering regularisation of ad hoc/temporary employees, daily rated workers and casual labourers.

13. Mr. Vakil, learned Counsel for the Reserve Bank would submit that Piara Singh's case would seal the fate of the ticca mazdoors, who according to his submissions, could not be directed to be regularised and or absorbed in the

Reserve Bank's permanent service in the cadre of mazdoors. Mr. Vakil, therefore, firstly read the caution note for the Courts to follow as appearing in Piara Singh's case. Accordingly, the Court must while giving directions for regularisation of service act with due care and caution. It must first ascertain the relevant facts, and must be cognizant of the several situations and eventualities that may arise on account of such directions. A practical and pragmatic view has to be taken, inasmuch as every such direction not only tells upon the public exchequer but also has the effect of increasing the cadre strength of a particular service, class or category. Following factors are required to be borne in mind while ordering regularisation of the above class of employees:

- (i) Whether there are vacancies available for such employees.
- (ii) Whether they are sponsored by the Employment Exchange
- (iii) Whether they are eligible and/or qualified for the post at the time of their appointments, and
- (iv) Whether their records of service since the appointment are satisfactory.

14. Mr. Vakil also drew our attention to the observation that mere continuation of an ad hoc employee for one year cannot lead to the presumption that there is a need for a regular post. He finally submitted that as cautioned by the Apex Court in the case of Piara Singh no blanket direction could be issued for regularisation and/or absorption of daily rated workers. His submission was that such an en bloc regularisation is entirely outside the scope of the principle of regularisation. In Piara Singh's case the facts indicate that for the last several years a large number of appointments were made to Class III and IV service in the States of Punjab and Haryana on ad hoc basis without reference to Public Service Commission or the Subordinate Service Selection Board and without adhering to employment exchange requirements. Some of the employees having so found their place in the establishment came to be regularised by various orders passed by the respective Governments on account of the fact that they fulfilled the criteria laid down by the orders so passed. Thus, who left out approached the Punjab and Haryana High Court, which gave en bloc direction for regularisation of the ad hoc/temporary employees, daily wagers and casual labourers, who had put in more than one year's service. It can thus be seen that the Government (employer) was mindful of the workers who had already been in employment, though irregularly appointed. The left out workmen could hardly be regularised as they were found to be not fulfilling the criteria laid down by the orders of regularisation passed by the Government. This is one side of the picture, which would obviously call for the application of the first part of the principle quoted above.

15. Mr. Vakil made reference to the following decisions of the Apex Court in support of his submission that regularisation could be directed only apropos the availability of vacancies and only if there are permanent posts available with the employer:

- (i) Dhirendra Chamoli and Another Vs. State of U.P.,
- (ii) Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others,
- (iii) Satyanarayan Sharma and Ors. v. N.M.D.C. and Ors. reported in 1990 (2) LLJ 596
- (iv) Catering Cleaners of Southern Railway v. Chief Commercial Superintendent reported in
- (v) Decision of the Division Bench of the Punjab & Haryana High Court at Chandigarh in L.P.A. No. 1613 of 1989 in the case of Reserve Bank of India v. Vidyasagar, son of Nikharam and Ors. rendered on 6-9-1993.

16. The second part of the principle reproduced from Piara Singh's case deals with ensuring of the Rule of law and to see that the executive acts fairly and to give fair deal to its employees consistent with the requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. It is uniformly said throughout the line of precedent on the question of regularisation that the State is a model employer and for that reason a person should not be kept in a temporary or ad hoc status for long. Where such an employee is continued for long the Court presumes that there is a need and warrant for a regular post and accordingly it directs regularisation. To amplify the principle, it would be appropriate to start with the quotation of Justice Douglas of the U. S. Supreme Court in *Baksey v. Board of Regents* reproduced by the learned single Judge in paragraph 2 of his judgment:

The right to work I have assumed was the most precious liberty that man possesses. Man has indeed, as much right to work as he has to live, to be free and to own property. To work means to eat and it also means to live.

17. In *Randhir Singh Vs. Union of India (UOI) and Others*, the Court found that though the equation of posts and equation of pay are matters primarily for the executive Government and expert bodies like the Pay Commission and not for Courts but where all things are equal, that is, all relevant considerations are same, persons holding identical post may not be treated differentially in the matter of their pay merely because they belong to different departments. The principle was again stated in the context of equal pay for equal work," in *Dhirendra Chamoli and Another Vs. State of U.P.*, . The Court in that case observed:

This argument lies ill in the mouth of the Central Government for it is an all too familiar argument with the exploiting class and a welfare State committed to a socialist pattern of society cannot be permitted to advance such an argument It must be remembered that in this country where there is so much unemployment, the choice for the majority of the people is to starve or to take employment on whatever exploitative terms are offered by the employer. The

fact that the employees accepted the employment with full knowledge that they will be paid only daily wages and they will not get the same salary and conditions of service as other CI. IV employees, cannot provide an escape to the Central Government to avoid the mandate of equality enshrined in Article 14 of the Constitution. This Article declares that there shall be equality before law and equal protection of the law and implicit in it is the further principle that there must be equal pay for work of equal value.

18. Once again, in the case of Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others, , the Apex Court observed that the Government and Public Sector Undertakings are expected to function like model and enlightened employers.

19. In Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others, the Apex Court was directly concerned with the regularisation of the casual employees. The daily rated labourers in the P & T Department complained that even though they had been working in the Department for more than 10 years, the wages paid to them were very low and far less than the salary and allowances paid to regular employees of the same Department. Their case was that they were being exploited by the Union of India. It was found that the said labourers were working continuously for more than an year in the Department and some of them were engaged as casual labourers for nearly 10 years and that they were rendering same kind of service as was being rendered by the regular employees doing the same type of work. The Court found that despite Articles 38(2) and 37 of the Constitution of India the said workmen were subjected to hostile discrimination. We are inclined to reproduce the observations of the Apex Court as having been reproduced by the learned single Judge:

It is urged that the State cannot deny at least the minimum pay in the pay scales of regularly employed workmen even though the Government may not be compelled to extend all the benefits enjoyed by regularly recruited employees. We are of the view that such denial amounts to exploitation of labour. The Government cannot take advantage of its dominant position, and compel any worker to work even as a casual labourer on starving wages. It may be that the 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 state. The Government should be a model employer. We are of the view that on the facts and in the circumstances of this case, the classification of employees into regularly recruited employees and casual employees for the purpose of paying less than the minimum pay payable to employees in the corresponding regular cadres particularly in the lowest rungs of the department where the pay scales are the lowest is not tenable.

We are also inclined to reproduce following observations which are reproduced by the learned single Judge while stating that they touch the constitutional philosophy enshrined in Articles 38, 41 and 37 of the Constitution of India:

India is a socialist republic. It implies the existence of certain important obligations which the State has to discharge. The right to work, the right to free choice of employment, the right to just and favourable conditions of work, the right to protection against unemployment, right to everyone who works to just and favourable remuneration ensuring a decent living for himself and for family, the right of everyone without discrimination of any kind to equal pay for equal work, the right to rest, leisure, reasonable limitations on working hours, and periodical holidays with pay, the right to form trade unions and the right to join trade unions of one's choice and the right to security of work are some of the rights which have to be ensured by appropriate legislative and executive measures. It is true that all these rights cannot be extended simultaneously. But they do indicate the socialist goal. The degree of achievement in this direction depends upon the economic resources, willingness of the people to produce and more than all the existence of Industrial peace throughout the country. Of those rights the question of security of work is of Utmost importance. If a person does not have the feeling that he belongs to an organization engaged in production he will not put forward his best effect to produce more. That sense of belonging arises only when he feels that he will not be turned out of employment the next day at the whim of the Management. It is for this reason it is being repeatedly observed by those who are in-charge of economic affairs of the countries in different parts of the world that as far as possible security of work should be assured to the employees so that they may contribute to the maximisation of production. It is again for this reason that managements and the Government agencies in particular should not allow workers to remain as casual labourers or temporary employees for an unreasonably long period of time. Where is any satisfaction to keep persons as casual labourers for years as is being done in the Postal and Telegraphs Dept.? Is it for paying the lower wages? Then it amounts to exploitation of labour. Is it because you do not know that there is enough work for the workers?

20. More important are the decisions 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., and Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others, . Dealing with the second part of the principle stated in Piara Singh's case the Supreme Court has made reference to these two cases. The first one has been referred to and relied upon by the learned single Judge in this matter also. In the first case it was alleged that about 50,000 persons were being employed on daily rated or on monthly rated basis over a period of 15 to 20 years, without regularising them. It was contended that the very fact that they are continued over such a long period is itself proof of the fact that there is regular need for such employment. In that view of the matter, directions for regularisation were issued. Following observations appearing at page 891 have been quoted while amplifying the aforesaid second part of the principle, in Piara Singh's case:

We are alive to the position that the scheme which we have finalised is not the

ideal one but as we have already stated, it is the obligation of the Court to individualise justice to suit a given situation in a set of facts that are placed before it. Under the scheme of the Constitution the purse remains in the hands of the executive. The legislature of the State Controls the Consolidated Fund out of which the expenditure to be incurred in giving effect to the scheme, will have to be met. The flow into the Consolidated Fund depends upon the policy of taxation depending perhaps on the capacity of the payer. Therefore, unduly burdening the State for implementing the constitutional obligation forthwith would create problems which the State may not be able to stand. We have, therefore, made our directions with judicious restraint with the hope and trust that both parties would appreciate and understand the situation. The instrumentality of the State must realise that it is charged with a big trust. The money that flows into the Consolidated Fund and constitutes the resources of the State comes from the people and the welfare expenditure that is meted out goes from the same Fund back to the people. May be that in every situation the same tax payer is not beneficiary. That is an incident of taxation and a necessary concomitant of living within a welfare society.

(Emphasis ours)

The second case (Jecob's case) deals with the establishment of Kerala Water Authority under the Kerala Water Supply and Sewerage Act, 1986. All the functions of Public Health Engineering Department were transferred to the said authority. All the employees of the said Department were also transferred to the said authority. After its constitution, the authority too recruited some persons with effect from 30-6-1988 which came within the purview of Public Service Commission. The employees of the authority thus fell into four categories, namely:

(i) those who were in the employment of P.H.E.D. before the constitution of the Authority and were transferred to the Authority.

(ii) those whom the Authority employed between 1st April, 1984 and 4th August, 1986,

(iii) those who were appointed between 4th August, 1986 and 30th July, 1988, and

(iv) those who were appointed after 30th July, 1988. Rule 9 of the Kerala State and Subordinate Services Rules empowered the Government to appoint persons, in the case of an emergency, otherwise than in accordance with the Rules. Such appointment was to be valid only for a limited time and such appointee was bound to be replaced by a regular appointee. At the same time, Clause (e) of the Rule provided that persons so appointed may be regularised provided they completed two years' continuous service on 22-12-1973. Construing the said Clause in the light of the constitutional philosophy, it was held:

Therefore, if we interpret Rule 9(a)(i) consistently with the spirit and philosophy

of the Constitution, which it is permissible to do without doing violence to the said rule, it follows that employees who are serving on the establishment for long spells and have the requisite qualifications for the job, should not be thrown out but their services should be regularised as far as possible. Since workers belonging to this batch have worked on their posts for reasonably long spells they are entitled to regularisation in service.

In the light of the aforesaid principle the Court issued various directions which have been reproduced in Flora Singh's case. We would, however, like to highlight the following observations of the Supreme Court in Jacob's case. Ahmadi, speaking for the Bench says:

It is unfair and unreasonable to remove people who have been rendering service since some time as such removal has serious consequences. The family of the employee which has settled down and accommodated its needs to the emoluments received by the bread winner will face economic ruination if the job is suddenly taken away. Besides, the precious period of early life devoted in the service of the establishment will be wholly wasted and the incumbent may be rendered age barred" for securing a job elsewhere. It is indeed unfair to use him, generate hope and a feeling of security in him, attune his family to live within his earnings and then suddenly to throw him out of job. Such behaviour would be an affront to the concept of job security and would run counter to the constitutional philosophy, particularly the concept of right to work in Article 41 of the Constitution.

(Emphasis supplied)

21. We may now revert to how the second part of principle quoted from Piara Singh's case would be attracted in so far as the present case is concerned. A very salient feature of employing ticca mazdoors on daily rated basis may be noted. Admittedly there is no difference in the nature of the work and duty in between the regularly appointed mazdoors and the daily rated ticca mazdoors. Regular mazdoors as well as ticca mazdoors are appointed by calling their names from the Employment Exchange. Their required qualifications are also the same. Both of them are required to undergo the similar type of medical test. There is no difference in the age requirement. The only difference is that the ticca mazdoors are appointed in the manner set out hereinabove on daily wages to fill in the gap created by the regular mazdoors and/or peons and/or darwans going on leave from time to time. Therefore, there is no reason why the regular mazdoors are not appointed from those amongst the daily rated ticca mazdoors by regularising their services. In the context of such features of the enrollment of ticca mazdoors the decision in the case of H.D. Singh Vs. Reserve Bank of India and Others, assumes importance. This case also deals with a ticca mazdoor in the Reserve Bank whose name was struck off from the roll in violation of Section 25F of the Industrial Disputes Act (14 of 1947). It was held that such striking off the name from the roll amounted to unlawful termination. It was further held referring to 5th Schedule of the Industrial Disputes Act that treating the

workman as a Badli worker under a confidential circular could be characterised nothing but an unfair labour practice. Following observation in paragraph 10 merits special mention in this matter, since the same also pertains to the same class of employees:

It is too late in the day for this Court to alert the employers that their attempt should be to evolve a contended labour.

22. As the facts noted above clearly indicate, the practice of employing ticca mazdoors on daily wages by preparing the roll of ticca mazdoors even after following the same procedure as is followed for the appointment of regular mazdoors without conferring any right to such ticca mazdoors for being absorbed or regularised in the permanent posts of regular mazdoors as and when occasions arise, is a matter of concern. Added to this is the fact that most of the ticca mazdoors before this Court had put in their services since 1984. We are in 1993. This would obviously indicate with reasonable certainty that there is such a need for availing of services of more mazdoors in the Reserve Bank of India here and yet the Bank is following the such too condemned practice of casual employment. It is here that the role of the Court sets in. Rest of the factors of sponsoring by Employment Exchanges, eligibility requirements of medical fitness and educational qualifications, and record of service are present in this matter. Above all, most of the petitioners belong to reserved categories so that it is unlikely that the Reserve Bank would have to face any, problem regarding reservation. Finally the leading banking institution would have before it duly tested ticca mazdoors in the matter of reposing of confidence so that it cannot be said that they lack such degree of confidence as would be required in the apex banking institution.

23. We would deal with the Bench decision of the Punjab and Haryana High Court relied upon by Mr. Vakil while we soon, hereafter deal with the subsequent events.

Subsequent events:

24. As soon as this appeal came to be filed the Reserve Bank moved Civil Application No. 900 of 1991 and respectively on 2-5-1991 and 7-9-1991 following orders came to be passed by the Bench:

Order dated 2-5-1991 (Per G.N. Ray as His Lordship then was, speaking for the Bench):

We, therefore, direct that let the application for interim order come up for hearing before the appropriate Bench one week after the summer holidays, viz. on 17th June, 1991, so that on a contested hearing, the Court may pass appropriate interim order during the pendency of the appeal. It appears to us that, in the facts and circumstances of the case, an ad-interim order should be passed at this stage to the effect that there will be stay of the operation of the order appealed from on condition that without prejudice to the rights and

contentions of the parties in the Appeal and also in the application for interim order, which will be heard in the presence of the Advocates on both sides, the appellants will have to pay to the writ petitioners-respondents salary only at the rate of minimum of the pay scale applicable to the Class IV employees from June, 1991.

This order, however, will be subject to any order that may be passed in disposing of the application for interim relief.

Order dated 7-9-1991 (Per G.N. Ray as His Lordship then was, speaking for the Bench):

After hearing the learned Counsels for the parties and considering the facts of the case, we dispose of this C A. for interim order, by directing that, without prejudice to the rights and contentions of the parties in the instant appeal, the Reserve Bank will provide work to any of the respondents herein (original petitioners), who will report for duty on any day and even if the reporting Ticca Mazdoors are in excess of the requirements for the day, the applicant-Reserve Bank of India will provide work to the petitioners to do any work of Class IV employees assigned to them, if they agree to do so.

1. The Reserve Bank of India shall regularise the petitioners' service in the category of Mazdoors in the available vacancies, subject to the reservation requirement. Excepting ineligibility on the score of being age-barred, the other usual eligibility criteria for being absorbed as Mazdoors may be made applicable to the petitioner for such regularisation;
2. The Reserve Bank of India shall pay full daily wages, instead of three-fourth daily wage, as at present, for working on Saturday;
3. The Reserve Bank of India shall also pay full daily wage for Sunday (weekly holiday), provided the petitioners have reported for duty and worked for all working days in the preceding days of the Sunday;
4. The Reserve Bank of India shall also pay full daily wage for holidays declared under the Negotiable Instrument Act, provided the concerned Ticca Mazdoor and/or the petitioner has reported for duty and worked on the day preceding the Holiday. By way of abundant caution, it is made clear that the aforesaid direction will not preclude the Bank authorities to absorb any of the petitioners in other Class IV category, provided they are otherwise eligible for such post,

Save as aforesaid, the order appealed from shall remain stayed.

25. It can thus be seen that since 7-9-1991 the Reserve Bank has been under the direction of this Court to regularise petitioners' services in the category of regular mazdoors in the available vacancies.

26. Some time after the above order the appellant-Bank moved in this Letters Patent Appeal, Civil Application No. 1968 of 1993 dated 14th September, 1993, for taking on record the settlement between the Management of Reserve Bank of

India and All India Reserve Bank Worker's Federation where none of the ticca mazdoors happened to be one of the parties to the settlement. This settlement is dated 23-7-1993 and perhaps, as the same succeeded the above order, might not have been brought to the notice of this Court after the above order was passed. Be that it may, we do not propose to take exception by saying that the settlement is arrived at by way of intercepting the process of Court and for that matter we also do not propose to entertain such a contention on behalf of the ticca mazdoors. We truly take the settlement to be a sort of awakening on the part of the Reserve Bank visualising what course it ought to follow in the matter of regularisation. However, in law, the submission of Mr. Padiwal that the settlement is not binding to the petitioners is correct. Following terms of the settlement may be noted :

(i) The existing arrangement or practice of engaging persons on daily wages purely on temporary and ad hoc basis in Class IV in various cadres shall be discontinued forthwith.

(ii) The leave reserve in the case of Mazdoors employed in Cash Department shall be increased from the existing level of 15% to 25%.

(iii) The leave reserve in other categories in Class IV shall be increased from the existing level of 15% to 20%.

(iv) The additional posts that may be created or may arise as a consequence of paragraphs (ii) and (iii) above, together with existing vacancies, if any, shall be utilised for giving (a) full-time employment to part-time employees to the extent possible and (b) regular full-time or part-time employment, as the ease may be, to the ticcas who have rendered continuous service of three years or more as on 19th November, 1992. However, if the number of available vacancies at a particular centre is less than the number of such ticcas at that centre to be given regular full-time/part-time appointment, the ticcas in excess of the available vacancies at that centre shall have to move at their own cost to another centre where vacancies are available after absorbing eligible ticcas at that centre on a returnable basis as and when vacancies arise in the present centre. Such repatriation being in the nature of request transfer, shall be at their own cost and also subject to usual terms and conditions prescribed in respect of request transfers. Such of the ticcas who are not willing to the above arrangements shall have no claim to be absorbed in the Bank.

(v) The Federation shall not under any circumstances insist for engagement of ticcas on daily wage basis for carrying out Bank's work smoothly and without any hindrance or disturbance in any Section/Department including Cash Department of the Bank irrespective of number of employees absent for any reason whatsoever. In other words, notwithstanding any absentism in Class IV cadre (any group), the work of the Bank shall be carried on by and with the assistance of the employees present on any given day. If, however, there is an increase in the Bank's normal work on a long term basis it would review the

overall strength in Class IV cadre at the centre concerned in the normal course.

It can be seen that it speaks of increase in leave reserve in case of mazdoors from the existing level of 15% to 25% in Cash Department and 15% to 20% in other categories of Class IV.

27. Then there are further admitted facts brought to our notice: Petitioner No. 1 Shri C.D. Chauhan, petitioner No. 2 Shri A.R. Chauhan, petitioner No. 10 Shri Ambalal Shivabhai Dantani, petitioner No. 16 Shri Mohanbhai Tribhovandas Shrimali and petitioner No. 32 Shri Rajeshbhai Dahyabhai Datania are the five ticca mazdoors whose services have been regularised. Petitioner No. 20 Shri Bharatkumar Kishanlal Dantani and the petitioner No. 23 Shri Vrajlal Bhajunbhai Mithaiwala are not in the queue of ticca mazdoors seeking regularisation/absorption in the cadre of regular mazdoors, as they are not available and even their whereabouts are not known. Therefore, out of 35 petitioners, there now remain 28 ticca mazdoors.

28. We do propose to bear in mind all the above subsequent events, but in the context of the facts as they are noted in our judgment. Mr. Vakil learned Counsel submitted that the question of regularisation now should be left to the Management of Reserve Bank. Even the Bench of Punjab and Haryana High Court has done the same thing while rejecting the petition of ticca mazdoors before that Bench in the case of Reserve Bank of India v. Viayasagar, son of Nikkaram and Ors. in Letters Patent Appeal No. 1613 of 1989 (supra). We adopt the reasoning of the learned Judges of the Bench when they distinguished the decision of the learned single Judge of this Court in this case, for saying that in the facts and circumstances attending ticca mazdoors of this place, the Bench decision of Punjab and Haryana High Court would not be applicable here. In other respects, if we are required to express ourselves, with profound respect to Their Lordships of Punjab and Haryana High Court, we are unable to share and endorse the views expressed in that decision. In fact, we endorse the applicability of the principle of regularisation to the facts of the present case decided by the learned single Judge.

29. The chain of events right from the day the learned single Judge pronounced his judgment till date, thus indicates how justice is truth in action as we at first expressed. We, therefore, find that while the broad conclusion reached to by the learned single Judge cannot be taken exception of, we would bear in mind the chain of events in the light of the principles noted above for moulding the specific directions.

Conclusion:

It has, therefore, to be held that the remaining 28 petitioners - ticca mazdoors deserve regularisation/absorption in the cadre of regular mazdoors. We give following directions bearing in mind what we have expressed hereinabove:

(I) The Reserve Bank of India shall regularise the services of the 28 remaining

ticca mazdoors - petitioners in the category of mazdoors within a period of six months from today.

(II) Such regularisation shall be given effect only for the purpose of continuity and without conferring any monetary benefit and benefit of seniority resulting from such regularisation, with effect from 1-1-1991.

(III) The interim direction with regard to payment of daily wages accorded by this Court as per the order dated 7-9-1991 reproduced hereinabove, as also with regard to daily wage for Sundays and Holidays stands unaffected and the Reserve Bank shall follow those directions till the actual regularisation is conferred to the ticca mazdoors as per the aforesaid directions.

This Letters Patent Appeal accordingly and in the aforesaid terms stands partly allowed. There shall be no order as to costs.