

(1987) 11 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 736 of 1986

Shakuntla Devi

APPELLANT

Vs

The State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 30-11-1987

Acts Referred:

Constitution of India, 1950 — Article 38, 39, 41, 42, 43

Citation : (1988) 2 ShimLC 18

Hon'ble Judges : P.D. Desai, C.J.; R.S. Thakur, J

Bench : Division Bench

Advocate : Nemo, for the Appellant; L.S. Panta, D.A.G., for the Respondent

Judgement

P.D. Desai, C.J.—This is an extraordinary case in which the widow and two unmarried daughters of a person who died in harness while being employed as a daily-rated employee continuously for a period of a little over 2 years without being regularised have been subjected to undeserved want since not a farthing by way of pensionary benefits has been or is being received by them. The following facts are not in dispute.

2. The deceased husband of the Petitioner was employed as Supervisor on daily-rated basis by the then Block Development Officer, Bhattiyat, with effect from October 16, 1956. He continued to be employed as such under various programmes upto December 25, 1985 on which day he died. He was paid wages ranging between Rs. 3 to Rs. 13 per day during this entire period, except for a period of five days (13-12-1964 to 15-12-1964 and 15-1-1967 to 16-1-1967), when he was on leave without wages. The case for the regularisation of his service appears to have been taken on hand in or about 1983 and he was recommended to be adjusted against the regular post of Block Supervisor or Road Supervisor or against the post of peon which was lying vacant in the Block since long. The case was, however, dropped before he died. The result was that he got no service benefits which were admissible to a regular appointed during his life time and after his death no pensionary benefits have accrued to his

dependants.

3. The State has to have a constitutional goal and a commitment to the socioeconomic justice. This flows inevitably from the preamble and the Directive principles of State Policy enshrined in the Constitution. Article 38 enjoins upon the State to strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life and, in particular, to strive to minimise the inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people engaged in different vocations. Article 39 requires the State to direct its policy towards securing that the citizens, men and women equally, have an adequate means of livelihood and that there is equal pay for equal work for both men and women. Under Article 41, the State is under an obligation to make effective provisions for securing the right to public assistance in cases of old age, sickness and disablement and in other cases of undeserved want and, under Article 42, to make provision for securing just and humane conditions of work. The mandate of Article 43 inter alia, is that the State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, a work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure. The State has apparently failed in the present case to carry out these constitutional mandates inasmuch as the deceased husband of the Petitioner was unfairly and unjustly denied the benefit of regularisation of his service during the period of his continuous employment for a little over 29 years although a post was available in the every Block where he was employed and he was recommended for being adjusted against the same. Since his dependants have been left in a state of undeserved want, as a result of the consequential denial of the pensionary benefits to them, the injustice is being perpetuated.

4. It is not in dispute that if the deceased husband of the Petitioner had been regularised prior to his death, the pensionary benefits would have been admissible in the case. Non-regularisation his case was an event over which he had no control and a consequence which was not of his own making. In conformity with the constitutional obligation, it was incumbe on the State Government to have taken timely and affirmative steps to regularise his services and, if necessary, to have created even a supernumerary post in order to achieve the purpose, especially when the work load justified his continuous employment for a period of almost three decades. Since he is dead, his regularisation now would involve only a paper exercise. But the State still owes a duty of taking remedial measures in accordance with law without undue delay in order to give posthumous justice to him and to secure to his dependants the right to monetary benefits so that they can have adequate means of livelihood.

5. It would be pertinent to point out in this connection that the Supreme Court has repeatedly emphasised the need to take timely and effective measures for the regularisation of the services of the casual labour. The latest in the line of

decisions is the ruling in the Daily Rated Casual Labour employed under P & T Department through *Bhartiya Dak Tar Mazdoor Manch v. Union of India and others*, Writ Petition No. 373 of 1986 and Writ Petition No. 302 of 1986 decided on October 27, 1987 (1987) 2 scale 189. The following observations/directions given in that case are to the point and are, therefore, extracted and cited hereinbelow:

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, the right of every one who works to just and favourable remuneration ensuring a decent living for himself and for family, the right of every one without discrimination of any kind to equal pay for equal work, the right to rest, leisure, reasonable limitation on working hours and periodic 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 effort 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 justification to keep persons as casual labourers for years as is being done in the Posts and Telegraphs Department? Is it for paying them lower wages? Then it amounts to exploitation of labour. Is it because you do not know that there is enough work for the workers? It cannot be so because there is so much of development to be carried out in the communications department that you need more workers. The employees belonging to skilled, semi-skilled and unskilled classes can be shifted from one department to another even if there is no work to be done in a given place. Administrators should realise that if any worker remains idle on any day, the country loses the wealth that he would have produced during that day. Our wage structure is such that a worker is always paid less than what he produces. So why allow people to remain idle? Any way they have got to be fed and clothed. Therefore, why don't we provide them with work? There are several types of work such as road making, railway

construction, house building, irrigation projects, communications etc. which have to be undertaken on a large scale. Development in these types of activities (even though they do not involve much foreign exchange) is not keeping pace with the needs of society. We are saying all this only to make the people understand the need for better management of man power (which is a decaying asset) the non-utilisation of which leads to the inevitable loss of valuable human resources. Let us remember the slogan : "Produce or Perish". It is not an empty slogan. We fail to produce more at our own peril. It is against this background that we say that non-regularisation of temporary employees or casual labour for a long period is not a wise policy. We, therefore, direct the Respondents to prepare a scheme on a rational basis for absorbing as far as possible the casual labourers who have been continuously working for more than one year in the Posts and Telegraphs Department.

6. For the foregoing reasons, it appears expedient in the interest of justice to direct the State Government to consider in accordance with law and in conformity with the principles of equity, justice and good conscience and in light of the observations hereinabove made the question of granting to the deceased husband of the Petitioner the benefit of ex-post-facto regularisation of services and to work out and grant all the monetary benefits including the pensionary benefits due and admissible in accordance with law to the Petitioner. Compliance to be reported on or before February 29, 1988.

7. The Court would like to observe that in *Gheto Ram v. H.P. State Electricity Board and Ors.* ILR 1986 HP 303, similar directions were issued to the Himachal Pradesh State Electricity Board and that in con-conferredconf ex-post facto benefit of confirmation of services was conferred ex-post facto on as many as 27 employees, who had put in long year of service even after their retirement. There is no reason why the State Government should not take such a step when an instrumentality of the State chose to do so to give delayed justice to its ex-employees.

8. The Court would like to observe further that unless timely affirmative decision is taken in the case as directed hereinabove, it may have to consider issuing interim directions with regard to the payment to the Petitioner of the differential wages of her deceased husband on the basis of the doctrine of "equal pay for equal work" in light of the decision of the Supreme Court in the *Casual Labour, P. & T.S* case (supra).

9. Adjourned to March 7, 1988.

10. Dasti copy on usual terms.