

**(1994) 04 CAL CK 0034**  
**In the Calcutta High Court**  
**Case No : C.R. No. 1163 (W) of 1993**

Sri Sumangal Mondal and Others

APPELLANT

Vs

The State

RESPONDENT

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**Date of Decision :** 26-04-1994

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226

**Citation :** (1994) 2 CALLT 385

**Hon'ble Judges :** Gitesh Ranjan Bhattacharjee, J

**Bench :** Single Bench

**Advocate :** Pratap Roy and Swapan Banerjee, for the Appellant; Tulshidas Maity, for the Respondent

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## Judgement

Gitesh Ranjan Bhattacharjee, J.—The petitioner of this writ petition want to be regularised in service and get pay equal to the pay of the employees of the regular establishment. It is the contention of the petitioners that they were engaged under Lower Damodar Irrigation Division, Government of West Bengal about 22 to 25 years back and since then they were discharging their duties as "seasonal Khalasis" with periodical break in service so that they might not claim themselves as regular employees of the department. It is however the contention of the petitioners that since 1-6-1987 they are discharging their duties continuously as Group-D staff of the said department throughout the year, and as such they, as casual workers in Group-D, are entitled to be absorbed in the regular establishment in view of the Government of West Bengal, Labour Department Memo No. 1700-EMP dated the 3rd August, 1979 and the said Department Memo No. 1650-EMP dated the 28th August, 1980. The petitioners have also annexed to the writ petition a Gradation List of Employees as Annexure-A showing their dates of joining as seasonal khalasis/casual workers in the said department. The respondents did not contest the writ petition by filing any affidavit-in-opposition or otherwise. The allegations made in the writ petition thus go uncontroverted. Consequently in view of the fact that the petitioners have been continuously working as casual workers in Group-D without any break

for more than 3 years since 1-6-1987 they are entitled to be absorbed in the regular establishment in view of the aforesaid Labour Department circulars of the Government of West Bengal as well as in view of the general proposition of law as by now established by plethora of judicial decisions applicable to the matter.

2. The learned Advocate for the petitioners however argued that in view of the principle of "equal pay for equal work" the petitioners who have been working in the Department as seasonal/casual workers for the last 22/25 years should be given wages for all those years at the same rate of pay as admissible to the regular employees of the department in the Group-D category and at any rate this they should get at least with effect from 1-6-87 since when they have been working in the department as casual workers without break. In this connection, the learned Advocate for the petitioners relied upon two decisions of the Supreme Court, one being *Dhirendra Chamoli and Another Vs. State of U.P.*, and the other *Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others*, . In fact the latter decision was rendered by the Supreme Court following and relying upon its earlier decision in *Dhirendra Chamoli (supra)* which is known as *Nehru Yuvak Kendra's* case. In the said *Nehru Yuvak Kendra's* case the Supreme Court took cognizance of the matter on the basis of two letters addressed by two persons. It was complained that there were a number of persons who were engaged by Nehru Yuvak Kendras as casual workers on daily wage basis and though they were doing the same work as was performed by Class-IV employees appointed on regular basis, they were not being given the same salary and allowances as were being paid to Class-IV employees. The plea taken by the respondents in that case was that Nehru Yuvak Kendras had been started at different places in the country as temporary organisations and they had not yet been made permanent, with the result that there were no sanctioned posts of Class-IV employees and the employees who were engaged by different Kendras were taken as casual employees on daily wage basis. The Supreme Court however did not find favour with such plea and observed that Article 14 of the Constitution declared that there would be equality before law and equal protection of the law and implicit in it was the further principle that there must be equal pay for work of equal value. The Supreme Court further observed that the employees who were in the service of the different Nehru Yuvak Kendras in the country and who were admittedly performing the same duties as Class-IV employees, must therefore get the same salary and conditions of service as Class-IV employees, and it made no difference whether they were appointed in sanctioned posts or not. The Supreme Court directed that the salary and allowances of Class-IV employees shall be given to these persons employed in the Kendras with effect from the date when they were respectively employed. In that context, the Supreme Court also observed that it was not at all desirable that any management and particularly the Central Government should continue to employ persons on casual basis in organisations which had been in existence for over 12 years.

3. In view of the direction given in that case by the Supreme Court for giving

salary and allowances of Class-IV employees to the persons employed in Kendras as casual workers with effect from the date when they were respectively employed, it has been argued by the learned Advocate for the petitioners that the petitioners in this case also must be given arrear wages for the back period at the rate of salary admissible to the regular employees of Group-D. It is however to be stated that although in the said decision the Supreme Court directed for payment of salary and allowances at the same rate as admissible to the Class-IV employees and although as a matter of fact there was direction for payment of such salary and allowances with effect from the date when the concerned persons were respectively employed yet it need not be assumed that the said decision purported to lay down any rigid principle of invariable application that in every case where the Court finds that casual workers were engaged without paying them equal salary as admissible to regular employees of the same category the Court must direct payment at such rate for the back period also. The question whether in any particular case direction should be given for payment for the back period rather depends upon the facts and circumstances of each individual case. Otherwise there may be hundreds and thousands of claimants approaching the Court for getting their dues for any back period extending upto any length of time, may be, say, 50 years and such a situation is likely to lead to a chaotic pass where the State may, to the detriment of public interest, find itself plunged into a position of sheer bankruptcy in liquidating past dues, the claims for which were kept dormant for a long time for some reason or other. In respect of past claims and past causes of action therefore even in writ jurisdiction it is an acknowledged position of law that the party must be vigilant and must approach the Court with reasonable promptitude and any undue delay in the matter must be reasonably explained. In the aforesaid case of Nehru Yuvak Kendra, we have seen, the writ proceedings were initiated on the basis of two letters addressed by two persons and not by any formal and regular writ petition. The very fact that the matter came up before the Court in a rather somewhat unusual way through letters and not by regular and formal writ petitions would rather indicate that the persons concerned had neither the necessary expertise nor the resources, financial and otherwise, to approach the Court promptly through regular writ petitions by engaging Advocates. In the circumstances, it would perhaps be slightly unrealistic to expect that the petitioners could have approached the Court promptly and without delay for getting the required relief. To my mind this background of the case may help up in understanding why the Court in that case thought it proper to issue directions for payment of dues for the back period inspite of apparent delay in approaching the Court, although the delay aspect of the matter was not expressly considered by the Court. In this connection, it may be noticed that in a later decision in Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others, in similar circumstances where some of the casual labourers were engaged for as long a period as nearly 10 years the Supreme Court while expressly acknowledging the principle laid down in the Nehru Yuvak Kendras case directed for payment of wages to the workmen

employed as casual labourers at the rates equivalent to the minimum pay in the pay scales of the regularly employed workers in the corresponding cadres without any increments with effect from a particular date on which the first of the two writ petitions was filed and not from the respective dates of appointment of the casual workers. This later decision of the Supreme Court in *Daily R. C. Labour, P & Depts.* read with the earlier decision of the Supreme Court in *Nehru Yuvak Kendra's* case will make it clear that the Supreme Court did not lay down any rigid principle that in all cases the Court has to pass an order, as an invariable rule, directing payment of dues for the back period from the date of initial engagement of casual labourer in the distant past. Rather it is indicated that the question whether the difference of wages should be given from any particular date is a matter of discretion of the Court to be exercised in the background of the facts and circumstances of each individual case. It is needless to mention that the Court may have regard to the undue and unexplained delay in approaching the Court refuse to direct payment of dues for any past period although in regard to the future period the petitioner's claim may be sustained on the basis of the principle of "equal pay for equal work".

4. In the present case the petitioners approached the Court by this writ petition only in February, 1993 although their case is that they have been working as seasonal/casual workers for 20/25 years and at any rate were working continuously as casual workers since 1-6-1987. In the present case the petitioners have not offered any satisfactory explanation as to why they did not promptly approach the Court much earlier. In the circumstances, following the decision of the Supreme Court in *Daily R. C. Labour, P & T Depts. v. Union of India* (supra) I direct the respondents to pay wages to the petitioners at the rate of the minimum level of salary and allowances as payable to the Group-D category of employees of the regular establishment on the principle of equal pay for work of equal value with effect from February, 1993 and the amount of arrears payable in this regard shall be paid within four months. The respondents are further directed to absorb the petitioners in the regular establishment within four months from the date of communication of this order and if necessary the respondents shall create supernumerary posts for absorbing the petitioners within the aforesaid time limit in the regular establishment. The writ petition stands disposed of accordingly. No cost is however ordered.