

(1997) 07 P&H CK 0054

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 791 of 1996 in Civil Writ Petition No. 10932 of 1991

State of Haryana and Others

APPELLANT

Vs

Nathu Singh and Others

RESPONDENT

Date of Decision : 14-07-1997

Acts Referred:

Citation : (1997) 117 PLR 247

Hon'ble Judges : T.H.B. Chalapathi, J;R.S. Mongia, J

Bench : Division Bench

Advocate : Amol Rattan, A.A.G, for the Appellant; Paul Saini, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Mongia, J.—This is a Letters Patent appeal by the State of Haryana against the judgment of the learned Single Judge dated April 19, 1996, by which the writ petition filed by the respondents herein was allowed and a direction was issued to the State Government to pay to the writ petitioners the pay scales and other allowances as were being given and admissible to regular workmen on the same posts as the writ petitioners were working. However, the arrears were limited to a period of three years and two months from the date of the filing of the writ petition.

2. The brief facts leading to the filing of the present appeal may be noticed. The private respondents herein (writ petitioners), thirty-eight in number, had been appointed on daily wage basis in the Haryana Roadways either as helpers, Sweepers, Peons or Chowkidars between the period January, 1979, to August, 1988. They were given appointments for a particular fixed period but their services were being extended from time to time. The fact remains that they remained daily wagers. They were being paid on the basis of daily rates determined by the Deputy Commissioner from time to time. Similar categories of employees, who were employed on regular basis in the corresponding cadre, were drawing regular pay scales and wages exceeding the wages which the

petitioners were getting. They claimed parity of pay with those of regular employees as, according to them, they were discharging the same duties, functions and responsibilities as were being discharged by the regular employees. Learned Single Judge primarily relying on the judgments of the Supreme Court in *Randhir Singh Vs. Union of India (UOI) and Others*, and *Y.K. Mehta and Others Vs. Union of India (UOI) and Another*, , allowed the writ petition and held that the daily wagers were entitled to the same pay as was being drawn by the regular employees of the identical cadre. This necessitated the filing of the present appeal by the State of Haryana. The Motion Bench while admitting the appeal on September 27, 1996, stayed the operation of the judgment of the learned Single Judge.

3. Learned counsel for the appellant argued that the daily wage workers cannot equate themselves for the purpose of pay scale with the regular employees. Daily wage workers are not required to possess the qualifications prescribed for regular workers and other qualifications like age etc. Their recruitment is also different when compared to the recruitment of the regular employees. They are not subjected to any disciplinary control as regular employees. The quality of work is also different. He relied upon a judgment of the apex Court reported as *State of Haryana and Ors. v. Jasmer Singh and Ors.*, *Judgments Today* 1996(10) S.C. 876. In this case, all the previous case law as also the law laid down in *Randhir Singh's* case (*supra*) was discussed. In that case, a similar relief had been granted by a Division Bench of this Court to the daily wagers as has been given by the learned Single Judge in his judgment under appeal. On appeal by the State of Haryana to the apex Court, it was held that those persons who are employed on daily wages cannot be treated at par with persons in regular service of the State of Haryana holding similar posts. Daily rented workers are not required to possess the qualifications prescribed for regular workers nor they have to fulfill the requirement relating to age. They are not selected in the manner in which regular employees are selected. The requirements of selection of daily wagers cannot equate themselves with regular workmen for the purpose of their wages nor can they claim the minimum of the regular pay scale of the regularly employed persons. The apex Court further observed that the quality of work which is produced may be different and even the nature of work assigned may be different. It is not just comparison of physical activity. The application of the principle of "equal pay for equal work" requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. The evaluation of such jobs as done by daily wagers and regular employees for the purpose of pay scales must be left to expert bodies and unless there are any malafides its evaluation should be accepted.

4. In *Ghaziabad Development Authority and others Vs. Sri Vikram Chaudhary and others*, , it was held by the apex Court that since the respondents therein were temporary daily wage employees and so long as there were no regular posts available for appointment, the question of making pay at par with the

regular employees did not arise. A Division Bench of this Court, in which one of us was a member (R.S. Mongia, J.) in C.W.P. No. 9766 of 1995, decided on November 8, 1995, after noticing the aforesaid judgment of the apex Court in Ghaziabad Development Authority's case (supra) held that for giving regular pay scale, regular posts have to be there. It was further, held that the service conditions of daily wage employees cannot be compared with regular incumbents. A daily wage employee is not subjected to disciplinary control of the employer. He may or may not come to work on a particular day. Still the employer would have no right to take any disciplinary action against such a daily wage employee. Who may be absent for a day or even for longer period without any permission from the employer. In fact a daily wager is not even required to take any leave from the employer.

5. Faced with this situation, learned counsel for the respondents argued that in fact it is not his case to compare the pay scale of the daily wagers-writ petitioners (new respondents) with the pay scale of the regular employees. He submitted that in fact there was discrimination regarding the pay/pay scale amongst the daily wagers themselves. He referred to an order dated September 28, 1990, of the Transport Commissioner, Haryana (Annexure P-2) by which eight persons mentioned therein working as Peons and Chowkidars were given the pay scale of 750-940 with immediate effect which was denied to the writ petitioners.

6. We have gone through Annexure P-2. It reads: "The following officials working on daily wages are placed in the grade of 750-12-880-EB-14-940 on ad hoc basis with immediate effect. Their cases for regularisation will be considered after the decision of Piara Singh's case." Thereafter the name of the officials have been given. It is apparent from the reading of the order that out of the whole lot of Peons and Chowkidars, eight persons were being appointed on ad hoc basis and their case were to be considered for regularisation in view of the judgment of Piara Singh's case of the apex Court. By this order, the eight daily wagers were being appointed on ad hoc basis. They ceased to be daily wagers from that date and had acquired a right for consideration for regularisation after completing a particular period of service in view of the Haryana Government instructions on the subject and Piara Singh's case of the Supreme Court. The writ petitioners were admittedly daily wagers and had not been appointed on ad hoc basis to be considered for regularisation. Giving of regular pay scale to an ad hoc employee is understandable but, as observed above, a daily wager has no right to compare himself with the regular employee.

7. For the foregoing reasons, we allow this appeal, set aside the judgment of the learned Single Judge and dismiss the writ petition with no order as to costs.