
(1999) 08 AHC CK 0014
In the Allahabad High Court
Case No : Special Appeal No. 558 of 1996

State of U.P. and Others

APPELLANT

Vs

Pawan Kumar Tewari and Others

RESPONDENT

Date of Decision : 27-08-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 19, 39, 49

Citation : (1999) 3 UPLBEC 1964

Hon'ble Judges : S.H.A. Raza, J; R.P. Nigam, J

Bench : Division Bench

Advocate : Chief Standing, for the Appellant; S.C. Misra and A.M. Tripathi, for the Respondent

Judgement

S.H.A. Raza and R.P. Nigam, JJ.—Delay in filing the special appeal is condoned.

2. We have heard the argument of learned Additional Chief Standing Counsel.

3. One would have thought that after the decision of Hon''ble Supreme Court, in *Dhirendra Chamoli and Anr. v. State of U.P.* (1986) 1 UPLBEC 254 the State would adhere to the principle of equal pay for equal work, but it is a sad commentary on the part of the State of U.P. that it has not been following the mandate of the Constitution and the pronouncement of the Apex Court. In *Dhirendra Chamoli (supra)*, Hon''ble Supreme Court observed :

"It must be remembered that in this country where there is so much employment, the choice for the majority of people is to starve or to take employment on whatever exploitative terms are offered by the employer. The fact that these employees accepted 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 Class 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. These employees who are in the service of the different Nehru Yuvak Kendras in the country and who are admittedly performing the same duties as Class IV employees, must therefore get the same salary and conditions of service as Class IV employees. It makes no difference whether they are appointed in sanctioned posts or not. So long as they are performing the same duties, they must receive the same salary and condition of service as Class IV employees."

4. In the case of State of Haryana v. Piara Singh 1992 LIC 2168 Hon"ble Supreme Court observed in para 25 of the report:

"So far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell-say two or three years-a presumption may arise that there is regular need for his services. In such a situation it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court, security of tenure is necessary for an employee to give his best to the job. In this behalf, we do commend the orders of the Government of Haryana (containing in its letter dated 6-4-1990 referred to hereinbefore) both in relation to work charged employees as well as casual labour."

5. As the persons employed in the Public Works Department were not paid at least the minimum scale of pay, which was given to regularly appointed Class III employees, they filed a writ petition before this Court staking the claim for regularization of their services as well as the payment of equal wages, which the regular Class IV employees in the department, were getting. One petitioner had completed more than ten years of service, while the other had completed more than nine years of continuous service. They were engaged as daily wager and have been working as such since then.

6. Hon"ble Single Judge on 18th September, 1996, during the pendency of the writ petition, passed an order to the effect that as the petitioners were working with the respondents as daily wager for more than five years hence they will be entitled to minimum in the pay scale payable to Class IV employees.

7. The order passed by the Hon"ble Single Judge was not complied with and a contempt petition under Article 215 of the Constitution of India was preferred. The State of UP. also filed a belated Special Appeal.

8. There is no denial of the fact that the respondents of this Special Appeal did not lack the prescribed minimum qualification. It is not the case of the appellants before us that their work was not satisfactory, but it was vehemently argued by the Additional Chief Standing Counsel that the State Government has devised a policy, by means of which persons, who were appointed on daily rated basis, will

be designated as on work-charged on the basis of seniority and availability of the posts.

9. Armed with the various pronouncements of Hon''ble Supreme Court, it was contended by the Additional Chief Standing Counsel that the matter falls within the domain of the State Government, which is empowered to issue directions and it is not a fit case where the Court should interfere.

10. In State of U.P. and others Vs. U.P. Madhyamik Shiksha Parishad Shramik Sangh and another, daily wagers were engaged to do certain manual work, like lifting of bundles, posting of develops and shifting of the answer books etc. They staked their claim for the payment of minimum wages under the Minimum Wages Act. A Division Bench of Hon''ble Supreme Court observed that in absence of posts, such daily wagers although performing duty like that of regular Class IV employees, but neither they are entitled to regularisation nor entitled in parity in pay with regular employees.

11. It is pertinent to mention here that the facts of the aforesaid case are not applicable to the facts of the present case. The pressure of work in the Board of High School and Intermediate Examinations, which are held every year, as a result of which large number of casual labours are engaged. As far as the Public Works Department is concerned, it has a vast establishment, which engages lakhs of workers for carrying on repairs of the roads and constructions of the buildings etc. There is always a need of continuous workers. They are not like a casual labours engaged in a particular project where the services come to an end after the end of the project. In the P.W.D. the work is always available for those, who are engaged.

12. As far as the other case State of Himachal Pradesh Vs. Suresh Kumar Verma and another, is concerned, the matter pertains to termination of the services of certain temporary, employees after the work in the project, in which, they were engaged, comes to an end, hence the relief for re-employment/re-engagement was not granted. The facts of that case are not applicable to the facts of the present case.

13. However, even in that case State of U.P. v. Suresh Kumar Verma, Hon''ble Supreme Court observed:

"Only work-charged employees who perform the duties of transitory nature are appointed not to a post but are required to perform the work of transitory and urgent nature so long as the work exists. One temporary employee cannot be replaced by another temporary employee."

14. Reference was also made to the decision of Hon''ble Supreme Court in Raj Narain Prasad and Ors. v. The State of U.P. and Ors., Writ Petition (Civil) No. 140 of 1989, decided on 18-1-1996. In that writ petition, which was filed under Article 32 of the Constitution of India, the work-charged and muster roll labour engaged in different project of the State of U.P. staked their, claim for

regularisation. Hon''ble Supreme Court ruled that services of the muster roll employees cannot be regularised because they stand next to work-charged employees, we would recommend that they could be absorbed as work-charged employees to the extent or at a certain percentage of posts falling vacant on the latter being regularised under the scheme. That would satisfy a certain percentage of the category of daily wage/muster roll employees also. The State was directed to undertake a review of the cadre strength by March of that year and thereafter in December every year so that budgetary support could be provided for in the next financial year for the added strength to the cadre. With the aforesaid observations and recommendations the Hon''ble Supreme Court approved their scheme, but impress upon the State that the spirit of the Court's observations in Piara Singh's case should be observed.

15. In State of Rajasthan Vs. Kunji Raman, Hon''ble Supreme Court ruled that the principle of equal pay for equal work is not applicable to the work-charged employees as they belong to different and distinct classes, hence framing of separate rules for the work-charged employees and excluding them from the general rules applicable to the employees of the general establishment was not arbitrary or discriminatory. The aforesaid observation was given after considering the various provisions of the Rajasthan Service Rules and Project Rules.

16. In Kunji Raman (Supra), the question of interpretation of various rules was involved, hence after considering those rules, which were framed by the State of Rajasthan, Hon''ble Supreme Court made certain observations.

17. In the instant case there exists no rule and hence principle enshrined under Articles 14 and 16 read with Article 49 of the Constitution of India might have been considered by the Hon''ble Single Judge while passing the impugned order. The Court while passing the interim order did not direct the Public Works Department to pay the same scale, which is paid to the regularly selected Class IV employees, but the Court only directed that they should be paid the minimum pay scale, which is being paid to the regular employees, because there was no challenge on behalf of the State that the respondents, of this special appeal, do not perform the same work which the regularly appointed employees were discharging.

18. Reference was also made about a decision of Hon''ble Supreme Court in State of Haryana v. Surendra Kumar and Ors. (1997) 2 SCC 633. In this case the matter pertains to regularisation of the daily wagger engaged on contract basis as Clerk, but Hon''ble Supreme Court directed that there cases be considered in accordance with law and guidelines laid down in Piara Singh's case, if they are otherwise eligible. Hon''ble Supreme Court was magnanimous enough to direct the State to provide age relaxation to the daily wagger engaged on contract basis as Clerk.

19. In the present case the respondents were not appointed on contract basis and the State Government while refusing to follow the direction of Hon''ble Single

Judge of this Court, also ignored the orders passed by Hon"ble Supreme Court in Piara Singh.

20. There are plethora of cases, which we need not cite, where Hon"ble Supreme Court considering the mandate of the Constitution of India as enshrined under Article 14 read with Article 19 of the Constitution of India, directed the State Government to follow the principle of equal pay for equal work. Hon"ble Single Judge of this Court did the same thing.

21. The other submission of the learned Additional Chief Standing Counsel is that Hon"ble Single Judge, while passing the interim order, has decided the writ petition itself and such relief can be granted at final stage. The argument is misconceived. The petitioners staked the claim for regularisation and parity in the pay scale. The learned Single Judge, while passing the interim order has neither ordered the regularisation of the petitioners nor directed the payment of equal wages, which Class IV regular employees of Public Works Department were getting. The directions of the Court is limited to the extent that the respondents would be paid the minimum pay scale of Class IV employees.

22. In view of what has been indicated hereinabove, we are of the view that this special appeal is devoid of merit. It is accordingly dismissed.

23. However, the parties are directed to bear their own costs.