

(2004) 02 AHC CK 0181
In the Allahabad High Court
Case No : Special Appeal No. 180 of 1997

State of U.P. and Others	Vs	APPELLANT
Shiv Prakash and Others		RESPONDENT

Date of Decision : 26-02-2004

Acts Referred:

Citation : (2004) 2 AWC 1823

Hon'ble Judges : Tarun Chatterjee, C.J; Amar Saran, J

Bench : Division Bench

Advocate : Vinod Mishra and Abhinava Upadhyay, S.C, for the Appellant; L.C. Srivastava, for the Respondent

Final Decision : Disposed Of

Judgement

Amar Saran, J.—This Special Appeal has been preferred by the State of U.P. represented by the Secretary, P.W.D., Lucknow, and others against the judgment dated 30.10.1996 in Civil Misc. Writ Petition No. 2379795 whereby the learned single Judge had issued two directions to the appellants. One, to prepare a regularisation scheme in respect of work charged employees if not already prepared, and two to pay the petitioners (Respondents 1-3 in the Special Appeal) salary at the same rate as other regular employees of the U.P. Public Works Department (P.W.D) working on the same posts as the petitioners until their absorption on the said posts pursuant to a scheme for regularisation of work charged employees.

2. We have heard Sri Abhinava Upadhyay, standing counsel for the appellants, and Sri L. C. Srivastava, learned counsel for the respondents. Perused the impugned judgment and the entire material on record including the writ petition. We have also considered the written submissions furnished by the parties.

3. The learned single Judge had been pleaded to grant the aforesaid two reliefs relying on the law laid down by the Hon'ble Supreme Court in Civil Misc. Writ Petition No. 140 of 1989, Raj Narain Prasad and Ors. v. State of U.P. and Ors.

and State of Haryana and others Vs. Piara Singh and others etc. etc., after recording a finding that there was no dispute between the parties on the question that the petitioners were in continued employment with the P.W.D. for the past 10 to 15 years.

4. Both the reliefs granted by learned single Judge have been challenged in the present appeal.

5. So far as the relief relating to preparation of regularisation scheme is concerned, it was contended by learned counsel for the appellants that it was neither legal nor proper for the learned single Judge to direct framing of a scheme for regularisation of the employees in the cadre of the petitioners. For this proposition the appellants relied upon paragraph 10 of the judgment of Hon"ble Supreme Court in Mallikarjuna Rao and Others Vs. State of Andhra Pradesh and Others, which is quoted below :

"It is neither legal nor proper for the High Courts or the Administrative. Tribunals to issue directions or Advisory Sermons to the, executive in respect of the sphere which is exclusively within the domain of the executive under the Constitution. Imagine the executive advising the judiciary in respect of its power of judicial review under the Constitution, we are bound to re-act scowlingly at any such advice."

6. It may be noted that in the case of Mallikarjun Rao and Ors. v. State of Andhra Pradesh. no scheme of regularisation framed by the State Government was being examined but only the criteria of promotion of class V veterinary assistant surgeon to class IV was being challenged. That controversy has no application to the present case.

7. In the present case, however, the learned single Judge has been pleased to order for regularisation on the basis of the decision of Hon"ble Supreme Court in Civil Misc. Writ Petition No. 140 of 1989, Raj Narain Prasad and Ors. v. State of U.P. and Ors., decided on 18.1.1996. In that case the question of regularisation of 7714 work charged employees and 5516 muster roll employees was being examined by Hon"ble Supreme Court. The State had admitted that it had prepared a scheme for regularisation of the work charged employees prior to 19.9.1985, who possessed qualifications for regular appointment on equivalent posts for the service of the establishment, i.e., when qualified under the Recruitment Rules. The State had to prepare a seniority list of work charged employees on the basis of those who were qualified under the relevant Recruitment Rules and thereafter regularisation was to continue strictly in accordance with the seniority so determined. The State had prepared the regularisation scheme so far as the work charged employees were concerned to which cadre the petitioners belonged, however, the State has expressed its inability to prepare a scheme for dally rated/muster roll employees. The Hon"ble Supreme Court after perusing the scheme had, however, directed that there should be a review of the cadre strength from year to year and based on the past

requirement and continuity of work charged employees and the same should be increased by a certain percentage of work charged employees working over a period of time that may be fixed by the Government so that the pace of regularisation is accelerated. This gradual exercise for the increase in the cadre strength from year to year was suggested as the Hon"ble Supreme Court felt that there was a need to balance the financial difficulties of the State on one hand and the welfare of the workmen on the other hand. The Hon"ble Supreme Court noted that "concern is also to be shown for those who have worked for a number of years and have become ineligible for any other employment anywhere, be that the private sector or the public sector. Therefore, a balance has to be struck between the two competing interest and that can be struck by a periodical revision of the cadre strength from year to year."

8. Learned counsel for the appellants has not been able to show that the judgment of Hon"ble Supreme Court in Raj Narain Prasad's case which was the basis for the impugned judgment of the learned single Judge has been overruled or that the petitioner's case was in any way not covered by that judgment.

9. In State of Haryana and others Vs. Piara Singh and others etc. etc., which was also relied on by the single Judge in the impugned judgment, the Hon"ble Supreme Court made the following observations in paragraphs 49, 50 and 51 which are relevant to the present case :

"49. If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.

50. The proper course would be that each State prepares a scheme. If one is not already in vogue, for regularisation of such employees consistent with its reservation policy and if a scheme is already framed, the same may be made consistent with our observations herein so as to reduce avoidable litigation in this behalf. If and when such person is regularised he should be placed immediately below the last regularly appointed employee in that category, as the same may be.

51. 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 authority concerned to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with sympathy 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 (contained in its letter dated

April 6, 1990 referred to hereinbefore) both in relation to work charged employees as well as casual labour."

10. The aforesaid views in the cases of Raj Narain Prasad and State of Haryana v. Piara Singh have been reaffirmed by the Hon"ble Supreme Court in the case of Hindustan Machine Tools and Others Vs. M. Rangareddy and Others, Para 8 of this decision reads as follows :

"Para 8. Tested on the touchstones of the principles laid down in the decisions noted above and keeping in mind the mandate of the Constitution under Articles 38(1), 39(e) and 43, we are of the considered view that the irections issued by the High Court to the appellants to frame a scheme for regularisation of services of the writ petitioners does not warrant interference. However, considering the submissions made by learned counsel for the appellants that the Company is under financial constraints and has decided to reduce its work force, we would like to clarify that while framing the scheme it would be open to the appellant-Company and the officers concerned to assess the requirement of regular work force in its different units, particularly, the units in which the writ petitioners have been engaged over long period and also the necessity for alleviation of the suffering to which the writ petitioners have been subjected to during all these years and fix the strength of work force so that the workers concerned are able to get the benefit of regular service within a reasonable time. It goes without saying that the absorption of the casual workers in regular service will be subject to the fulfilment of the conditions of eligibility qualification with relaxation of the age prescribed under the Rules."

11. The learned counsel for the appellants however referred to a case in Ramakrishna Kamat and Ors. v. State of Karnataka and Ors. 2003 (2) AWC 1098 : JT 2003 (2) SC 88. In this case honorary teachers working in various schools run by the Zila Parishad had sought a direction for being treated as regularly appointed teachers from the date of their initial appointment and pay parity with that of the graduate teachers. The relief sought by the teachers who had been appointed on payment of honorarium was turned down by learned single Judge and Division Bench of the High Court. The Hon"ble Supreme Court also turned down the claim of the teachers, as petitioners were unable to show that their appointment had been made against any sanctioned post. Thus, the facts in the case of Ramakrishna Kamat and Ors. v. State of Karnataka and Ors., are clearly distinguishable from the present case.

12. Similarly, the case in Orissa University of Agriculture and Technology and Another Vs. Manoj K. Mohanty, cited by the appellants, is also distinguishable on the facts and circumstances from the present case. In that case the respondent had been appointed in the institution as a typist against the vacancy of junior assistant. He claimed to have possessed a certificate showing that he was doing the work of a junior assistant. The High Court had passed orders that he should not be disengaged from service till appropriate decision is taken by the University and that he should be paid regular pay scale admissible to junior assistants from

September, 1997. While setting aside the direction of the High Court Hon"ble Supreme Court observed as follows :

"When the services of the respondent had not been regularised, his appointment was on temporary basis on consolidated pay and he had not undergone the process for regular recruitment, direction to give regular pay scale could not be given that too without examining the relevant factors to apply the principle of "equal pay for equal work"."

13. Orissa University of Agriculture and Technology and Anr. v. Manoj K. Mohanty's case, was again not a case where scheme had been framed for regularisation of work charged employees. In the instant case we also find that in the written arguments filed on behalf of the respondents, the "Uttar Pradesh Regularisation of Dally Wagers Appointments on Group "D" Post Rules, 2001 and Government order dated 15.10.1997 have also been annexed. The said Rules lay down criteria for regularisation of daily wagers who have been working on that post on or before June 29, 1991. They require inter alia that the applicant should possess requisite qualification prescribed for regular appointment. The appointment could be subject to rules for reservation for S.Cs. and S.Ts.

14. The Government order dated 15.10.1997, which has been specifically framed for work charged employees of the P.W.D. provides that work charged employees, who had been working on the available post in the department from before 29.6.1991 should be regularised on the existing and future posts in the department. This Government order mentions, inter alia, that the applicant who has been working as work charged employee from prior to 29.6.1991 would be entitled to be regularised/ absorbed on the sanctioned post or vacancy permanent/temporary in the department. Such regularised work charged employee would be eligible for all benefits available to the State employee. The applicant should bear a good character and there should be no proceedings pending against him, which could have made him ineligible for appointment. He should also possess the requisite qualification for the post at the time of regularisation. A seniority list of eligible work charged employees would also have to be prepared and approved by the Regional Chief Engineer after wide circulation of the seniority list. The regularisation would be on the basis of seniority subject to elimination of the unfit. The regularisation would be effected only on those posts/ vacancies, which were out side the purview of appointments under the U.P. Public Service Commission. The rule with regard to reservation for the relevant categories would also have to be observed at the time of regularisation. New appointments would only be made to the vacant post after taking permission from the State Government. Prohibition was also imposed on direct appointments on the basis of the vacancies for which the work charged employees, who had been working prior to 29.6.1991, possess requisite qualifications. Only when no eligible work charged employees were available direct recruitment on the posts would be possible.

15. As the respondent No. 1, Shiv Prakash, had been working as work charged

employee on the post of helper since 1982, respondent No. 2, Chhedi Lal, had been working on the same post since 1979 and respondent No. 3, Ishwar Deen Pal had been working on the post of mate since 1984 they were clearly eligible for consideration for regularisation in accordance with the "Uttar Pradesh Regularisation of Daily Wages Appointments on Group "D" Posts Rules, 2001" and the Government Order dated 15.10.1997 as well as in accordance with the direction contained in the judgment of Hon"ble Supreme Court in the case of Raj Narain Prasad and Ors. v. State of U.P. and Ors., subject to the conditions that have been mentioned in the decision of Hon"ble Supreme Court.

16. There is more substance in the appellants challenge to the second direction in the order of the learned single Judge for grant of equivalent salaries to the regular employees, until their absorption on a regular post pursuant to a policy of regularisation of work charged employees. Relying on the case in State of Haryana Vs. Jasmer Singh and others, it was contended that the accuracy and dexterity that the job may entail may differ from job to job and also there may be differences in qualifications and degrees of reliability and responsibilities amongst different categories of employees, which do not admit of a superficial comparison, and which are basically ascertainable by the employer. Paragraph 5 of State of Haryana v. Jasmer Singh, may be usefully extracted here :

"Para 5. The principle of "equal pay for equal work" is not always easy to apply. There are inherent difficulties in comparing and evaluating work done by different persons in different organisations, or even in the same organisation. The principle was originally enunciated as a part of the Directive Principles of State Policy in Article 39(d) of the Constitution. In the case of Randhir Singh Vs. Union of India (UOI) and Others, however, this Court said that this was a constitutional goal capable of being achieved through constitutional remedies and held that the principle had to be read into Articles 14 and 16 of the Constitution. In that case, a Driver-constable in the Delhi Police Force under the Delhi Administration claimed equal salary as other Drivers and this prayer was granted. The same principle was subsequently followed for the purpose of granting relief in Dharendra Chamoli and Another Vs. State of U.P., and Jaipal and Others Vs. State of Haryana and Others, In the case of federation of Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others, however, this Court explained the principle of "equal pay for equal work" by holding that differentiation in pay-scales among Government servants holding same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. In that case, different pay-scales fixed for Stenographers (Grade I) working in the Central Secretariat and those attached to the heads of subordinate offices on the basis of recommendation of the Pay Commission was held as not violating Article 14 and as not being contrary to the principle of "equal pay for equal work". This Court also said that the judgment of administrative authorities concerning the responsibilities which attach to the post, and the degree of reliability expected of an incumbent, would be a value

judgment of the concerned authorities which, if arrived at bona fide, reasonably and rationally, was not open to interference by the Court."

17. We find that in the impugned order of the single Judge there is no elaborate consideration of the nature of work performed by the work charged employees as compared with regular employees. However, it can also not be denied that there is no refutation in the present case that no special qualifications, duties and responsibilities were called for on those low paid posts of helper and mate on which the respondents were working for the past 20-25 years, or that the work and responsibilities of the work charged mate and helpers significantly differed from the regular employees working on those posts. The Government order dated 15.10.1997, which has been filed by the respondents also mentions in item Clause 12 that the vacant posts could only be filled up by work charged employees who have been working prior to 29.6.1991 and the same would not be filled up by direct recruitment and only when work charged employees are not available or ineligible for the same regular posts that further appointment could be made by direct recruitment. This also suggests that the nature of work of the work charged employees is similar to that of the regular employees.

18. However, inspite of the aforesaid facts and circumstances we would have struck down the direction to grant equal salary as the regular employees on the posts of the respondents, until their absorption pursuant to a scheme of regularisation and remanded the case to the learned single Judge for giving a more elaborate finding on the question of similarity/dissimilarity in the nature of work and responsibilities, etc. between the work charged employees and regular employees, were it not for the fact that now the respondents have been working on the said posts for the last 25 years. This Court granted no interim order when the appeal was filed 7 years ago in 1997 as the delay in filing the appeal beyond time was only condoned on 6.1.2004.

19. We are not aware whether the respondents 1 to 3 have been paid the enhanced salary of regular employees on the corresponding posts after the judgment in the writ petition. In case the petitioners have been granted equal pay as regular employees on the same post after the decision of the writ petition it would be highly inequitable to recover the same from the petitioners who are low paid employees at this stage. This direction would be consistent with the approach of the Hon'ble Supreme Court in the case of Ramkrishna Kamat, where the Supreme Court although holding that honorary teachers in Zila Parishad schools would be disentitled to receive the same salaries as regular teachers, did not insist on recovery of enhanced salaries paid to the honorary teachers in pursuance of interim orders.

20. In the event, the interim relief for equal pay, as a regular employee, has not been actually granted to the petitioners during the pendency of the writ petition that relief becomes infructuous, at this stage, and the petitioners would also not be entitled for any arrears in the event of their being regularised in pursuance of the judgment of the learned single Judge and in terms of the direction contained

in the case of Raj Narain and also U.P. Regularisation of Daily Wages Appointment on Group "D" Post Rules, 2001 as well as the Government order dated 15.10.1997.

21.. The respondents have also mentioned in their written argument that respondent No. 2. Chhedi Lal has been regularised in the year 2003. In view of the painfully long period time that has been consumed in this litigation we now direct that the appellants pass orders on the plea for regularisation of the petitioners on the above mentioned considerations within three months of their presentation of the certified copy of this order by the concerned respondents No. 1 and 3 before the appropriate authorities. With these observations this appeal is disposed of.