

(2008) 07 AHC CK 0217
In the Allahabad High Court

State of U.P.

APPELLANT

Vs

Mangal Prasad, U.P. State Bridge Corporation

RESPONDENT

Date of Decision : 28-07-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 39

Citation : (2008) 119 FLR 262 : (2009) 2 LLJ 59

Hon'ble Judges : Ashok Bhushan, J;Arun Tandon, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Ashok Bhushan and Arun Tandon, JJ.—Heard Sri U.N. Sharma Senior Advocate assisted by Sri P.N. Rai Advocate on behalf of the Bridge Corporation, Standing Counsel on behalf of the State of U.P. and Sri Ravindra Kumar Advocate on behalf of the employees.

2. These special appeals have been filed by the State of U.P. as pf as by the U.P. State Bridge Corporation, established by the State of U.P. against the common judgment of the learned Single Judge delivered in a bunch of 154 writ petitions. All the appeals have been clubbed and are being decided by this judgment. The relevant facts for the decision of these appeals are:

3. U.P. Bridge Corporation has been constituted by the State of U.P. basically for carrying on the construction work of Bridges etc. It is not in dispute that the power to create posts both Class-IV and above in the U.P. Bridge Corporation vest with the State Government. The aforesaid 154 writ petitions were filed by the persons, who were engaged by the Bridge Corporation as daily wager/work charged employees since 1975 onwards, with the prayer that the State Government/Corporation be directed to regularize the services of such petitioners who have completed requisite years of service in the Corporation and further to ensure that such employees are granted minimum of the pay scale admissible to regular employees, till such regularization.

4. Before the writ Court a stand was taken on behalf of the State Authorities/ Bridge Corporation that there were no regular vacancies available and therefore no regularization can be directed. Prayer for salary at par with the regular employees working in the Corporation was also disputed on the ground that the nature of appointment of petitioners being different qua the appointment of regular employees, they cannot claim parity with any regularly appointed staff for the purposes of payment of salary.

5. The learned Single Judge, after hearing the Counsel for the parties, by means of the impugned judgment and order dated 16th September, 2004 has allowed the writ petitions. It has been held that since the writ petitioners have been working with the UP. State Bridge Corporation for last more than 29 years, it is patently arbitrary to keep such employees as daily wagers/work charged employee for such a long period. The Court proceeded to direct the State Government to create additional posts in order to ensure that writ petitioners are absorbed against the said newly created posts and are paid salary on regular basis. The Court further provided that till such regularization the interim order granted by this Court permitting the petitioners to continue in service and to be paid current salary as payable to regular workers would continue. It is against this order of the learned Single Judge that the present special appeals have been filed.

6. On behalf of the appellants it is vehemently contended that power to create posts is within the exclusive domain of the employer, in the facts of the case State Government. The State has to take care of its financial commitments and liabilities before creating additional posts.

7. Today a letter issued by the State Government dated 27th August, 2007 has been brought on record. Under the said letter total number of posts; both in the regular cadre as well as in the work charged establishment in the Bridge Corporation have been specified. The total number of posts sanctioned within the regular cadre are 1493, while those within the work charged establishment has been provided as 2934. The break up of the post category wise has also been enclosed along with the Government Order. Lastly reference has been made to the letter of the Secretary, State of Uttar Pradesh dated 24th July, 2008, wherein it is recorded that the writ petitioners shall be regularized as and when regular vacancies become available in the Corporation within the regular post created under the aforesaid Government Order dated 27th August, 2007.

8. It is also recorded that seven out of such writ petitioners have already been regularized. The detail of special appeals referable to these writ petitioners has been specified. So far as remaining writ petitioners are concerned, it is mentioned that one of the petitioner has expired and six petitioners still remain to be regularized. The State Government has decided that as and when regular vacancy becomes available in the Corporation their claim for regularization shall also be considered as per the seniority.

9. In view of the aforesaid development, Counsel for the writ petitioners-respondent contends before us that the State Government should have created necessary number of posts and in case the State Government wants some time for creation of new posts, the direction issued for payment of salary at par with the regular employees be maintained and appropriate direction for the purpose be issued.

10. We have heard Counsel for the appellants as well as counsels for the writ petitioners and have gone through the records.

11. It cannot be disputed that the power to create posts is within the domain of the employer, in the facts of the case the State Government. The Court while exercising powers under Article 226 of the Constitution of India cannot insist upon the employer to create additional posts so that regularization of daily wage employees can be effected. At best a direction can be issued for consideration of the matter and appropriate orders being passed by the State employer.

12. Having regard to the Government Order, which has been brought on record today, dated 27th August, 2007, we are of the considered opinion that the decision taken by the State Government to create/sanction regular post to the extent of 1493 and 2934 in the work charged establishment for the Bridge Corporation cannot be faulted with nor this Court has the expertise to examine as to whether such creation of posts is as per the requirement of the Bridge Corporation or not.

13. The Court has to rely upon the wisdom of the State Government and its officers who have the necessary expertise qua requirement of work force for an establishment. We, therefore, record that the order passed by the learned Single Judge for creation of additional posts cannot be approved. Any claim of the writ petitioners for regularization has to be considered within four corner of the post created and available with Bridge Corporation. We also take note of the letter dated 24th July, 2008 whereunder seven writ petitioners have already been regularized. The special appeals, with reference to such writ petitioners, who have been regularization, are Special Appeal Nos. 81 of 2007, 84 of 2007, 86 of 2007, 87 of 2007, 88 of 2007, 89 of 2007 and 90 of 2007. In view of the aforesaid order of the State Government, the said special appeals have become infructuous so far as the issue of regularization is concerned.

14. So far as the right of writ petitioners, who have yet not been regularized, are concerned, we feel that substantial justice has been done by the appellants by providing that the claim of remaining writ petitioners shall be considered as and when regular vacancies become available within the regular post provided under the Government Order dated 27th August, 2007 (Reference letter of the Secretary dated 24.07.2007). We, however, direct that the claim of remaining writ petitioners for regular appointment shall be considered strictly in accordance with the seniority at the earliest from the date the post so become available.

15. So far as the plea for grant of regular pay scale at par with the regular

employees working in the Corporation pending regularization is concerned, we notice that the Government Order itself create different category of the post on the regular side vis-a-vis those for work charge establishment. The pay scale admissible to the various categories of the posts both on the regular cadre and work charge establishment has also been provided for.

16. It is settled law that an work charged employee cannot claim parity with the regular employees working in the establishment so far salary in the regular pay scale is concerned. At the best they are entitled to the payment of minimum of the wages provided under the statutes or the prevailing wages in the locality only.

17. The legal proposition in that regard has been settled under the judgment of the Hon"ble Supreme Court in the case of State of Haryana and Others Vs. Jasmer Singh and Others, the Hon"ble Supreme Court considered the provisions of Articles 39(d), 14 and 16 of the Constitution and held that the principle of "equal pay for equal work" is not always easy to apply. The Court further observed as under:

The respondents, who are employed on daily wagers cannot be treated as on a par with persons in regular service of the State of Haryana holding similar posts. Daily-rated workers are not required to possess the qualifications prescribed for regular workers, nor do they have to fulfill the requirement relating to age at the time of recruitment. They are not selected in the manner in which the regular employees are selected. In other words, the requirements for selection are not as rigorous. There are also other provisions relating to regular service such as the liability of a member of the service to be transferred, and his being subject to the disciplinary jurisdiction of the authorities as prescribed, which daily-rated workmen are not subjected to. They can not, therefore, be equated with regular workmen for the purposes for their wages. Nor can they claim the minimum of the regular pay scale of the regularly employed.

18. In Gujarat Agricultural University Vs. Rathod Labhu Bechar and Others, the Hon"ble Supreme Court considered a similar issue of pay parity to the daily-rated workers working since long considering large number of its earlier judgments including Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others, Ghaziabad Development Authority and others Vs. Sri Vikram Chaudhary and others, ; Basudev Pati Vs. State of Orissa and Another, ; Jasmer Singh (supra); State of Haryana and others Vs. Piara Singh and others etc. etc., ; Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, ; and held that for their absorption etc the University may frame the Scheme for regulansation and as regularisation cannot be directed in absence of regular post and such employees can be entitled for minimum wages under the Statute, if any, or the prevailing wages in the locality but the question of claiming the minimum of the pay scale of a regular employee would not arise.

19. In State of Karnataka and Others Vs. KGSD Canteen Employees Welfare Association and Others, , after considering very large number of its earlier

judgments and considering the provisions of Articles 14, 16 and 39(d) of the Constitution of India, the Hon''ble Supreme Court held that daily wagers cannot claim pay scale as that of government employees. The Court again reiterated the law laid down by it in its earlier judgment in Mahendra L. Jain and Others Vs. Indore Development Authority and Others, , wherein it has been held that the daily wagers do not hold the post, therefore, they were not the employees of the State. Salary of a regular scale of pay, it is trite, is payable to an employee only when he holds a status.

20. In view of the above, the law can be summarised that daily wagers do not hold the post. They cannot claim parity with those who are working in the regular cadre as they earned a status, therefore, the question of parity with them would not arise. The pay scale may depend upon large number of factors including seniority, experience, educational qualification, mode of selection and it cannot be claimed by the persons unless they establish complete equality with those who are working in regular cadre. The daily wagers are entitled only for minimum of the wages fixed by the State Government or the wages prevailing in the locality.

21. In view of the aforesaid, the present special appeals are disposed of by providing that the claim of the remaining writ petitioners for regular appointment shall be considered strictly in accordance with the seniority by the appellants as early as possible on a regular vacancy within the regular cadre specified under the Government Order dated 27th August, 2007, becoming available.

22. At this stage Counsel for the respondents-writ petitioners contended that despite the judgment and order of this Court dated 13th September, 2007 passed in Writ Petition No. 2266(SS) of 2007 (along with connected writ petitions) the Managing Director of Bridge Corporation has passed an order dated 26th June, 2008 whereby the ceiling earlier fixed qua payment of dearness allowance has been relaxed with regard to some of the daily wage employees only.

23. We are of the considered opinion that in view of the judgment referred to above, all the work charged employees of the Corporation are entitled to the benefit of said judgment. There cannot be any ceiling of dearness allowance on the such work charged employees so long the judgment dated 13.09.2007 holds the field.

24. Counsel for the State as well as Bridge Corporation in reply submitted that an special appeal against the judgment of the learned Single Judge dated 13th September, 2007 has been filed. However, no interim order has been granted.

25. We may clarify that any payment as directed under the judgment and order dated 13th September, 2007 shall abide the orders, which may have been or may be passed in the special appeal filed against the same.

26. In view of the aforesaid, the judgment of the learned Single Judge is

substituted by the directions issued above. All the special appeals are disposed of accordingly.