

(1989) 03 CAL CK 0012
In the Calcutta High Court
Case No : C.O. No. 5983 (W) of 1988

Tapas Ghosh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-03-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 38, 39, 41

Citation : (1990) 1 CALLT 50

Hon'ble Judges : Mahitosh Majumdar, J

Bench : Single Bench

Advocate : Samir Ghosh and Dinabandhu Das, for the Appellant; H.K. Dev Barman and Ila Chatterjee, for the Respondent

Judgement

Mahitosh Majumdar, J.—This writ application is directed against the action of the respondents in not absorbing and/or appointing the petitioner as Group "D" employee in the service of the Defence Research and Development Organisation, Defence Research & Development Unit, Hastings, Calcutta-700002.

2. The grievances of the petitioner are as follows :

On or about in the month of November, 1985, the petitioner was appointed in the Ministry of Defence, Defence Research and Development Organisation, Defence Research & Development Unit, as casual labour and he had discharged his duties to the satisfaction of the authorities. In this connection reference may be made to the certificate of Lt. Col. R. M. Reddy who certified on January 29, 1988 that the petitioner worked in the Defence Research and Development Unit, Hastings, as a casual mazdoor from November 1985 to November 1988 in intermittent intervals. The certifying officer recorded that the petitioner is sincere, hard working, obedient, loyal and bears a good moral character to the best of his knowledge. Sometimes the petitioner also worked as clerk-cwm-typist under the said Defence Research and Development Unit. Since the appointment, as stated above, the petitioner duly discharged his duties and thereafter he was allowed to work during the period of two years covering 240 days a year consecutively and

in the first year 43 days in the year 1986 293 days and in the year 1987 311 days and the total number of days worked is 647 days. The petitioner claimed that his case merits effective and active consideration by the authorities for regularisation of service by application of the Government Circulars which, inter alia, provides that those who have discharged functions for 240 days consecutively in two years, their cases should be considered for regularisation and their services should not be terminated.

3. In the background of the facts and circumstances of the case, Mr. Ghosh appearing in support of the application submitted that the decision of the authorities for disengagement of the petitioner from service with effect from the month of December 1987 is wholly unjustified and contrary to law. It is also claimed by Mr. Ghosh that when law specifically provides for regularisation of the case of the concerned persons who has discharged duties and functions for 240 days consecutively in two years, the authorities concerned cannot and should not terminate the service of such employee. The action of the respondents in not regularising and/or absorbing the petitioner in service is wholly de hors the Government Circulars which subsequently during the course of hearing was placed before this Court.

4. An affidavit-in-opposition was filed on behalf of respondents Nos. 1 to 3. Lt. Col. R. Mahadeva Reddy, Officer-in-Charge, Defence Research and Development Unit, Calcutta affirmed the said affidavit. It is the case of the respondents as would appear from the said affidavit that Defence Research and Development Unit, Calcutta is one of the establishments of Defence Research and Development Organisation. The Unit was reorganised with revised man power of total eight in terms of Government of India, Ministry of Defence, Department of Research and Development, New Delhi letter dated June 24, 1983. The Unit at Calcutta is an independent Unit. To meet the complete administrative requirement of its own and to provide logistic support to the representatives of all the DRDO establishments/laboratories visiting Calcutta and nearby places for technical/ administrative work. Different DRDO establishments approach the Unit for assistance in inspecting and supervising the trade work in and around Calcutta. Stores and equipments manufactured by local firms including those repaired by local firms are also required to be kept in safe custody of the Unit and to be despatched to respective establishments as directed. From time to time it is necessary to collect stores of own Unit and technical stores of other establishments from local firms/Government undertakings, preserving and stocking them and shifting stores from one place to another. Since there is only one peon in the Unit, who can be used for such jobs which is considered to be grossly inadequate inasmuch as one person alone cannot remove or shift materials, etc. The matter was taken up with DRDO Head Quarters for increasing the staff by including one messenger and two labourers in the Peace Establishment but no sanction has been accorded till date. To enable the Unit to function properly, an application was made on August 12, 1985 to the Director, Planning and Resource Management, DRDO Head Quarters, New Delhi for

sanctioning on temporary basis appointment of two casual labourers which was sanctioned for a period of three months. The first of such sanction was given by DP & RN vide letter dated October 25, 1985 and the petitioner was given work as casual labourer on 19th November 1985. As the requirement of casual labourers was not consistent and could not be predicted, the casual labourers were not asked for from "Employment Exchange" and were picked up and engaged from road side. The petitioner on his own used to contact regularly at the gate of the Unit for work and whenever required was given work of Mazdoor/ casual labour on daily wages. Such arrangement was purely on "no work no pay" basis. Payments to the casual labourers was made from Budget sub-head "(C) Miscellaneous Expenses" and from sub-head "(B)-pay of civilians". From time to time proposals were made by the Unit for sanction of engaging two casual labourers which was granted for a period of three months at a time. Last such sanction was given on 16-10-87. Last application for further sanction dated 3-12-87 was refused on 5-1-88. It was denied that the petitioner worked for 647 days. Sanction for employment of casual labourer is annexed to the affidavit in opposition as annexure "C which reads thus :-

"Authority Period 1. DP&RM/6139/DRDU/RD-Budget/ For a period of three months, 85, dated 25 Oct. 85. 2. DP&RM/6139/RD-Budget/DRDU/ For three months w.e.f. 18 85, dated 12 Feb. 86. Feb. 86. 3. DP&RM/6139/RD-Budget/DRDU/ For three months w.e.f. 26 86, dated 08 May 86. May 1986. 4. DP&RM/6139/DRDU/RD-Budget/ For three months w.e.f. 01 86, dated 12 Aug. 86. Sep. 86. 5. DP&RM/6139/DRDU/RD-Budget/ For a period of three months. 86, dated 08 Dec. 86. 6. DP&RM/6139/RD-Budget/86-87, For a period of three months dated 24 Mar. 87. (89 days). 7. BP&RM/6139/RD-Budget/DRDU/ For a period of 89 days w.e.f. 87-88 (Telegram No. C 1548 BH 115 16 June 87. NEW DELHI, dated 17 Jul. 87). 8. DP&RM/6139/RD-Budget/DRDU/ For a period of 89 days w.e.f. 87-88 (Telegram No. XI 53;6 DA-27, 16 Sep. 87." NEW DELHI, dated 28 Sep. 87).

5. The respondents further claimed that there is no question of regularisation of the service of the petitioner nor the petitioner can claim such regularisation as a matter of right, that there is no discriminatory treatment meted out to the petitioner. That for the sanction not being extended, the petitioner could not be given the job of casual mazdoor. That there is no fund for making any payment nor there is any regular post, permanent or temporary where the petitioner can be absorbed nor has, the petitioner any right thereto.

6. Mr. Ghosh appearing for the petitioner submitted that the claims of the petitioner cannot be frustrated and/or defeated on hyper-technical ground. It is also claimed by Mr. Ghosh that it is an admitted position that the petitioner worked for number of days. It is also claimed by the petitioner that the petitioner belonged to Group "D" post and should be considered for regularisation of his service.

7. Mrs. Dev Barman referred to various circular being F No. 49014/2/ 86-Estt(C),

dated 7th June, 1988. Provisions as contained in the said Circular, inter alia, lay down the following guide lines :

"(i) Persons on daily wages should not be recruited for work of regular nature.

(ii) Recruitment of daily wagers may be made only for work which is of casual or seasonal or intermittent nature or for work which is not of full time nature, for which regular posts cannot be created.

(iii) The work presently being done by regular staff should be reassessed by the administrative Departments concerned for output and productivity so that the work being done by the casual workers could be entrusted to the regular employees. The Departments may also review the norms of staff for regular work and take steps to get them revised, if considered necessary.

(iv) Where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day,

(v) In cases where the work done by a casual worker is different from the work done by a regular employee, the casual worker may be paid only the minimum wages notified by the Ministry of Labour or the State Government/Union Territory Administration, whichever is higher, as per the Minimum Wages Act, 1948. However, if a Department is already paying daily wages at a higher rate, the practice could be continued with the approval of its Financial Adviser.

(vi) The casual workers may be given one paid weekly off after six days of continuous work.

(vii) The payment to the casual workers may be restricted only to the days on which they actually perform duty under the Government with a paid weekly off as mentioned at (vi) above. They will, however, in addition, be paid for a National Holiday, if it falls on a working day for the casual workers.

(viii) In cases where it is not possible to entrust all the items of work now being handled by the casual workers to the existing regular staff, additional regular posts may be created to the barest minimum necessary, with the concurrence of the Ministry of Finance.

(ix) Where work of more than one type is to be performed through out the year but each type of work does not justify a separate regular employee a multifunctional post may be created for handling those items of work with the concurrence of the Ministry of Finance.

(x) The regularisation of the services of the casual workers will continue to be governed by the instructions issued by this Department in this regard. While considering such regularisation, a casual worker may be given relaxation in the upper age limit only if at the time of initial recruitment as a casual worker, he had not crossed the age limit for the relevant post.

(xi) If a Department wants to make any departure from the above guidelines, it should obtain the prior concurrence of the Ministry of Finance and the Department of Personnel and Training.

All the administrative Ministries/Departments should undertake a review of appointment of casual workers in the offices under their control on a time-bound basis so that at the end of the prescribed period, the following targets are achieved :

(a) All eligible casual workers are adjusted against regular posts to the extent such regular posts are justified.

(b) The rest of the casual workers not covered by (a) above and whose retention is considered absolutely necessary and is in accordance with the guidelines, are paid emoluments strictly in accordance with the guidelines.

(c) The remaining casual workers not covered by (a) and (b) above are discharged from service.

2. The following time limit for completing the review has been prescribed in respect of the various Ministries/Departments :

(a) Ministry of Railways 2 years (b) Department of Posts, Department of Tele communications and Department of Defence Production 1 year (c) All other Ministries/Departments/Offices. 6 months.

8. The Ministry of Defence, Research & Development Organisation, New Delhi, duly circulated the copy of Ministry of Home Affairs OM No. 49014/3/83 Estt(C), dated 5 Jan. 1984 which is quoted below :

"The undersigned is directed to refer to this Department's OM No. 49014/77-Estt (C), dated 21.3.79 in which, inter alia, a complete ban was imposed on engagement of persons on daily wages basis for work of regular nature, and it was also stipulated that if any contraventions are noticed responsibilities should be fixed on the person such contraventions. These orders are still in force and required to be implemented scrupulously. However, doubts have been expressed as to whether this ban prohibits appointment on regular basis of all casual workers recruited after 20-3-79 in group "D" posts. It is hereby clarified that the imposition of the ban essentially relates to the engagement of daily wages for work of regular nature. Thus, if a person was engaged on daily wage basis against a regular post in contravention of the ban orders, he cannot be regularised in terms of the existing instructions on the subject. Persons only daily wages basis may, however, be recruited for work of purely temporary/casual/sensonal nature, if their recruitment is warranted by the requirements of a Ministry/Department (etc., and is approved by the concerned Associated Finance/Department of expenditure. If a person so engaged, even after 20.3.79, happens to be in service of the Government for a minimum period of 2 years, with at least 240 days of service as daily wage worker during each of the year (including broken period of service), he may be considered for regular appointment against

Group "D" Post, provided his resruitment was made through the Employment Exchange and he fulfils the other conditions of eligibility such as age limits, educational qualifications etc. provided further that the Ministry/Department/Office concerned has a suitable vacancy to accommodate him."

9. Reference was made to Chapter 18 from Establishment & Administrative Lines by Muthuswamy. The said Chapter 18 lays down the terms and conditions for employment of casual labour. Reference may be made to the said Chapter for its true import. It is, inter alia, provided in the said Chapter that casual labourer may be given the benefit of two years continuous service as casual labourer if he has put in at least 240 days of service as a casual labourer (including broken periods of service) during each of the two years of service. It is also contained in paragraph 2 that it has been decided that in the organisations observing five day week, casual workers may be considered for regular appointment to Group "D" posts, if otherwise eligible, if they have put in two years of service as casual workers, with 206 days of service during each year as against the usual 240 days. Paragraph 3, inter alia, provides for regularisation of services of casual workers not recruited through employment exchange before May 7, 1985 in Group "D" posts. The Affidavit in opposition also disclosed that there exists acute paucity of staff strength and that was indicated in the letter dated November 20, 1987. The permanent need for the acute paucity of the staff strength is thus an admitted fact. Successive engagement of the petitioner on the basis of sanctions made in his favour for a period of three months at a time is a fact or which should be taken into account.

10. Mrs. Deb Barman appearing for the respondents claimed and contended that the petitioner cannot claim the benefit of the said circular as he has not been recruited through employment exchange. The petitioner was duly registered with the employment exchange and he was allowed to work for more than 206 days in each of the calendar years, the benefit of regularisation of service cannot be denied by reason of the decision of the authority who allowed him to work on the basis of the sanction given by the Central Government. The fact not in dispute is that the petitioner was accorded the benefit of three months of service at a time which was continued during period 1985, 1986 and 1987 in intermittent intervals. The petitioner was duly registered with the employment exchange and that fact was not denied by the respondents and now the respondents cannot be allowed to take the plea that his case cannot be considered on the ground that the matter of his employment was not sponsored by the Employment Exchange. The petitioner being registered with employment exchange worked as a casual majdoor for all these years and now the respondents cannot be allowed to take up an inconsistent position so as to frustrate the genuine grievance of the petitioner. The contention of Mrs. Dev Barman could have been otherwise accepted had there not been such disclosure of the fact that there exists acute paucity of staff strength which means and implies that there exists permanent need for the employment of Group "D" employee.

11. Mr. Ghosh claimed that the concerned respondents sought to have reviewed the case of the petitioner in terms of the circular, dated June 7, 1988 within a period of one year in terms of paragraph 2 of the said circular. Reference was made to Articles 14, 38, 39(d) and 41 of the Constitution of India.

12. It is also to be borne in mind that the case of the petitioner does not warrant any application of 240 days work in a year. Mrs. Ila Chatterjee learned Advocate was asked to enlighten the Court as to whether in the particular Unit where the petitioner was engaged what procedure is followed as regards the number of working days. Mrs. Chatterjee on instruction from the concerned officer submitted that the Unit observes five day week. Therefore, the question of working 240 days in the facts and circumstances of the case does not arise. Government Circular dated October 26, 1984 is relevant for this purpose. It has been decided that the organisations observing five day week, casual workers may be considered for regular appointment to Group "D" posts, if otherwise eligible, if they have put in two years of service as casual workers, with 206 days of service during each year as against the usual 240 days.

13. Mr. Ghosh at the stage of his reply relied on the said circular dated October 26, 1984 in support of his contention that the petitioner duly fulfilled the conditions as he worked beyond 206 days in each year. Reference to the decision cited at the bar is now to be referred to in the case of Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others, . The petitioner, in my view, cannot be denied the benefit of regularisation of service on hyper-technical plea that his case was not sponsored through Employment Exchange. The petitioner at least fulfilled the condition that he is duly registered with the Employment Exchange. When the Circulars are very clear as regards the regularisation of service of the casual workers, mere technical objections, in my view, cannot be a ground for denying such regularisation of service of the petitioner. When the petitioner comes within the sweep of the Circular, dated October 26, 1984 by working more than 206 days, the bogey of sponsoring of the case of the petitioner by the Employment Exchange, as raised by the learned Counsel for the respondents, does not call for any consideration, as the same shall defeat the very mandate of the Constitution as contained in Articles 38, 39 and 41 which is complementary to Part III of the Constitution. While deciding the matter, the Court cannot ignore the radical changes that have taken place since the days of independence and law cannot be allowed to remain static but it is to go on and go on. The court should not sit fenciter to avoid the grant of relief to a person who substantially fulfills the conditions for regularisation of service. It is apt for this Court to refer to the observations of Lord Denning, "Law does not stand still. It moves continually. Once this is recognized, then the task of the Judge is put on a higher plane. He must consciously seek to mould the law so as to serve the needs of the time. He must not be a mere mechanic, a mere working mason, laying brick on brick, without thought to the over all design. He must be an architect thinking of the structure as a whole, building for society a system of law which is strong, durable and just. It is on his work that civilised

society itself depends".

14. The petitioner having duly fulfilled all the conditions for regularisation of his service, the hyper-technical pleas now raised by Mrs. H. K. Dev Burman, in my view, cannot be allowed to stand for the simple reason the respondents cannot be permitted to deny the benefit of regularisation of service on such ground and/or basis as indicated above, that the Administrative Instructions as are referred to by Mr. Ghosh have and had binding force upon the respondents. Respondents, in my view, are required to adhere to the said Administrative Instructions rigourously and they cannot be permitted to ignore the Administrative Instructions without rational and valid justification. The Hon'ble Supreme Court repeatedly since the decision in the case of Randhir Singh Vs. Union of India (UOI) and Others, exploded the doctrine of the complementary nature of the directive principles. The decision of Supreme Court in the case of Randhir Singh v. Union of India (supra.) has subsequently been referred to in the case of Dhirendra Chamoli and Another Vs. State of U.P., . The claim of the petitioner is founded upon Article 14, 16 and 21 of the Constitution. It is appropriate for this court to refer to relevant portions of the Judgment of Supreme Court in the case of Dhirendranath Chamoli v. State of U.P. (Supra).

15. In other decisions in which the principle of equal pay for equal work has been applied, the Supreme Court has veered round to imposing on the State the duty of being a model employer. That duty would be enforced by setting right any action found to be arbitrary or unconscionable. If unconscionable it is for the State to attempt to justify its failure to comply with the principle of equal pay for equal work on the ground that persons who complain of the infraction of that principle were aware when they joined public service that they would be given lower emoluments than others in the service performing similar function.

16. In Dhirendranath Chamoli v. State of U.P. the Supreme Court held that casual labourers employed in the Nehru Yuvak Kendra were entitled to the same pay scales as regular class IV employees who perform the same tasks :

It is peculiar on the part of the Central Government to urge that these persons took up employment with the Nehru Yuvak Kendras knowing fully well that they will be paid only daily wages and therefore they cannot claim more. This argument lies ill in the mouth of the Central Government for it is an all too familiar argument with the exploiting class and a welfare State committed to a socialist pattern of society cannot be permitted to advance such an argument. It must be remembered that in this country where there is so much unemployment, the choice for the majority of people is to starve or to take employment on whatsoever exploitative terms are offered by the employer. Further 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.

17. Similarly in *Surinder Singh v. Engineer-in-Chief, C.P.W.D.* the Supreme Court directed that daily wagers employed by the Central Public Works Department must be given the same pay as regular employees.

17a. The Central Government like all organisation of the State is committed to the Directive Principles of State Policy and Article 39 enshrines the principle of equal pay for equal work.

17b. The Central Government, the State Government and likewise, all public sector undertakings are expected to function like model and enlightened employers and arguments such as those which were advanced before us that the principle of equal pay for equal work is an abstract doctrine which cannot be enforced in a court of law should ill come from the mouths of the State and State undertakings. We allow both the writ petitions and direct the respondents as in the *Nehru Yuvak Kendras* case to pay to the petitioners and all other daily rated employees to pay the same salary and allowances as are paid to regular and permanent employees with effect from the date when they were respectively employed."

18. The Central Government and State Government are likewise and all public sector undertakings are expected to function like model and enlightened employers particularly in situation where livelihood of an employee is seriously affected. Article 21 of the Constitution in the recent times has found wide and varied interpretation in the several cases pronouncements of the Supreme Court, *State of Maharashtra Vs. Balram Bama Patil and Others*, Life does not mean mere animal existence of a man. It has a finer grace and different shades. A youth after joining the service when fastened with the deprivation of livelihood, the court will try to examine the basic and fundamental grievance of the affected person in the light of the Government Circulars and instructions. In the case of *Satwant Singh v. Asstt. Passport Officer*, Supreme Court found a new dimension of Article 21 which, Chief Justice Subbarao in succinct manner placed "the word liberty is not a static conception but a broad and pervasive view adaptable to the challenging circumstances of life and liberty. In the said judgment, Chief Justice Subbarao further observed while in the case of unchannelled arbitrary discretion, discrimination is writ large on the face of it. Such discretion violates the doctrine of equality for the difference of treatment of persons solely rests on the arbitrary selection of the executives. Article 21 as is now found by the Supreme Court and the High Court is the bedrock of the Constitution.

19. In view of the decisions as stated above, I am of the view, that hyper-technical pleas cannot do away with livelihood of persons and the court shall not stand as a silent spectator or a fencesetter to see that it has no power to declare an arbitrary onslaught to which the petition has been subjected.

20. In view of the reasons as indicated above, I am not in a position to accept

the contentions of Mrs. Dev Burman. The petitioner on the basis of the disclosures made by the respondents duly fulfilled the conditions by working 206 days. That being the position, he should not be denied the benefit of the circular on mere technical plea which stands negative. I, therefore, deem it fit and proper to allow this application by directing the respondents to consider the case of the petitioner on the basis of the circular, dated October 26, 1984. The application of 240 days in the facts and circumstances of the case should not be taken into account. Such consideration of the case of the petitioner should be effected within a period of six weeks from date. The petitioner shall be given an opportunity of hearing. Before I part with the case, I must put an epilogue :

"When the law shows her teeth, but cannot bite, a farce is enacted."

21. This application is allowed to the extent indicated above without any order as to costs.