
(2016) 12 UK CK 0017
In the Uttarakhand High Court
Case No : Special Appeal No. 485 of 2015

Union of India

APPELLANT

Vs

All India Trade Union Congress

RESPONDENT

Date of Decision : 05-12-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 16, Article 21

Citation : (2017) 1 CLR 987 : (2017) 1 LLJ 526 : (2016) 4 LLN 772

Hon'ble Judges : Rajiv Sharma and Alok Singh, JJ.

Bench : Division Bench

Advocate : Mr. Sanjay Bhatt, Advocate, for the Appellants; Mr. M.C. Pant, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Rajiv Sharma , J. - This special appeal is instituted against the judgment dated 11th March, 2015 rendered by learned Single Judge in Writ Petition (S/S) No.1333 of 2013.

2. Key facts, necessary for adjudication of this appeal, are that the writ petition was instituted by respondents, herein, on behalf of Members of Trade Union, seeking regularisation of their services. The members of the Trade Union are working with the Border Road Organization (BRO) in various projects and General Reserve Engineer Force (GREF) in the State of Uttarakhand which are in the border areas such as Uttarkashi, Pithoragarh, Chamoli etc. The members made various representations but those were not considered.

3. The case of the appellants is that the casual workers like the members of respondents-federations are not engaged against any regular vacancies. The casual labour is not engaged against any regular establishment. There is no regular budget provision in the annual budget of the organization. Their wages are paid out of the funds earmarked for the works they are deployed depending upon the work load or as provided by the agencies by whom the work is

entrusted to the BRO.

4. The Border Roads Development Board comes under the Ministry of Defence. It is headed by a Lt. General from the Army. Similarly, the General Reserve Engineer Force is the force that carries out the responsibilities and tasks assigned to BRO. The GREF is primarily responsible for providing engineering support to the Army vide Notification dated 14.8.1985.

5. The fact of the matter is that the members of the Federation are working for more than 10-20 years as daily wagers and casual labours. The construction of roads in border areas is a continuous process. The members work in harsh weather conditions without any proper equipment. The services of the labourers cannot be terminated without sufficient grounds. In case, the work is not available at one particular place, they are required to be deployed in adjoining area.

6. The similarly situated persons have filed writ petition before the Hon'ble Jammu and Kashmir High Court i.e. SWP No.432 of 2000. The writ petition was disposed by the learned Single Judge on 6-2-2002.

"This petition is accordingly disposed of with a direction that the respondent would take notice of the scheme referred to above and regularise the service of the petitioners. Let requisite steps be taken within a period of six months from the date a copy of this order is made available to respondents by the petitioner. In this, the respondents would release, the benefits of the scheme as contemplated in para 6 of the same."

7. It would be apt to submit at this stage that the Union of India has filed an L.P.A. against the judgment rendered by learned Single Judge in SWP No. 432 of 2000 of Hon. Jammu & Kashmir High Court. The L.P.A. was dismissed by the Division Bench of Jammu & Kashmir High Court on 8.1.2005 by refusing to condone the delay. The Union of India preferred a Special Leave Petitions against the order dated 8.1.2005. The Union of India preferred Special Petitions against the order dated 08.01.2005 bearing no. CC19148-19149 of 2009. These petitions were dismissed by the Hon. Apex Court on 7.12.2009. A review petition was also preferred by the Union of India. It was dismissed by the Apex Court on 9.2.2010.

8. Respondents have also reproduced the paragraph no.21 of the judgment rendered by the Hon. Apex Court in the case of "Union of India & others v. Vartak Labour Union" in Civil Appeal Nos. 2129-2130 of 2004. Paragraph no.21 reads as under:-

"21. Therefore, in the facts and circumstances of the instant case, where members of the respondent Union have been employed in terms of the Regulations and have been consistently engaged in service for the past thirty to forty years, of course with short breaks, we feel, the Union of India would consider enacting an appropriate regulation/scheme for absorption and regularisation of the services of the casual workers engaged by BRO for

execution of its on-going projects."

9. It is thus, evident from the paragraph, quoted herein above, that the Union of India was required to frame an appropriate regulation/scheme for absorption and regularisation of the services of the casual workers engaged by the BRO for execution of its ongoing projects.

10. The fact of the matter is that despite the judgment of Hon. Jammu & Kashmir High Court, which was upheld by the Hon. Apex Court and in view of the observations made by Their Lordships of Hon. Apex Court in judgment dated 4.3.2011 in Vartak Labour Union (Supra), the appellants have not taken any steps to regularise the casual labourers who are working in the Organization i.e. B.R.O. and G.R.E.F. for more than 10-20 years in the State of Uttarakhand.

11. The Union of India vide communication no. 2021/PF/CPL/38/E2 dated 09.04.2011 have issued following directions.

"To ensure that no CPL works for more than 240 days in a year, as there are guidelines by the Hon"ble Court in various states that continuing in working of a labour for prolonged period of 5 years to 7 years leads to regularisation in jobs, without proper technical break up to avoid problem of claiming regularisation of CPLs."

12. That the respondents vide communication no.2021/LS/139/E2 dated 18-04-2011 have issued along with other directions the following two directions:

- a) No CPL should be deployed for a period more than 120 days at a time.
- b) CPL on roll be mustered not more than 210 days under any circumstances in one financial year.

13. Similarly the Union of India has also directed the Authorities to ensure that no labourer be permitted to work for more than 239 days and thereafter they should be discharged vide order dated 07.04.2011.

14. It reflects the callous attitude on the part of the appellants in not permitting the workmen to complete 240 days. The members of the Union are working with the organisation for 10-20 years, despite that, their service conditions have not been made humane. They are liable to be regularised and are also required to be paid the minimum of pay-scale for a corresponding regular Group-D officials including DA, HRA and CCA. The action of the Union of India, in neither regularising the members of respondent Federation and nor paying the basic wages, is violative of Articles 14, 16 and 21 of the Constitution of India.

15. The Union of India, till the finalisation of Scheme, could, at least, grant the members of respondent Federation, a temporary status. The artificial breaks given to the casual labourers are illegal. The members of respondent Federation have no bargaining powers with the Union being lowly paid employees. India is a welfare State. Our preamble talks of socialism. The welfare State and the socialism have defined connotations. The socialism and welfare State are the

basic features of the Constitution. A welfare State cannot deprive the regular status to its employees who are working for more than 10-20 years, that too, on meagre wages in border areas.

16. It may be true that the members of respondent Federation have not been engaged against the regular posts but the fact of the matter is that they are continuously working for more than ten years and are being paid wages from the Government funds. The construction of roads in the border areas is a continuous process and if one road is complete, the BRO/GREF undertakes to construct the next road. They are working regularly and their work cannot be termed as temporary. They are entitled for the basic wages to enable them to feed their children. They are also required to impart education to their children besides reasonable housing facilities in the remote areas including the clothing and equipment.

17. The directions have been issued illegally by the higher authorities to their subordinates not to permit the respondents/workmen to work for more than 240 days. Directions have also been issued by the higher authorities to their subordinates to dismiss the workmen after completion of 239 days. This is a callous attitude of the authorities towards their fellow citizens and is highly condemnable by this Court. One must give due respect to the workmen. It is the workmen who toil hard in nation building. The construction of roads in the border areas is of utmost importance and the same cannot be compromised by insensitive officers/officials of the Organization who have no respect for the human values.

18. Their Lordships of Hon. Apex Court in AIR 1966 SC(1) 305 in the case of "All India Reserve Bank Employees" Association and another v. Reserve Bank of India and another", have held that the concept of living wage is one or more steps higher than fair wage. Living wage means that every male earner should be able to provide for his family not only the essentials but the fair measure of frugal comfort and an ability to provide for old age or evil days. Fair wage lies between the concept of minimum wage and the concept of living wage.

"(27) The next fundamental point requires narration of a little history before it can be stated. In December 1947 there was an Industries Conference with representatives of the Government of India and the Governments of the States, businessmen, industrialists and labour leaders. An Industrial Truce Resolution was passed unanimously which stated inter alia that increase in production was not possible unless there was just remuneration to capital (fair return), just remuneration to labour (fair wages) and fair prices for the consumer. The Resolution was accepted by the Central Government. In 1947 a Central Advisory Council was appointed which in its turn set up a Committee to deliberate and report on fair wages for workmen. The Report of that Committee has been cited over and over again. In the Standard Vacuum Refg. Co. v. Its Workmen, 1961-1 Lab LJ 227: (AIR 1961 SC 895), this Court elaborately analysed the concept of wages as stated by the Committee. The Committee divided wages into three

kinds: Living wage, fair wage and minimum wage. Minimum wage, as the name itself implies represents the level below which wage cannot be allowed to drop. It was universally recognised that a minimum wage must be prescribed to prevent the evil of sweating and for the benefit of workmen who were not in a position to bargain with their employers. This received immediate attention in India, though there was an International Convention as far as back as 1928 and the demand for fixation of minimum wages extended even to non-sweated industries. The result was the Minimum Wages Act of 1948. the Fair Wages Committee understood the term minimum wage as the lowest wage in the scale below which the efficiency of the worker was likely to be impaired. It was described as the "wage floor" allowing living at a standard considered socially, medically and ethically to be the acceptable minimum. Fair wages by comparison were more generous and represented a wage which lay between the minimum wage and the living wage. The United Provinces Labour Enquiry Committee classified the levels of living as -

- (i) poverty level
- (ii) minimum subsistence level
- (iii) subsistence plus level, and
- (iv) comfort level.

The concept of fair wages involves a rate sufficiently high to enable the worker to provide "a standard family with food, shelter, clothing, medical care and education of children appropriate to his status in life but not at a rate exceeding the wage earning capacity of the class of establishment concerned." A fair wage thus is related to a fair workload and the earning capacity. The living wage concept is one or more steps higher than fair wage. It is customary to quote Mr. Justice Higgins of Australia who defined it as one appropriate for "the normal needs of average employee, regarded as a human being living in a civilised community." He explained himself by saying that the living wage must provide not merely for absolute essentials such as food, shelter and clothing but for "a condition of frugal comfort estimated by current human standards" including "provision for evil days etc. with due regard for the special skill of the workman." It has now been generally accepted that living wage means that every male earner should be able to provide for his family not only the essentials but a fair measure of frugal comfort and an ability to provide for old age or evil days. Fair wage lies between the concept the minimum wage and the concept of living wage."

19. Their Lordships of Hon. Apex Court in 1983(1) SCC 305 in the case of "D.S. Nakara and others v. Union of India", have held that while interpreting or examining the constitutional validity of legislative/administrative action, the touchstone of Directive Principles of State policy in the light of the Preamble will provide a reliable yardstick to hold one way or the other.

20. Their Lordships of Hon. Apex Court in (1987) 2 SCC 165 in the case of "Vincent Panikurlangara v. Union of India & others", have held that in a welfare State, it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health. Maintenance and improvement of public health have to be ranked high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society which the Constitution-makers envisaged. Their Lordships, in paragraph nos. 13 and 16, have held as under:-

"13. The issues raised in this petition are of vital importance as they relate to maintenance of approved standards of drugs in general; the writ petition involves the claim for withdrawal of 7000 fixed dose combinations and withdrawal of licences of manufacturers engaged in manufacture of about 30 drugs which have been licensed by the Drugs Control authorities; the issues that fall for consideration are not only relating to technical and specialised matters relating to therapeutic value, justification and harmful side effect of drugs but also involve examination of the ectness (sic) of action taken by the Respondents 1 and 2 on the basis of advice; the matter also involves the interest of manufacturers and traders of drugs as also the interest of patients who require drugs for their treatment.

16. A healthy body is the very foundation for all human activities. That is why the adage "Sariramadyam Khaludharma Sadhanam". In a welfare State, therefore, it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health. This Court in *Bandhua Mukti Morcha v. Union of India*, 1984 (3) SCC 161 aptly observed: (SCC p. 183. para 10)

"It is the fundamental right of everyone in this country, assured under the interpretation given to Article 21 by this Court in *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, 1981 (1) SCC 608, to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of the workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State - neither the Central Government nor any State Government - has the right to take any action which will deprive a person of the enjoyment of these basic essentials."

While endorsing what has been said above, we would refer to Article 47 in Part IV of the Constitution. That article provides:

"The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

This article has laid stress on improvement of public health and prohibition of drugs injurious to health as one of the primary duties of the State. In *Akhil Bharatiya Soshit Karamchari Sangh v. Union of India*, 1981 (1) SCC 246, this Court has pointed out that: (SCC pp. 308-09, para 123)

"The fundamental rights are intended to foster the ideal of a political democracy and to prevent the establishment of authoritarian rule but they are of no value unless they can be enforced by resort to courts. So they are made justiciable. But, it is also evident that notwithstanding their great importance, the Directive Principles cannot in the very nature of things be enforced in a court of law.... It does not mean that directive principles are less important than fundamental rights or that they are not binding on the various organs of the State."

In a series of pronouncements during the recent years this Court has culled out from the provisions of Part IV of the Constitution these several obligations of the State and called upon it to effectuate them in order that the resultant pictured by the Constitution Fathers may become a reality. As pointed out by us, maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the Constitution makers envisaged. Attending to public health, in our opinion, therefore, is of high priority - perhaps the one at the top."

21. Their Lordships of Hon. Apex Court in (1995) 3 SCC 42 in the case of "*Consumer Education & Research Centre & other v. Union of India & others*", have held that the right to health and medical aid of workers during service and thereafter is a fundamental right. Court can give directions in appropriate cases to State or its undertakings/instrumentalities, company or private employer to make the right meaningful and to pay compensation to affected workmen. Their Lordships have further held that the right to life includes the right to livelihood, better standard of living, hygienic conditions in the workplace and leisure. It was further held that the Preamble and Article 38 of the Constitution envision social justice as the arch to ensure life to be meaningful and live-able with human dignity. Their Lordships have held as under: -

"19. In a developing society like ours steeped with unbridgeable and ever-widening gaps of inequality in status and of opportunity, law is catalyst, Rubicon to the poor etc. to reach the ladder of social justice. Justice K. Subba Rao, the former Chief Justice of this Court, in his *Social Justice and Law* at page 2, had stated that: "Social justice is one of the disciplines of justice and the discipline of justice relates to the society." What is due cannot be ascertained by absolute

standard which keeps changing depending upon the time, place and circumstance. The constitutional concern of social justice as an elastic continuous process is to accord justice to all sections of the society by providing facilities and opportunities to remove handicaps and disabilities with which the poor etc. are languishing and to secure dignity of their person. The Constitution, therefore, mandates the State to accord justice to all members of the society in all facets of human activity. The concept of social justice embeds equality to flavour and enliven practical content of "life". Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of law, therefore, is a potent instrument of social justice to bring about equality in results.

20. Article 1 of the Universal Declaration of Human Rights asserts human sensitivity and moral responsibility of every State that "all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." The Charter of the United Nations thus reinforces the faith in fundamental human rights and in the dignity and worth of human person envisaged in the Directive Principles of State Policy as part of the Constitution. The jurisprudence of personhood or philosophy of the right to life envisaged under Article 21, enlarges its sweep to encompass human personality in its full blossom with invigorated health which is a wealth to the workman to earn his livelihood, to sustain the dignity of person and to live a life with dignity and equality.

22. The expression "life" assured in Article 21 of the Constitution does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in the workplace and leisure. In *Olga Tellis v. Bombay Municipal Corpn.*, 1985 (3) SCC 545, this Court held that no person can live without the means of living i.e. means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content of meaningfulness but it would make life impossible to live, leave aside what makes life live-able. The right to life with human dignity encompasses within its fold, some of the finer facets of human civilisation which makes life worth living. The expanded connotation of life would mean the tradition and cultural heritage of the persons concerned. In *State of H.P. v. Umed Ram Sharma*, 1986 (2) SCC 68 this Court held that the right to life includes the quality of life as understood in its richness and fullness by the ambit of the Constitution. Access to road was held to be an access to life itself in that State.

24. The right to health to a worker is an integral facet of meaningful right to life, to have not only a meaningful existence but also robust health and vigour without which worker would lead life of misery. Lack of health denudes him of his livelihood. Compelling economic necessity to work in an industry exposed to health hazards due to indigence to bread-winning for himself and his

dependants, should not be at the cost of the health and vigour of the workman. Facilities and opportunities, as enjoined in Article 38, should be provided to protect the health of the workman. Provision for medical test and treatment invigorates the health of the worker for higher production or efficient service. Continued treatment, while in service or after retirement is a moral, legal and constitutional concomitant duty of the employer and the State. Therefore, it must be held that the right to health and medical care is a fundamental right under Article 21 read with Articles 39(e), 41 and 43 of the Constitution and make the life of the workman meaningful and purposeful with dignity of person. Right to life includes protection of the health and strength of the worker and is a minimum requirement to enable a person to live with human dignity. The State, be it Union or State Government or an industry, public or private, is enjoined to take all such actions which will promote health, strength and vigour of the workman during the period of employment and leisure and health even after retirement as basic essentials to live the life with health and happiness. The health and strength of the worker is an integral facet of right to life. Denial thereof denudes the workman the finer facets of life violating Article 21. The right to human dignity, development of personality, social protection, right to rest and leisure are fundamental human rights to a workman assured by the Charter of Human Rights, in the Preamble and Articles 38 and 39 of the Constitution. Facilities for medical care and health to prevent sickness ensures stable manpower for economic development and would generate devotion to duty and dedication to give the workers" best physically as well as mentally in production of goods or services. Health of the worker enables him to enjoy the fruits of his labour, keeping him physically fit and mentally alert for leading a successful life, economically, socially and culturally. Medical facilities to protect the health of the workers are, therefore, the fundamental and human rights to the workmen.

25. Therefore, we hold that right to health, medical aid to protect the health and vigour of a worker while in service or post-retirement is a fundamental right under Article 21, read with Articles 39(e), 41, 43, 48-A and all related articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person."

28. "It would thus be clear that in an appropriate case, the Court would give appropriate directions to the employer, be it the State or its undertaking or private employer to make the right to life meaningful; to prevent pollution of work place; protection of the environment; protection of the health of the workman or to preserve free and unpolluted water for the safety and health of the people. The authorities or even private persons or industry are bound by the directions issued by this Court under Article 32 and Article 142 of the Constitution."

22. Their Lordships of Hon. Apex Court in (1996) 4 SCC Page 37 in the case of "Paschim Banga Khet Mazdoor Society & others v. State of W.B. & another", have held that the Constitution envisages the establishment of a welfare State at the

federal level as well as at the State level. In a welfare State, the primary duty of the Government is to secure the welfare of the people.

23. Their Lordships of Hon. Apex Court in 2000 (3) SCC 224 in the case of "Municipal Corporation of Delhi v. Female Workers(Muster Roll) and another", have held that a just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of the society have to be honoured and treated with dignity at cases where they work to earn their livelihood. To become a mother is the most natural phenomenon in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the workplace while carrying a baby in a womb or while rearing up the child after birth. Their Lordships have further held in Paragraph 33 that :

33. "A just social order can be achieved only when inequalities are obliterated and everyone is provided what, is legally due. When who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work; they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomena in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the work place while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear, of being victimised for forced absence during the pre or post-natal period."

24. Accordingly, there is no merit in this appeal and the same is dismissed with the costs quantified as Rs.50,000/- (Rupees fifty thousand only). Judgment rendered by learned Single Judge is affirmed and following mandatory directions are issued to the Union of India:

A. Union of India is directed to frame a Scheme within a period of three months from today positively to regularise the services of the members of respondent Federations who have worked for more than five years" continuously in BRO and GREF. The Union of India shall take into consideration the various schemes already framed by the Department of Personnel & Training from time to time while framing fresh scheme.

B. Union of India is directed to pay the members of respondents Federations the minimum of the pay scale being paid to the corresponding regular Group "D" employee, including D.A., H.R.A. and C.C.A.. The members of respondent

Federation shall also be entitled to regular increments, as applicable to Group "D" employees. They shall also be entitled to leave on pro-rata basis at the rate of one day for every ten days of work. The female members of the Federations are held entitled to maternity leave at par with regular Group "D" employees.

C. Union of India is directed to implement all the labour laws i.e. EPF, Gratuity Act, Bonus Act, Workmen Compensation Act qua the members of respondent Federations.

D. Communications dated 7.4.2011, 9.4.2011 and 18.4.2011, issued by the Union of India, are declared ultra vires the Constitution and are quashed and set aside.

E. The Union of India is directed to give temporary status to the workmen/casual labourers who have worked for more than 240 days continuously in the block of 12 calendar months.

F. The Union of India is directed to provide warm clothes to the casual labourers deployed in the border areas since they have to work in very low temperatures.

G. The Union of India is directed to provide the members of respondent Federation pre-fabricated houses with a separate bathroom. The rooms should be airy and well-lit. The houses should be provided with sufficient fuel to make them warm during severe winter conditions.

H. The Union of India is also directed to open Crèches in the areas where more than 20 families are deployed.

I. The respondents are directed not to retrench the services of the workmen, who have completed more than 240 days without following the due process of law.

J. The Union of India is directed that all the casual labourers who receive injuries, while discharging the duties in harsh conditions in border areas, should be treated in Military Hospitals free-of-cost. The Union of India is also directed that the casual labourers from the camping site of construction should be transported in buses and not in open trucks.