
(1999) 12 DEL CK 0126

In the Delhi High Court

Case No : CWP. No. 4418 of 1998 with CWP No's. 4419, 3737, 5381 of 1998
and CWP No. 5259 of 1999

V.K. Srivastava

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-12-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 3 AD 868 : (2000) 53 DRJ 170

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Mr. Anil Seth, Mr. J.R.Das, Mr. K.N. Tripathy, Mr. G.L. Sawhney and
Mr. Anil Shrivastava, for the Appellant; Mr A.K. Verma, for the Respondent

Judgement

A.K. Sikri, J.—All these Writ Petitions raise common questions of facts and law. The petitioners in all these writ petitions are employed by National Industrial Development Corporation Ltd. (NIDC for short). They were all appointed on contract basis to the post of Assistant Engineer. In these Writ Petitions they are all claiming same relief i.e. Regularization of their services by NIDC as well as pay of regular employees on the principle of equal pay for equal work. Accordingly, all these petitions are disposed of by one common judgment.

2. In order to appreciate the controversies between the parties, it would be appropriate to refer to the facts contained in Civil Writ Petition No. 4418 of 1998, inasmuch as facts on the basis of which the relief is sought by the petitioners in different Writ Petitions are more or less same.

3. The petitioner in Writ Petition No. 4418 of 1998 was appointed on contract basis to the post of Asstt. Engineer by NIDC with effect from 8.10.92. He is a qualified Engineer and working with NIDC for over six years without any break. He was appointed on consolidated salary of Rs. 3,100/- per month. He claims that he is working in various site offices of respondent No. 2 organization to oversee conduct and supervisions were carried on by respondent No. 2 on behalf

of various organizations. Petitioner states that he was appointed on contract basis pursuant to advertisement issued in this regard. He applied for the post of Asstt. Engineer and was interviewed by Selection Committee. Offer dated 8.10.92 of contract appointment as Asstt. Engineer (Civil) shows that it was consolidated salary for a period of one year from the date of his joining duties. This appointment was for NIDC projects. Offer of contract appointment provides that it would stand automatically terminated on the expiry of period of contract mentioned therein unless extended in writing. It is further provided that NIDC shall have right to terminate the contract by giving one month's notice in writing or paying one month's consolidated salary in lieu thereof. After getting this appointment, petitioner has been discharging the duties to the full satisfaction of the respondents. Petitioner states that he was never given opportunity to be regularised in NIDC although respondents have always verbally assured that he along with other similarly situated contract appointees would be regularized in due course. Although respondents have held about 3 interviews for appointment on regular basis during this period the petitioner has never been called for interview at the said selection process. He submits that in view of his long satisfactory service and as respondents need Assistant Engineer on regular and perennial basis, he is entitled to be regularized as Assistant Engineer.

4. Petitioner has also claimed payment of same salary as is being given to regular employees holding similar post and discharging similar duties and functions on the principle of "equal" pay for equal work". It is the case of the petitioner that he has been performing same level of functions and duties as are performed by permanent/regular incumbents to the post, but denied the salary which is paid to regular incumbent. Junior Engineers on contract basis are getting consolidated salary, of Rs. 2,100/- to Rs. 2,500/- and Assistant Engineers on contract basis are getting about Rs. 3,100/- to Rs. 3,200/-. As against this, regular appointees are drawing the monthly emoluments of about Rs. 8,000/-. He claims that he should be paid same salary as he is discharging same function and payment of consolidated salary violates principle of "equal pay for equal work" as well as Article 14 of the Constitution.

5. In the Counter-affidavit filed by the respondents, number of Preliminary Objections are taken. It is averred that the present petition is not maintainable as petitioner was appointed on contractual basis and dispute, if any, between the petitioner and respondents are of contractual nature and cannot be adjudicated under Article 226 of the Constitution of India. It is also alleged that very important and material facts have been deliberately withheld by the petitioner from this court and Therefore, he has not come to this court with clean hands and his writ petition should be dismissed on this ground also. On merits, it has been clarified that NIDC has only one office which is situated at New Delhi. Depending on the requirement of various projects being undertaken by the respondent temporary site offices are established by the respondent for controlling the projects. In view of the changing situation and specialised project-specific inputs, the respondent Company could not afford to burden itself with

increasing intake of supervisory professionals on its rolls. The induction of professionals on regular basis was bound to render them idle after the project was over. It was Therefore, decided by the management of the respondent company to engage the services of unemployed technical persons with minimum qualifications and experience on a temporary basis. For this basic purpose almost all aspects of engaging project personnel e.g. selection process, duration of engagement, authority designation, possible compensation package, leave entitlement, admissibility of travel allowance, medical facility etc. was examined. Depending on the nature of the work, regular employees of the respondent company are posted to the site office as well as earmarked at the head office. The site in charge appointed by the respondents is responsible for getting the works executed on behalf of the owners of the project, who are the clients of the respondent company. If considered necessary, the site in charge or the project in charge at the Head Office, in addition to the regular staff of the respondent company, advertises and invites applications from candidates interested in working temporarily on a consolidated salary on specific projects being undertaken by the respondent company. The candidates found suitable for the supervisory work expected to be done by them on a project, are engaged on certain specific terms and conditions contained in a contract executed between such a candidate and the respondent company. A clear undertaking is signed by such a selected candidate which reads as under :-

"I accept the terms & conditions as set out in the offer of appointment without any reservation. I have noted that this appointment is for a specific period for the project work on consolidated salary as offered to me and that I will have no claim whatsoever for continuance or claiming permanency in my appointment. Any extension that may be given to me an account of extention of the project work is acceptable to me as per conditions laid down at para 2 of the offer of appointment."

6. It is further mentioned in the counter affidavit that at times it becomes necessary for the respondent to extend the periods of the con- tracts. This generally happens due to prolongation of the execution of the projects undertaken by the respondent company. In such circumstances, the contracts of the employees are suitably extended and/or renewed on the same terms and conditions. It is clarified that the duties of the petitioner was purely of a supervisory nature on specific projects being handled by the respondent company at different points of time. The petitioner has signed the undertaking as mentioned above and as such is estopped from raising any claim contrary to the said undertaking. Other Public Sector companies, doing the same business as that of the respondents are also following this system of specific work contract employment. It is also stated that the respondent company is engaged in the work of providing project consultancy in the fields of engineering and project management to its various clients. The respondent company has to handle assignments, non-repetitive and diverse in nature, often of shorter term duration e.g. assignments like requirement of sociologists, hydrologists, social scientists,

personnel to man the temporary sites on one hand, and secondment of personnel in different fields to various client organizations on the other. It is not possible for the respondent Company or for that matter any consultancy organization to have experts and other supervisory personnel in all the disciplines on its regular rolls to meet these needs. Further, the likelihood of the respondent company getting these assignments on a regular basis is rather uncertain. As such, it is necessary to supplement its capabilities by engaging personnel, specific to different assignments for its entire duration, resorting to some temporary measures.

7. It is further stated that extension of the contract of the petitioner has been due to the reason of prolongation of the project for which the petitioner was engaged. According to respondent the petitioner was, free and unrestricted to look around for regular job with any other employer or even the respondent company. In fact, many of contract employees engaged on various projects of NIDC left the services in between to join other employers. For this neither any Prior permission was required to be taken from NIDC nor they were ever stopped. It is also stated that as and when need arose, applications were invited for appointment of eligible candidates on regular managerial posts by NIDC. It was done, through Open General Advertisements. In response to one such advertisement, petitioner even applied for the post of Assistant Manager and was interviewed on 7.11.94. However, he was not recommended for selection by the Selection Committee. There is no provision for regularizing the services of a person engaged on contract basis, nor has anybody been regularized by respondent NIDC so far. No verbal assurances were given to the petitioner. He had been working under the contract without any coercion or pressure. The respondent NIDC also stated that it is not possible to regularise the petitioner as there are no posts against which petitioner could be regularised. As of date there are approximately 250 employees on regular roll of NIDC. The Company is running into losses which is clear from duly audited balance sheet showing total expenditure of Rs. 1,011.53 Lacs and a total of Rs. 56.52 lacs has been carried forward as loss for the past year. At present, total work in the hand of the respondent company is only to the tune of approximately Rs. 2 Crores as compared to turn over of approximately Rs. 10 crores achieved by the Company in the past year. As a result of this impossible financial situation, the respondent company has been unable to even pay regular salaries to its permanent employees. Thus, according to respondent even when the permanent strength is surplus and the respondent NIDC is not in a position to meet their financial burden it cannot even consider to make any fresh appointment or regularise the services of person like the petitioner.

8. In the Rejoinder Affidavit, filed by the petitioner, allegations made in the Counter Affidavit are repudiated and various documents are annexed. Petitioners have also referred to various judgments in support of their contentions reference to which would be made to at appropriate stage.

9. Mr. Anil Seth, learned counsel for the petitioner who is also counsel for the petitioners in most of the cases, mainly argued on behalf of the petitioner and these arguments were adopted in other petitions. Mr. A.K. Verma, learned counsel for the respondents made submissions on behalf of NIDC.

10. It was contended by Mr. Anil Seth that petitioners having worked for such a long duration were entitled to regularization. Respondent could not bank upon the Appointment Letter to contend that it was for specific period or against a project or on contract basis. According to him, petitioners were made to sign being in a weaker position against Mighty employer and it was nothing but sheer exploitation of the petitioner. The Undertaking got signed from the petitioner was contrary to law and against Public Policy. In support of this contention, he relied upon the judgment of Supreme Court in the case Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, and referred to the following observations of the Supreme Court :-

"A clause such as Rule 9(i) in a contract of employment affecting large sections of the public is harmful and injurious to the public interest for it tends to create a sense of insecurity in the minds of those to whom it applies and consequently it is against public good. Such a clause Therefore, is opposed to public policy and being opposed to public policy, it is void u/s 23 of the Indian Contract Act."

11. He also referred to the judgment of Supreme Court in the case Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, and contended that right to life of a workman would include the right to permanent employment and that right to work is a fundamental right. He also submitted that in various cases, Supreme Court had passed the orders of regularization of services of persons like petitioners, who had worked for long duration and relied upon the following judgments to buttress his contention :-

(i) Dr A.K. Jain and Others Vs. Union of India (UOI) and Others, .

(ii) Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, .

(iii) U.P. Income Tax Department Contingent Paid Staff Welfare Association Vs. Union of India (UOI) and Others, .

(iv) Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others, .

(v) Karnataka State Private College Stop-Gap Lecturers Association Vs. State of Karnataka and Others, .

(vi) State of Haryana and others Vs. Piara Singh and others etc. etc., .

(vii) Rattan Lal and Others Vs. State of Haryana and Others, .

12. Arguing vehemently that the approach of the NIDC was discriminatory in treatment of such contract employees he submitted that the respondents had regularized the juniors ignoring the claim of seniors like the petitioners and drew

the attention of the court to certain instances which are specifically given in C.W. No. 2794/96. He contended that this was clearly illegal as held by Supreme Court in the case of Satyendra Nath Bajpai Vs. Inspector General of Registration, Uttar Pradesh and another, . It was also contended that merely because the project against which the petitioner was working was over, was not the ground to terminate his services or not to regularise him. The NIDC has so many projects and in fact, the main function of NIDC was to undertake this project. Therefore, services of the petitioners could not be terminated on conclusion of one project and their services could be utilized from one project to other if one project had come to an end. In support of this contentions, petitioner relied upon the judgment of Supreme Court in the case reported in 1992 Suppl. (1) SCC 399; and he also contended that financial inconvenience was no ground to deny Regularization or to violate fundamental rights of the petitioner and for this proposition petitioner relied upon the following judgments :-

- (i) State of Maharashtra Vs. Manubhai Pragaji Vashi and others, .
- (ii) Paschim Banga Khet Mazdoor Samity and others Vs. State of West Bengal and another, .
- (iii) 1983 (3) SCC 425.

Mr. Anil Seth, learned counsel for the petitioners further argued that in 1994 the Petitioner applied for the post of Asstt. Manager in response to open public advertisement for the post of Asstt. Manager issued by Respondent Corporation. Petitioner along with other like placed were interviewed in 1994 as an eye wash as the Respondents rejected petitioner as being treated over-age knowing fully well that the Petitioner who had applied was working the Respondent itself.

13. On the other hand, Mr. A.K. Verma, learned counsel for NIDC relied upon the various averments made in the Counter Affidavit which are already noticed above. In support of his contentions that the petitioners were not entitled to any relief of regularization when they knew very well that they were appointed against specific project for specific duration on contract basis. They were continued beyond the initial period of one year only because the project against which they were appointed was prolonged. The petitioner had accepted the offer of appointment with open eye and had even given an Undertaking to the effect that they would not claim continuance or permanency in appointment. Much emphasis was made on the terms and conditions of offer of contract appointment and particularly para 2 thereof which reads as under :-

"2. (i) Your appointment shall stand automatically terminated on the expiry of the aforesaid period of contract unless extended in writing. You will have no claim whatsoever for continuation of your engagement beyond the period of contract nor any claim for regular appointment in the Corporation.

(ii) During the period of contract the Corporation shall have the right to terminate the contract by giving one month's notice in writing or by paying one

month's consolidated salary in lieu thereof. You will also have the right to terminate the contract by giving one month's notice in writing to the Corporation subject to its acceptance by the Corporation after properly handing over the assets of the Project/Site on your charge.

(iii) Your contract is also terminable by the Corporation for any act of misconduct on your part without any notice or payment of salary in lieu thereof.

(c) Your contract is also terminable for any act of misconduct on your part without any notice or payment of salary in lieu thereof."

14. It was also emphasized that NIDC by its very nature was Consultancy Company providing consultancies to its various clients after taking their projects in hands. Depending on the requirement of various projects, temporary site offices are established for controlling the projects. In view of the changing situation and specialised project-specific inputs, the respondent company could not afford to burden itself with increasing intake of supervisory professionals on its rolls. The induction of professionals on regular basis was bound to render them idle after the project was over. In these circumstances it was decided to engage the services of unemployed technical persons with minimum qualifications and experience on a temporary basis. NIDC has to handle assignments which are non-repetitive and diverse in nature, of shorter term duration. Much emphasis was given by Mr. A.K. Verma, learned counsel for the NIDC on the present financial position of the company as well as insignificant quantum of work in hand which did not warrant Regularization of the services of these petitioners. It was contended that merely because petitioners have worked for long period in a project did not give them automatic right to get regularised. Moreover, it was contended that such regularization, if done, would amount to back-door entry in as much as appointment on regular basis have to be made only on availability of post, that too, after following the procedure contained in Recruitment Rules. He relied upon the following judgments in support of his contentions :-

(i) Municipal Council Vs. Mrs. Jaiwant Bi and Others, 1998 LIC 2972.

(ii) Uma Shanker Dubey Vs. I.G. of Registration, 1998 LabIC 1699.

(iii) reported in 1996 AISLJ 82 (SC).

15. In order to decide the question as to whether the petitioners are entitled to regularisation in their services or not, I need not deal with the elaborate submissions made by both the parties. The arguments advanced by the petitioners seem to be attractive. However, when these arguments are tested against the factual matrix the whole edifice of the petitioners arguments crumbles and these harsh realities staring on the face of record legitimately deny any relief to the petitioners. Admitted facts are that petitioners were appointed against specific project for specified period on contract basis which contract was extended from time to time. The NIDC being a Consultancy Company undertakes

such projects. Depending on the availability of such projects and the quantum of work with it, it has to decide as to how many permanent/regular managerial posts are to be filled. At the very nature of its activities it has to recruit some additional staff for specified period against this project to meet the exigencies on temporary basis flowing from undertaking such projects. If every time, a project is undertaken by the respondent NIDC and to meet the requirement of such projects, persons are appointed on regular basis, they may be rendered idle after the project is over. Therefore, it is managerial decision as to how much man power is required on regular basis after studying the various aspects including the nature of work, how much work/project NIDC is having on average/regular basis, duration of such project and quantum of regular inflow of work etc. With such policy decision courts cannot interfere and substitute its own decision. It cannot direct the NIDC to create more posts/regular posts than what the NIDC considers necessary. In fact, the courts are ill-equipped to decide such matters and policy decisions of the employer/management are not to be interfered with by the courts unless these decisions violate fundamental or statutory rights of the petitioners or they are arbitrary and mala fide. It may be seen that in this very case, the position in which NIDC is placed at present confirms the aforesaid view. As noticed above, it is stated by the NIDC in the Counter-affidavit that it is undergoing great financial hardship; has no sufficient work in its hands and is not even in a position to pay regular salary to permanent employees. Following averments are made in the counter-affidavit to this effect :-

"As of date there are approx. 250 employees on the regular rolls of the respondent company. That the duly audited balance sheet of the respondent company shows a total expenditure of Rs. 1,011.53 lakhs which has been incurred by the company in the past year. A total of Rs. 56.52 lakhs has been carried forward as loss for the past year suffered by the respondent company. At present, the total works in the hands of the respondent company are only to the tune of approx. Rs. 2 crores. This is in comparison to a turnover of approx. Rs. 10 crores achieved by the company in the past year. As a result of this impossible financial situation, the respondent company has been unable to even pay regular salaries to its permanent employees. In these circumstances there is no question of the respondent company even considering to make any fresh appointments or regularizing the services of the petitioner."

16. Thus when the NIDC is faced with this kind of situation directing it to regularize the services of the petitioners, even when there are no posts would not be precedent and would amount to adding uncalled for burden including financial burden on NIDC. These facts clearly show that the decision of the NIDC not to create more post is proper and valid, actuated by harsh reality.

17. It may be seen that NIDC is not even in a position to bear the burden of existing regular employees. It has not been able to pay their salaries in time. It does not have sufficient work at hand which would justify retention of even the existing regular employees and they are becoming surplus. When the situation

has come to this that even existing regular staff is more than the required, keeping in view the projects in hands that NIDC has at present, directing NIDC to regularise the services of the petitioners would not be wise. Moreover, it has been stated by NIDC in the counter affidavit that there are no regular posts, in any case, available where these petitioners can be regularized. Directions to regularize the services of the petitioners would amount to mandating the NIDC to create more posts on regular basis and absorb these persons. Such a direction cannot be given even otherwise in law inasmuch as it is not the function of the courts to direct the employer/management to create more posts. These are the policy decisions of the employer and employer has to take such decisions after taking into consideration number of factors. In view of the aforesaid factual position prevailing in this case, various judgments cited by the petitioners have no application on these cases.

18. It may also be borne in mind that the petitioners were given appointment on contract basis which were against particular project/sites as is clear from the respective appointment letter in case of each petitioner. It is one of the conditions of the appointment letter, as reproduced above that on the conclusion of the project the services of these contract appointees would come to an end, it has been held by Apex Court in the case of Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava, that appointment of this kind for specific period against specific project does not give any right to the incumbent to continue work after the project is over. To the same effect is the judgment of Supreme Court in the case of Dr V.P. Chaturvedi and Others Vs. Union of India (UOI) and Others, . This Court has also, in various cases, held that such project employees are not entitled to regularization of their services. Particulars of few such cases are as under :-

(1) Miss Krishna Gaur Vs. AIIMS, CW 2003/91 decided on Feb. 28, 1992 (D.B.).

(2) Dr. Sheila Roy Vs. UOI and others (1993) 3 DL 9 (DB).

19. In view thereof I am not inclined to grant the relief of regularisation of the petitioners services with NIDC. One can only say that since these petitioners have worked for number of years with the respondent as and when there are regular posts available with the respondent and there is necessity to fill up these posts, the NIDC shall consider the cases of the petitioners for such appointments keeping in view the nature of job being performed by them and having regard to the Recruitment Rules of NIDC in respect of such posts. While giving such consideration, the NIDC shall give necessary relaxation of age and number of years of service they have put on contract basis.

20. Insofar as claim for equal pay for equal work is concerned, the petitioners cannot be granted this relief as well. A perusal of the appointment letter shows that petitioners were appointed on consolidated salary against specific project. It is well established principle of law that merely because the qualifications of these employees are same as that of regular employees will not give them the right to

have the same salary as being given to regular employees. Even qualitatively the job responsibilities expected of regular employees are different and much more than that of contract employees or daily wage employees. It is stated in the counter-affidavit that regular posts filled by NIDC are for managerial work at the entry level of Asstt. Manager. On the other hand, persons like the petitioners who are engaged on contract basis, their work is purely of supervisory nature. It is also explained that there is very strict minimum eligibility criteria in respect of age, qualifications and experience laid down for the post of Asstt. Manager. There is no common element or similarity between the work of Asstt. Engineer and the Asstt. Manager. Respondents have also placed on record eligibility criteria for the post of Asstt. Manager and Asstt. Engineer, which are totally different. No doubt in the rejoinder affidavit the petitioners have tried to explain that the function and responsibilities of regular Asstt. Manager are the same as that of Asstt. Engineer namely the petitioners. However, all these involve disputed questions of fact which cannot be decided in this writ petition. One may only refer to the recent judgment of the Supreme Court setting trend that the daily wage workers even, discharging same functions, may not be entitled to same salary/wages as given to regular employees because of qualitative difference between the two appointments. In *State of Haryana Vs. Jasmer Singh and others*, , Supreme Court while denying regular salary to daily wage workers, observed as under :

"The respondents, Therefore, in the present appeals who are employed on daily wages 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 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 the daily-rated workmen are not subjected to. They cannot, 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."

21. In *State of Haryana Vs. Surinder Kumar and others*, the aforesaid view was further re-confirmed under the following manner :

"Shri Manoj Swarup, learned counsel for the respondents, contends that the posts held by the respondents are interchangeable and in fact they have been interchanged to enable them to hold the posts. That contention cannot be given acceptance for the reason that since the respondents were appointed on contract basis on daily wages, they cannot have any right to a post as such until they are duly selected and appointed. Merely because they are able to manage to have the posts interchanged, they cannot become entitled to the same pay-scale which the regular clerks are holding by claiming that they are discharging their

duties as regular employees. The very object of selection is to test the eligibility and then to make selection in accordance with rules prescribed for recruitment. Obviously the respondents' recruitment was not made in accordance with the rules."

22. To the same effect is the judgment of Full Bench of Punjab & Haryana High Court in the case of Ranbir Singh and Another Vs. State of Haryana & Others 1998 (4) SLR 11.

23. No doubt the petitioners here are not daily wage workers but appointed on contract basis. The aforesaid principles laid down by Supreme Court apply in their cases also in view of the difference in the mode and nature of appointments as described above.

24. In view of my aforesaid discussions, these petitions fail and are hereby dismissed. However, there shall be no order as to costs.