
(1996) 06 AHC CK 0007
In the Allahabad High Court
Case No : Writ Petition No. 2605(s/s) of 1991

Yogesh Srivastava and Anr.

APPELLANT

Vs

State of U.P. Through the Chief Engineer RW.D. Lucknow & Anr.

RESPONDENT

Date of Decision : 18-06-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 15
Uttar Pradesh Industrial Disputes Act, 1947 — Section 2(k)

Citation : (1996) 06 AHC CK 0007

Hon'ble Judges : S.H.A. Raza, J

Final Decision : Allowed

Judgement

S. H. A. Raza, J.—The petitioners have filed these petitions stating therein that they are Diplomaholders in Civil Engineering and are fully qualified for being appointed to the post of Junior Engineer (Civil) and accordingly their candidatures were considered and thereafter, they were given appointment to the post of Surveyor, which is also known as Junior Engineer, on daily wage of Rs. 20/ per day. The petitioner Yogesh Srivastava was given appointment in the Department of Construction Units (Road), PWD now known as Lok Nirman Vibhag, Rai Bareilly on 1451985. Subsequently, the remuneration/daily wage rate was increased from Rs. 20 to Rs. 35 per day and the petitioner continuously worked and discharged duties to the said post for more than six years as a regular Junior Engineer, but even then his services were not regularised. He made several representations and requested for his regularisation, but of no avail, hence he filed the present writ petition bearing No. 2605/1991 with a prayer that writ order or direction in the nature of mandamus be issued commanding the opposite parties to consider the regularisation of the petitioner's services. On 2941991, this Court passed an order to the effect that the opposite parties may consider the petitioner if he is otherwise eligible for his regularisation and shall be paid his salary regularly at the rate of Rs.35 per day.

2. But, despite the service of the aforesaid order, the opposite parties did not consider the petitioner for regulation of his services. Again, on 681992, a

Division Bench of this Court passed an order to the effect that the opposite parties shall allow the petitioner to continue in service as Junior Engineer in Public Works Department and the petitioner shall be paid salary with effect from 191992. It was also directed that the opposite parties shall consider the petitioner for regularisation within three months, failing which, the petitioner shall be presumed to have been regularised, provided the petitioner has been working as daily wager on a regular post of Junior Engineer and provided that such a post is available.

3. Thereafter, on 3111992 Chief Engineer passed an order that as the petitioner has been working as Surveyor Since 1451985 and as Supervisor with effect from 26111991 and as per the departmental procedure and instructions, the services of the daily wage employee could only be regularised if he is placed as a regular work charge employee, but as the petitioner has been working on the post of Supervisor on daily wage and on muster roll, the petitioner is not eligible for regularisation against the said post. Petitioner Yogesh Kumar again preferred another application for interim order and on 2141993, this Court passed the following order

"It is stated by the standing counsel that the petitioner is working on the post in question and that he may be paid salary. It is further stated that he has not received his file from the office. In view of the statement made by the standing counsel, application for vacating the interim order is rejected. The interim order granted earlier is confirmed. "

Rejoinder affidavit filed today shall be placed on record.

"The petitioner has given an application for further interim order. No counteraffidavit has been filed to this application. It is stated in the affidavit accompanying this application that the salary for the post in question is payable in the scale of Rs. 14002300. The opposite parties shall consider the request of the petitioner for salary being paid to him in this scale and take a decision by speaking order within two weeks from the date on which a certified copy of this order is served upon them."

4. In spite of the aforesaid orders passed by this Court, the opposite parties took a decision arbitrarily that the petitioner is not entitled for payment of salary in the payscale of Rs. 14002300 and also rejected the claim of the petitioner for regularisation vide order dated 1251993 and directed the Works Department, Lok Nirman, Vibhag to file a counteraffidavit along with an application for vacation of the stay order and till the said order is vacated, he will remain in Lucknow. It was also contended that the said order itself is mala fide, inasmuch as, the opposite parties are adamant not to regularise the services of the petitioner, in any circumstance. The opposite parties have also not paid to petitioner the salary in the payscale of Rs. 14002300 even though the order of interim relief was passed by this Court, which was neither vacated nor modified and is still operative. Later on, petitioner moved an application for amendment of the writ petition which was

allowed and by the said amendment, the petitioner has taken a plea that the post of Surveyor, thereafter, redesignated as Supervisor and the said post is identical post to that of the Junior Engineer, but different nomenclatures have been given by the opposite parties for some oblique reasons. The petitioner has also pleaded that the work, functions and duties assigned to the post of Surveyor now Supervisor, are also identical and similar in nature to that of the work, functions and duties of the Junior Engineer and thus, the petitioner is entitled for equal pay in the payscale of Rs. 14002300, which is being given to the Junior Engineer. The petitioner also took a plea that he was appointed on the post of Surveyor and thereafter, redesignated as Supervisor on daily wages, which is a kind of ad hoc appointment and in view of the regularisation rules, he is entitled for regularisation against the post of Junior Engineer.

5, The petitioner, Virendra Kumar Sonkar has filed the writ petition No. 1400/1991, against the order of termination of services, stating therein that he was appointed as Surveyor/Supervisor on 131988 being a Diplomaholder in Civil Engineering on daily wages and qualified for the post of Junior Engineer and was paid Rs. 20 per day, which is known as Surveyor/Supervisor and subsequently the wages were raised to Rs. 35 per day with effect from 181990 in view of the Govt. order, but he has been paid the said wages of Rs. 35 per day only with effect from 1101990 only. The petitioner has further stated that he continued to work and discharge duties to the entire satisfaction of the superior officers and authorities and has completed more than 240 days in a year, but all of sudden, he has not been paid salary with effect from 2611991 and annexed a document as Annexure 6. Which indicates that the services of the petitioner had been terminated vide order dated 2411991, the petitioner has further pleaded that he belongs to scheduled caste and as such, his services could not be terminated and he be allowed to continue to work against the reserved category quota prescribed for scheduled caste and scheduled tribe. Accordingly, he prayed for quashing the order of termination of his services dated 2411991 alongwith other consequential relief including the regularisation of his services against the post of Junior Engineer, on the ground that the post of Surveyor/Supervisor is one and the same post of Junior Engineer having a different nomenclature. This Court passed an interim order, dated 1131991 in favour of the petitioner but in pursuance of the interim order, dated 1131991, the petitioner has not been allowed to work and discharge his duties.

6. However, opposite parties filed a counteraffidavit alongwith the application for vacating the interim order, stating therein that the petitioner was engaged on daily wages and there is no work available and thus, he is not being allowed to continue on daily wages. In the rejoinder affidavit, the petitioner has reiterated again that his services have been terminated in most arbitrary manner, without following due provisions of law, as the petitioner has neither been given one month's retrenchment notice, nor paid salary in lieu thereof. He is not being paid the retrenchment compensation as provided under Section 6N of the U.P. Industrial Disputes Act, 1947,

7. The petitioner has further indicated that he worked continuously on daily wages from the initial date of his appointment till 24.11.1991 and thus, he has completed more than 240 days and on the date on which his services were terminated/retrenched, he has completed more than 240 days in a preceding year and thus, his services could not be retrenched or terminated.

8. The petitioner has also pleaded that he had worked for a considerable period i.e. more than 240 days in a preceding year and thus, under section 6N of the U.P. Industrial Disputes Act, his services could not be terminated without giving him one month's notice or one month's pay in lieu thereof and payment of the retrenchment compensation, in view of the fact that Public Works Department has been discharging the functions of welfare nature and not of sovereign nature and, as such, it is an "industry" in view of the provisions of Section 2(k) of the U.P. Industrial Disputes Act, 1947, in view of the principles laid down by Hon'ble Supreme Court in the case of Bangalore Water Supply and Sewerage Board v. A. Rajappa and others, 1978(2) SCC 213. The petitioner who was appointed as Surveyor/supervisor, i.e. Junior Engineer at Rs. 20" on daily wages and subsequently the said wage rates were enhanced from Rs. 20/ to Rs. 35/ per day and the functions which were and are being discharged by the petitioner is of skilled labour. He has not been conferred with any such power of appointment and punishment and, as such, he is a workman as per the definition given under the provisions of section 2(z) of the U.P. Industrial Disputes Act, 1947.

9. There cannot be any doubt that the Public Works Department of the State Government comes within the purview of Industrial Disputes Act and it is an "Industry" as defined under the provisions of section 2(k) of the U.P. Industrial Disputes Act, 1947. In numerous cases, Hon'ble Supreme Court has held that if services of such employees have been terminated without following due process of law, meaning thereby that if the services have been terminated/retrenched without giving one month's notice or pay in lieu thereof and the compensation, such an order of termination/retrenchment is void ab initio and deserves to be quashed and accordingly set aside.

10. In U.P. State Food and Essential Commodities Corporation & Ors. v. Krishna Kumar Dubey, 1992 LCD 147. Hon'ble Supreme Court has held:

"The petitioner has been working under the respondent Corporation as a temporary employee for over three years. It is The case of the appellant that from time to time his services were discontinued for a day or two with a view to breaking the continuity of his services. It, however, appears that he has continuously worked for more than 240 days. It is not disputed that the respondents have terminated his services without complying with the provision of section 25F of the Industrial Disputes Act, 1947. The High Court took the view that the appellant had an efficacious alternative remedy before the Industrial Tribunal and, accordingly, dismissed the writ petition. It is not necessary for us to consider whether the High Court was justified in dismissing the writ petition on that ground or not, but the fact remain; that the appellant had worked

continuously for more than 240 days and so his services could not be terminated without complying with the provisions of Section 25 of the Industrial Disputes Act."

11. This court, in *Shailendra Nath v. ViceChancellor, Allahabad University & Ors.* 1987 LIC 1607. has held that the termination/retrenchment of such employees without giving any notice, the order of termination/retrenchment is void ab initio. Similarly, in *U.P Chalchitra Karmchari Nigam Union v. State of U.P. & Ors.* (1990) SCD 848. It has been held that termination/retrenchment of services of such employees. Without following the provisions prescribed under the U.P. Industrial Disputes Act, is void ab initio.

12. This Court has again considered about the termination and retrenchment of service of employees, without following the process of law as per provisions of Section 6N of the U.P. Industrial Disputes Act, in *Prabhu Narain Rai and another v. Secretary cum General Manager, Central Cooperative Bank Limited, Jhansi and others*, (1994) 3 UPLBEC 1714 and it has been held that such kind of termination/retrenchment of service is void ab initio and the order of termination/retrenchment of service is void ab initio and the order of termination/retrenchment is liable to be quashed. It was observed:

"A similar question arose before the Division Bench in *Jai Kishun v. U.P. Cooperative Bank Ltd. Lucknow* 1989(2) UPLBEC144, where it was held that a workman would be taken to be in continuous service if he has worked for not less than 240 days during the preceding 12 months period. The case there too was of repeated appointments for 89 days each with short breaks of a few days between each appointment, it was held.... that the cessation of their employment, rendered applicable to them the provisions of Section 6N of the Act. The employers, it was observed, should not shirk their liability in giving the benefit which may accrue to a workman by virtue of this provision of law. In other words, it was held to be retrenchment and consequently on the termination of the services of the workman, they were held to be entitled to payment of retrenchment benefits."

13. A plea was next raised that appointments of the petitioners beyond a period of 180 days was contrary to law as the relevant service regulations provided that the appointments beyond the period of 180 days are to be made by the Institutional Service Board. The answer to this contention is provided by the judgment, of the Division Bench in *Jai Kishun's* case (*supra*) where it was observed:

"Once an employer itself choose to re-appoint and continued the same despite the expiry of period of 120 days or extended period of 120 days, it is not open to it to plead that the benefit which has accrued to the employee for" having worked for more than 240 days in one calendar year, would not be available to them. After all, the employer societies had appointed and continued the employees beyond the specified period and also paid their wages which had

accrued to them or having worked even beyond the period of 120 days. At the most, in our view, the employer societies can be said to have a good ground to bring about cessation of employment of such employees who have continued in violation of the Service Regulation, but it does not mean that if any benefit has accrued to those employees for the period they worked, that would not be admissible to them. Under the provisions of Industrial Laws, if an employee works for 240 days during one calendar year, certain benefits accrued to him and they cannot be wiped off on the plea which is now sought to be raised. There is no fault on the part of employees. It was for the society concerned to have sent requisition to the Industrial Service Board within the time stipulated for regular recruitment. If this was not done, the employees could only discontinue to take work from such employees after the expiry of period of 180 days or the extended period when their appointments ceased under the Regulations. But, in the present case, the employees were in fact continued and work was taken from them, they were also paid their wages, therefore, to say that they would not be entitled for other benefits which accrued to them under the provisions of Industrial Law, is not acceptable nor tenable. It was further held; that the provisions of Section 6N of the Act would have in this respect overriding effect over the provisions of the Service Regulations."

14. It was vehemently argued on behalf of the petitioners that such being the settled position of law, there can be no escape from conclusion that the cessation of the employment of the petitioner of W.P. No. 1400 of 1991, was retrenchment under the Act and he was consequently, entitled to retrenchment benefits and such benefits not having been given to him, renders the cessation of his employment wholly illegal. This being so the petitioner is not only entitled to reinstatement in services but also to full back wages.

15. In view of the above, facts and circumstances it was submitted the order of termination/retrenchment of services of the petitioner from the post of Surveyor/Supervisor, i.e. the Junior Engineer, deserves to be quashed and set aside and the note appended in Annexure 8 to the writ petition bearing No. 1400/91 deserves to be quashed.

16. The State Government has taken a plea that the post of Junior Engineer could only be filled in through Public Services Commission and, as such the services of the petitioners could not be regularised. It has also been alleged that the posts of Surveyor and Supervisor are not equal and the same cannot be equated to the post of Junior Engineer (Civil), but they have not placed any such material before this Court to show that there is any such bar to consider regularisation of an employee who is working against the post of Surveyor and thereafter, as Supervisor.

17. It is relevant to mention that there is no difference in the duties and functions between the post of Junior Engineer and the Surveyor/Supervisor and the qualification prescribed for the posts of Junior Engineer and Surveyor/Supervisor is also similar and same and there is no distinct and separate

qualification for the post of Junior Engineer. The function and duties which are being discharged by Surveyor/Supervisor is the same and like the functions and duties which are being discharged by Junior Engineer, which is evident from the certificates issued to them, which have been annexed with the writ petition and rejoinder affidavits as annexures, showing that the work assigned to them which they accomplished successfully are similar to the work which is assigned to the Junior Engineers.

18. The petitioner have filed a supplementary rejoinder affidavit alongwith a Government order dated 8121989, to show and substantiate, that there is no post of Surveyor/Supervisor and there is only post i.e. Junior Engineer and the petitioners were appointed against the aforesaid post of Junior Engineer but the said post was given and carried different nomenclatures, like Surveyor/Supervisor, with an oblique purpose.

19. The petitioner have also annexed lectures on (Rules and Procedure) Fundamental Rules and Correspondence of the Public Works Department, as Annexure11, to show that the post of Junior Engineer and of Surveyor/Supervisor is one and the same and the work, duties and functions are also equal, same and identical to that of the Junior Engineer, but the opposite parties have given the different nomenclatures with a view that petitioners and others may not be able to claim any right against the post of Junior Engineer and their services may also not be regularised.

20. From the side of the respondents, a similar objection was raised in writ petition No. 8148 of 1990 and other thirtyseven writ petitions to the effect that the petitioners working in the Rural Engineering Department of U.P who not appointed as Junior Engineers, Assistant Engineers etc. but were appointed as Work Charge Engineers only. The said objection was not sustained and writ petitions were allowed, Against the said judgment a special leave petition was filed before Hon''ble Supreme Court, which was dismissed on 24995.

21. From the above facts, it is evident that the post of Junior Engineer and Surveyor/Supervisor is one and the same post and the duties and functions which are being discharged by Surveyor/Supervisor are equal, same and identical to that of the Junior Engineer and the said post carries and known as with two different names.

22. Hon''ble Supreme Court as well as this Court, have considered the claim of daily wage employees for regularisation and it has been held that such kind of employees are entitled for regularisation against the said post even if there any rule or no rule. In *Dhirendra Chamoli v. State of U.P.* 1986(1) SCC 737, Hon''ble Supreme Court held:

".....the Central Government to accord to these persons who are employed by the Nehru Yuvak Kendras and who are concededly performing the same duties as ClassIV employees the same salary and conditions of service as are being received by Class IV employees, except regularisation which cannot be done

since there are no sanctioned posts. But, we hope and trust that posts will be sanctioned by the Central Government in the different Nehru Yuvak Kendras, so that these persons can be regularised. It is not at all desirable that any management and particularly the Central Government should continue to employ persons on casual basis in organisations which have been in existence for over twelve years."

23. Similarly, Hon"ble Supreme Court in Bhagwati Prasad v. Delhi Mineral Development Corporation, 1990 (1) SCC 361, had again considered regularisation of daily rated employees and held as follows:

"The main controversy centers round the question whether some petitioners are possessed of the requisite qualifications to hold the posts so as to entitle them to be confirmed in the respective posts held by them. The indisputable facts are that the petitioners were appointed between the period 1983 and 1986 even since they have been working and have gained sufficient experience in the posts held by them. Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with but it is so at the time of initial entry into the services. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view, three years" experience, ignoring artificial break in service for short period/periods created by the respondents, in the circumstances, would be sufficient for confirmation. If there is a gap of more than three months between the period of termination and reappointment that period may be excluded in the computation of three years period. Since the petitioners before us, satisfy the requirement of three years service as calculated above, we direct that 40 of the seniormost workman should be regularised with immediate effect and the remaining 118 petitioners should be regularised in a phased manner, before April, 1991 and promoted to the next higher post according to the standing orders. All the petitioners are entitled to equal pay at par with the persons appointed on regular basis to the similar post or discharged similar duties and are entitled to the scale of pay and allowances revised from time to time for the said posts. We further direct that 16 of the petitioners who are ousted from the service pending the writ petitions should be reinstated immediately. Suitable promotional avenues should be created and the respondent should consider the eligible candidates for being promoted to such posts. The respondent is directed to deposit a sum of Rs. 10,000.00 in the Registry of this Court within four weeks to meet the remuneration of the Industrial Tribunal. The writ petitions are accordingly allowed, but without costs."

24. In Dharwad Distt. P.W.D. Literate Daily Wage Employees Association and others v. State of Kamataka and others, 1990(2) SCC 396, Hon"ble Supreme Court has held as follows:

"The casual/daily rated employees appointed on or before July 1,1984 shall be treated as monthly rated establishment employees at the fixed pay of Rs. 780/ per month without allowances with effect from January 1,1990. They would be entitled to an annual increment of Rs. 15/ till their services are regularised. On regularisation they shall be put in the minimum of the time scale of pay applicable to the lowest GroupD cadre under the Govt. but would be entitled to all other benefits available to regular Government servants of the corresponding grade.

Those belonging to the B or C groups upon regularisation shall similarly be placed at the minimum of the time scale of pay applicable to their respective groups under Government service and shall be entitled to all other benefits available to regular Government servants of these grade.

From amongst the casual and daily rated employees who have completed ten years, of service by December 31, 1989, shall immediately be regularised with effect from January 1,1990 on the basis of senioritycum suitability.

The balance of casual of daily rated employees, who become entitled to absorption on the basis of completing ten years of service shall be absorbed regularised in a phased manner on the same principle as above on or before December 31,1997.

At the point of regularisation, credit shall be given for every unit of five years of service in excess of ten years and the additional increment in the timescale of pay shall be allowed by way of weightage. There was a direction that the claims on other heads would be considered at the time of final disposal. We have come to the conclusion that apart from these reliefs on other would be admissible."

25. In *K. C. Rajeevan and fifteen others v. State of Kerala and two others*, 1991 (1)SCC 31. Hon"ble Supreme Court has considered and held that all such employees are entitled for regularisation against the posts on which they have been engaged. In *State of Haryana v. Piara Singh and others*, 1992 (4) SCC118 Hon"ble Supreme Court has held in para 51. as follows:

"So far as the workcharged employees and casual labour are concerned, the effect must be to regularise them as far as possible subject to their fulfilling the qualification. If any, prescribed for the post and subject also to availability of work. If a casual labour is continued for a fairly long spell.....say two or three years.....a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the authority concerned to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with a sympathy for the persons. Security of tenure is necessary for an employee to give his best to the job."

26. In a case of *Shyam Narain and others v. State of UP. and others*, 1993 LCD 756, this Court has considered the claim for regularisation of daily rated employees and held that such kind of employees are entitled for regularisation

against the regular post. Similar, in the case of Prakash Narayan Sirothiya v. State of U.P and others, 1994 (8) UP LBEC 1737, this Court has considered and held that such kind of daily rated employees are entitled for regularisation against the post against which they have been allowed to work for such a long period. This Court has again considered the question of regularisation in a case reported in 1994 (3) UPLBEC 1670Ayodhya Prasad Misra and others v. State of U.P. and another and held that the ad hoc employees as well as daily rated employees, who have been allowed to work and continue to work and discharge duties on the post against which they have been allowed to work for such a long period, are entitled for regularisation against the post against which they have been allowed to work.

27. In Shri Ram Kishan and others etc., v. Union of India and others in writ petition No. 853 (Civil) of 1990 with WP (Civil) No. 1060/1990, 1010/90 and 80 of 1991, which was filed by Asstt. Engineers and Junior Engineers working under Ghaziabad Development Authority who were paid Rs. 60/ and 40/ per day and were not paid the amount during holidays, on February 21, 1991 Hon"ble Supreme Court disposed of the writ petitions by following directions:

(1). Both categories of petitioners shall now be taken as temporary employees of G. D. A. from 1st March, 1991, with liberty to the Authority to screen the petitioners and others similarly situated who have not come before the Court but are working under the Authority in regard to their qualifications as also suitability.

(2). The Assistant Engineers shall be paid fixed pay of Rs. 2,750/ and the junior Engineers Rs. 25,00/ per month.

(3). The appointments on temporary basis shall be against the particular projects undertaken by G. D subject to the condition of employment in any other project if available, on completion of one project, these Engineers have to be adjusted against available work in other projects so that their services may be continued.

(4). In the event of any particular Engineer working for more than one year in one or more projects in terms of the above term, in the case of an Assistant Engineer, there would be an increment of Rs. 50/ and a similar increment of Rs. 40/ for a Junior Engineer per annum.

(5). Mr. Rana has been fair enough to indicate that apart from the fixed pay subject to annual increment as indicated above, those petitioners shall be entitled to the normal perks and others allowances excepting D.A. admissible to similar category or officers employed under GDA.

It was further observed:

"We are told, under Uttar Pradesh Rules recruitment on regular basis is to be through Public Service Commission. We direct the Authority to take steps through the State of Uttar Pradesh to obtain regularisation of the petitioners as far as possible preferably within nine months from now so that by the end of the year the process of regularisation may, as far as practicable be completed.

The State of Uttar Pradesh is represented before us and counsel appearing for it has been put to notice of the order. At the time of regularisation the period spent on duty shall be adjusted against the age prescribed and the Public Service Commission would take into account the past service to consider, if any weightage should be given and performance under the Authority may be taken into account for such purpose.

Mr. Rana has ensured us and we believe it shall be worked out in terms of our order that vacancies arising hereafter shall be given to the petitioners already who are in employment. Steps for regularisation may be taken by the Authorities within three months from now. The ViceChairman of the Authority is authorised to comply with the our order and make such directions as may be necessary to implement it. At the request of Mr. Rana the process which is contemplated by our order may be completed from 1st May, 1991 giving benefit of the order from 1st March, 1991."

28. Later on the said order was revised by Hon"ble Supreme Court by directing that in lieu of what the Court required to be paid as monthly remuneration to the Junior Engineers, they shall now be paid monthly remuneration of Rs. 1750/ in view of the fact that regular employees were paid between Rs. 2200/ and 2300/ per month. It was further observed that we had also indicated that DA would not be admissible to the petitioners keeping that fact in view the present direction for payment of Rs. 1750/is made. The arrears on the basis of Rs. 1750/ per month in compliance of what without previous directions shall be disbursed within six weeks from now."

29. In the matter of Sandeep Kumar & others v. State of U.P. and others (WP(C) No. 533 of 1991), with WP. (C) No. 534 of 1991 Ram Narash and others v. union of India and others W.P.(C) No. 689 of 1991 Rajeev Kumar THpathi and Ors. v. Union of India and others, alongwith Om Prakash Singh and others v. Union of India and others. Hon"ble Supreme Court while dealing with the matter of U.P Bridge Corporation observed on 1791991.

30. From the papers placed before us and the submission advanced at the bar we find that the regular employees are being paid at the rate of Rs. 1400/ for diploma holders and Rs. 1860/ for degree holders whereas the petitioners who are employed on casual basis are being paid at the rate of Rs. 1800/ (for degree holders) and Rs. 1280/ (for diploma holders). The distinction maintained has been explained by saying that since they are not regular employees no payment is being made for the holidays when no work is taken. It is difficult to accept this contention. The petitioner are degree holders. There is no reason to make distinction between petitioner diplomas holders and the regular diploma holders. Besides even under the Minimum Wages Act a paid day of rest in every period of seven days is mandatory. The diploma degree holders the petitioners should therefore be paid Rs. 1400/ p.m.

31. Regarding regularisation Hon"ble Supreme Court indicated that:

"So far as regularisation is concerned it is the stand of the petitioners that even when vacancies occur, those are being filled up by receiving employees from the regular establishments of the State of Uttar Pradesh on deputation thereby overlooking the claims of the employees under the Corporation. Counsel for the Corporation has agreed and we must accept the position that his agreement is justified, that all such vacancies which would occur henceforth shall ordinarily be filled up by regularising the employees like the petitioners who directly employed by the Corporation and as and when that is not possible for some reason, no temporary basis deputationist may be accepted as to so ensure that no deputationist functions from more than six months. Persons already on deputation are not intended to be covered by this order. As and when the corporation suggests to Government for filling up of the vacancies, we suggest that Government may consider the request favourably and with a sense of immediacy".

32. Similarly in the matter relating to casual Junior Engineers working under the Control of Executive Officer, City Board, Ghaziabad in W.P. (Civil) bearing No. 533 of 1991, Hon'ble Supreme Court indicated:

We have been told that the nature of work is essentially slum clearances and the project is financed partly by the State of Uttar Pradesh and partly by World Bank. The petitioners have alleged, that they are employed on daily rate basis and on an average receive Rs. 1000/ per month. It is stated that no payment is made for the holidays and they are not entitled to any other benefit. Reliance has been placed on this Court's decision in the case of Ghaziabad Development Authority Engineers and some other decisions including the one in the case of Dharwad Distt. PWD Literate Daily Wage Employees Association and others v. State of Karnataka and others, 1990 (2) SCC 396.

From the facts placed before it, it appears that the scheme under which the petitioners are working is of a very specific nature. There is no permanent need for the work and since it is a project for a particular purpose, it will not be possible to direct that the petitioner may be regularised in service. From the materials, however, it appears that similarly qualified engineers, when employed for the work which the petitioners called upon to do, on regular basis are paid a minimum grade pay of Rs. 1400/. We see no justification to discriminate between the petitioners and the regularly employed junior Engineers, who on appointment receive Rs. 1400/. Accordingly, we direct that the petitioners shall be paid a sum of Rs. 1400/ per month instead of Rs.1000/ as at present and since the pay shall be for the month the question of holidays will not be taken into account.

We further clarify that petitioner are entitled to regularisation of their service by recruitment through the State Public Service Commission for vacancies other than employment under the project and as and when such vacancies arise and are duly notified the claim of the petitioners be considered for appointment subject to their satisfying the requisite qualifications prescribed therefore, under the rules and the employer would not stand in the way of regularisation of their

service. It is open to the State Public Service Commission to consider if any weightage would be available to them for their service but we make no direction. Continuity of service of the petitioners may be taken into account for overcoming the age bar as directed in similar cases. Mr. Rana has agreed that this will be given effect to from 1st October, 1991.

33. In view of the aforesaid, it does not lie in the mouth of the opposite parties to contend that as the petitioners were engaged as surveyor and later on were asked to work as supervisor, they are not entitled for the same salary, which are being paid to the regular junior engineers in the department of Public Works Department. Such a stand is violative of Articles 14 and 15 of the Constitution as well as the directive principles of states policy contained in the Constitution. They worked as Junior Engineers and are entitled to the minimum scale of pay and other allowances which their counter parts regular engineers are getting in accordance with the various pronouncement of Hon'ble Supreme Court cited above.

34.1 further clarify that as the posts of the petitioners comes within the purview of State Public Services, Commission, they deserve for the regularisation of their service by recruitment through Public Service Commission for vacancies other than the employment under the project and as and when such vacancies arise and are duly notified, the claim of the petitioners will be considered for appointment subject to their satisfying the requisite qualifications, prescribed thereunder by the Rules and the opposite parties would not stand in the way of regularisation of their services. It would be open to the State Public Service Commission to consider, if any weightage would be available to them for their past services for which no direction is warranted. The continuity of service of the petitioners would be taken into account for overcoming the age bar. It is further provided that at least two vacancies, which would occur henceforth, shall be filled up by regularising the petitioners who were engaged by the department of PWD and till the sendees are regularised in accordance with rules, the petitioner be deemed to be temporary employees. By means of the interim orders, the petitioners have been allowed to work. It is expected that the department would have honoured the direction of the Court, even otherwise they were entitled for the relief set out below.

35. In view of what has been indicated herein above, writ petitions succeed. A writ in the nature of mandamus is issued commanding the opposite parties to allow the petitioners to work on the post of Junior Engineer in the establishment of PWD ignoring the oral order of discharge/termination. If any, passed against them, the petitioners would be deemed to be in service during the period they were not allowed to work in pursuance of the oral order of discharge/termination passed against them, but they would not be entitled for back wages. This order has been passed only for the reason that it may not put the department of PWD to financial strain. The petitioners will be paid the minimum scale of salary with allowances per month which the regular Junior Engineers in the department of

PWD have been getting, till their services are regularised in accordance with the law, as per directions given above.