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Court : Andhra Pradesh

Decided On : Apr-13-1992

Reported in : (1993)IILLJ239AP

Judge : D.J. Jagannadha Raju, J.

Acts : [Constitution of India](#) - Article 12; Industrial Disputes Act - Sections 9-A

Appeal No. : W.P. Nos. 9445, 9897 and 10272/1991

Appellant : E. Krishna and ors.

Respondent : Director General, Indian Council of Medical Research and anr.

Advocate for Def. : P. Innayya Reddy, Sr. Counsel and ;Y.N. Lohitha, Adv.

Advocate for Pet/Ap. : V. Venkateswara Rao and ;K. Phani Raju, Adv.

Judgement :

1. These three writ petitions are filed by the casual labourers of the National Institute of Nutrition, Hyderabad. All these petitioners are working as Garden Malis, Mason Helpers, Canteen Workers, Animal Attendants, Laboratory Attendants and similar posts which all come under Group-D category posts in the Institute. The main relief asked for in these writ petitions is the implementation of

the Government's policy enunciated in O.M. No. DOP P. No. 49014/2/86-Estt. (C) dated June 7, 1988. The petitioners pray for two reliefs : (1) for issuance of a writ of mandamus to absorb and regularise the services of the petitioners against regular posts; (2) to make payment of daily wages till the date of their absorption in accordance with the Government's Memo No. DPO F.J. 40024/2/86-Estt. (C) dated June 7, 1988 and they also pray for consequential benefits and arrears of salary.

2. The Writ Petition No. 9445 of 1991 is filed by 12 petitioners. The Writ Petition No. 9897 of 1991 is filed by 16 petitioners. The Writ Petition No. 10272 of 1991 is filed by 7 petitioners. As the points involved are identical in all these writ petitions, if the affidavit allegations in one writ petition, namely W.P. 9445 of 1991 are mentioned in brief, it would be sufficient.

3. The National Institute of Nutrition (hereinafter called N.I.N.) is directly under the control of Indian Council of Medical Research (hereinafter called 'I.C.M.R.' for brevity sake). It is an organisation of the Government and it is an authority which comes within the meaning of 'State' under Article 12 of the Constitution. The second respondent-organisation is amenable to the writ jurisdiction of the High Court. All the petitioners were engaged as daily rated casual labourers/contingent workers by R. 2 from the year 1983 onwards. The dates of first appointment, the nature of duties performed etc., are mentioned in detail in the writ petition. All these petitioners were continuously engaged as contingent workers on daily wages. They were given artificial breaks of two days intermittently and even for those two days of artificial break, work has been extracted without paying wages by showing their attendance in the Attendance Register. They were originally paid Rs. 8/- per day. Subsequently it was increased and from June, 1991, they are being paid Rs. 19-25 per day. Hours of work are from 8.30 A.M. to 5.30 P.M. with half an hour's lunch break. Thus the work for 9 hours every day. Except the weekly off on Sundays and the three National Holidays no other holidays or leave are available to the petitioners. For every day's absence, wages for two days are deducted. The nature of duties discharged by these petitioners, namely, Animal Attendant/Laboratory Attendant/Garden Mali/Mason Helper etc. are all unskilled posts which fall in the category of Group-D carrying a regular pay scale of Rs. 750-

940 with all usual allowances. The work done by these petitioners is similar and identical with the work done by the regular employees of Group-D Category. While the regular employees are being paid total emoluments of Rs. 1,200/- per month, these petitioners are paid daily wages at the rate of Rs. 19-25 per day. This is highly illegal, arbitrary and discriminatory. It violates Article 14 of the Constitution. After the Supreme Court pronounced its decision in *Surender Singh and others v. Union of India*, the Government of India issued guidelines and issued the proceedings in O.M. No. DOP F. No. 49014/2/86-Estt. (C) dated June 7, 1988. If these guidelines are implemented, the petitioners would be entitled to approximately Rs. 40/- per day. The petitioners are also entitled to be regularised in service in accordance with the scheme to be formulated by the respondents. Casual labourers cannot be continued indefinitely on daily wages without regularising their services. Wherever there is necessity for creation of posts, it should be done expeditiously and the casual labourers should be absorbed against those posts. The work is not of a seasonal character, but it is of a permanent character and there is always work and necessity for the services of the petitioners. Some of the casual labourers were absorbed ignoring the claims of seniors in a most arbitrary manner.

The petitioners are entitled to be absorbed against the regular posts and they are also entitled to salary on a regular scale of pay of Rs. 750-940 per month with usual allowances. The petitioners are all directly appointed by R. 2. Some of them were sponsored by Employment Exchange and some of them were appointed on direct applications. Instead of implementing the Government's Memo dated June 7, 1988 R. 2 converted the casual labourers as contract workers without the consent of the petitioners and without giving prior notice or information. This was done with effect from June, 1, 1989. The petitioners are not even aware who is the contractor and to whom the contract of labour is given by R. 2. They have no connection whatsoever with the contractor. The conversion of the petitioners from casual labourers of R. 2 to contract workers under contractor is done unilaterally and it is not valid in law. It is illegal and arbitrary. Even after the so called conversions, the Attendance Register is being maintained by R. 2 and the payment of wage is also being made by R. 2. R. 2 maintains a seniority list of the casual labourers. One of the lists maintained is filed as material document. All

these things are being done with a view to avoid implementation of the Government's Memo dated June 7, 1988. In view of the numerous decisions of the Supreme Court, the petitioners are entitled to the reliefs of (1) absorption and regularisation against regular posts in the category of Animal Attendant/Laboratory Attendant/Mason Helper/Garden Mali etc. or any other comparable post in the category of Group D. They are also entitled, till the date of absorption, to be paid wages in accordance with the Government's Memo dated June, 7 1988. Pending disposal of the writ petition, the respondents may be directed to pay the petitioners daily wages at the rate of 1/30th of the basic pay plus D.A. at the minimum of scale of Rs. 750-940.

4. In these three writ petitions, no separate counters were filed. But counter was filed in W.P.M.P. No. 12951 of 1991 in W.P. No. 10272/91 and by a memo, it was adopted as the counter in all three cases.

5. The main contentions raised in the counter are that the writ petition is not maintainable and that the second respondent is not amenable to the writ jurisdiction. It is an autonomous body and a society under the Societies Registration Act. The petitioners are not the employees of the second respondent. They are not on the pay-roll of the second respondent. They are engaged by a private contractor M/s Verdure Gardeners, Uppal. That contractor entered into a contract for supply of labour with the second respondent. Prior to him, there were different contractors. There is no question of maintaining any seniority list for casual workers by R. 2. The second respondent N.I.N. is a research institution and the total strength of scientists including the research fellows is only about 70. They have about 175 Group-D staff and hence there is absolutely no provision or need to increase the cadre strength of Group-D staff. It is almost double the ratio of scientific and auxiliary service staff. The N.I.N. is one of the permanent laboratories of the I.C.M.R. and it undertakes various projects. The regular staff strength is as follows :

1. Scientists : 702. Technical & Auxiliary : 1603. Administrative staff : 844. Group 'D' Staff : 195

(Animal Attendants/Sweepers/Malis/Helpers)

In addition to the regular staff, R. 2 takes extra hands through the labour contractors for development work for annual maintenance of buildings, white washing, painting and development of garden, grounds, weeding of lawns etc. Some of them are also engaged to carry out field sowing and for collecting data. During the last three years, as incentives for work with devotion and sincerity, 16 regular jobs were offered to some of the contract labourers. The contract labourers are being paid wages at the rates notified by the Labour Commissioner, Hyderabad. In view of the poor financial position, many of the schemes have been curtailed and the Institute will be constrained to retrench the contract labour. If enhanced wages are to be paid, most of these contract labourers will have to be retrenched. When there is no work, as laid down in : (1990)ILLJ596SC , there is no question of absorption of the petitioners in regular jobs. The various decisions relied upon in the petition-affidavit are not applicable to the facts of these cases. The writ petitions may be dismissed.

6. In these writ petitions, Sri. V. Venkateswar Rao, appearing for the petitioners, contended that the petitioners, who are the casual labourers employed by R. 2 and who have been continuously working for several years, are bound to be absorbed in regular posts. The claim that they are employees of a contractor is not correct. R. 2 unilaterally tried to introduce a middle-man, namely contractor. But, in reality, R. 2 is the employer and pay-master. The introduction of a contractor and conversion of the casual workers into contract labour-workers is illegal and void. The second respondent is bound to implement the Government's memo dated June 7, 1988 which has been issued in accordance with the Supreme Court's decisions. R. 2 is amenable to writ jurisdiction as it satisfied the requirements of an authority which answers the definition of 'State' in Article 12 of the Constitution.

7. On behalf of the respondents, Sri Y. N. Lohita contends that a writ petition is not maintainable as R. 2 is a Society and it does not satisfy the requirements of 'State' under Article 12 of the Constitution. He also contends that the petitioners are not the employees of R. 2 and they are only the employees of the contractor. As they are the employees of the contractor, if there is any dispute, they should approach the Labour Commissioner. As there is an efficacious alternative remedy under the Contract Labour (Regulation & Abolition) Act, 1970, a writ petition is not

maintainable. He also contends that the writ petitions are liable to be dismissed on the ground of laches because these writ petitions were filed in July and August, 1991, when, in fact, the contractor system came into existence in 1989 June itself.

8. The petitioners' counsel, replying to this argument, contends that the ground regarding laches is not taken in the counter and hence this ground cannot be urged at the stage of final hearing of the writ petition.

9. The points that arise for consideration in these writ petitions are :

(1) Whether the second respondent answers the definition of an authority which is amenable to writ jurisdiction in view of Article 12 of the Constitution

(2) Whether the petitioners are the casual workers of the second respondent or whether they are the employees of the labour-contractor as claimed by R. 2

(3) If the petitioners are entitled to relief what are the reliefs available to them

10. POINT NO. 1:

In the counter itself, it is specifically pleaded that the first respondent is an autonomous body answerable to the Ministry of Health of the Central Government and that the second respondent is an institution controlled and functioning under the guidance of R. 1. It is clearly admitted that the institution has been adopting such rules as are warranted from the rules framed by the Central Government in respect of rules governing the relationship of employers and employees. It is also admitted in paragraph 7 of the counter-affidavit that the I.C.M.R. as well as R. 2 receive Government grants and grants from other Government of India agencies and various international organisations. These admissions clearly indicate that R. 2., though a registered society under the Societies Registration Act and though it is an autonomous institution working under the guidance of R. 1, I.C.M.R., it is an authority which comes within the ambit of 'State' as defined under Article 12 of the Constitution. It is an authority under the control of Government of India. The Bye-laws governing conditions of services of R. 2 clearly indicate that the fundamental and supplementary rules framed by the Government of India and such other rules and orders framed by the Government of India from time to time shall apply to the

employees of the respondents. This also indicates that it is a governmental organisation. The bye-laws governing the conditions of service provide ample material to show that all the Government rules would apply to the employees of R. 2. Judicial pronouncements have also held that the Indian Council of Medical Research (R. 1) is an authority within the meaning of the expression 'other authorities' in Article 12 of the Constitution and a writ against I.C.M.R. is maintainable. (Refer to AIR 1992 NOC 15 (Calcutta) in Director General, I.C.M.R. v. Dr. Anil Kumar Ghosh). During the course of arguments, it was frankly stated that Justice S. S. M. Quadri of this High Court held that the second respondent is amenable to writ jurisdiction in one of the judgments. In view of the various admissions made in the counter and in view of the judicial pronouncements, it is quite clear that a writ is maintainable against R. 1 and R. 2. They are the authorities which satisfy the definition of 'State' under Article 12 of the Constitution. I hold this point in favour of the petitioners.

11. POINT NO. 2 :

Throughout the counter and in the course of the arguments, the stand is that from 1989 June onwards these petitioners are employees of the labour contractor. Not a word is said as to what was their position prior to June 1, 1989. There is abundant material on record to indicate that the petitioners have been employed from the years 1982 and 1983 onwards as casual labourers by R. 2. After the Government issued Casual Labour Regulation-Government Policy in the memo dated June 7, 1988, it looks as if with a view to avoid implementation of this memorandum, an effort was made by R. 2 to introduce the system of labour-contractor. Such a thing cannot be permitted for various reasons. The material papers filed by the respondents show that on June 1, 1989, an agreement is entered into between Sri. S. Z. Khan and the Director of N.I.N. To this agreement, the representatives of the casual labourers are not parties. The casual labourers had no part to play in it. In the meeting held on April 7, 1989, between the N.I.N. Employees Association and the Director, the specific question of payment of equal pay for equal work to contingent workers and implementation of the Central Government's memo dated June 7, 1988, were brought in as specific items for discussion. At that meeting the Director took the attitude that the Employees

Association is not concerned with this issue of payment of wages to casual labourers. In the representation dated March 8, 1991 given by the Employees Association to the Director General of I.C.M.R., it was specifically complained that more than 50 workers were employed on contingency basis for about ten years and they were being paid minimum wages till 1988 and when the Association sought for payment of minimum wages in accordance with Memo dated June 7, 1988, the Director, who loves contracts, converted them as contract workers and then threw a challenge stating 'let me see which union can save you from becoming contract-workers.' It was specifically complained that instead of implementing the Government of India's order dated June 7, 1988, she adopted the device of introducing the contractor and hence the Director General, I.C.M.R., should intervene and do justice to them. In fact, the additional material papers filed by the petitioners show an office order passed by the Director on May 31, 1989, which clearly indicates that it has been decided to hand over the maintenance of grounds, gardens, lawns and roads clearing at N.I.N. campus to a labour-contractor, Sri S. Z. Khan, with effect from June, 1, 1989. The casual labourers employed for such works will be under the control of the contractor and all the casual labourers from this day will receive payment of daily wages at Rs. 18-70 per day with weekly off. They are also entitled to contributory provident fund, E.S.I. benefit and bonus. The order also mentions that the seniority of the casual labourers as on today 'May 31, 1989' will be maintained for considered them for regular posts as and when vacancy arises at this institute. This document clearly shows that it is a unilateral decision taken by the second respondent to introduce the contractor and that the casual workers and originally casual labourers of R. 2.

12. It is not open to R. 2 to convert their employees or casual workers into employees of a contractor. *Workmen of F.C.I. v. M/s. F.C.I.*, 1985-II-LLJ-4 at 11 is a leading decision on this aspect. In the case dealt with by the Supreme Court, persons who are originally working under the F.C.I. were one day told that they have ceased to be the workmen of the employer and that they have become the workmen of another employer, namely, the contractor. In such a case, the court construed that it amounts to termination of service by the Food Corporation and it is contrary to well established legal position. The court also found that such a change offends Section 9-A of the Industrial Disputes Act and it is ab initio void.

Dealing with the case in such a background of facts, the court observed at page 634 in paragraph 17 as follows :

'When workmen working under an employer are told that they have ceased to be the workmen of that employer, and have become workmen of another employer, namely, the contractor in this case, in legal parlance such an act of the first employer constitutes discharge, termination of service or retrenchment by whatsoever name called and a fresh employment by another employer, namely the contractor. If the termination of service by the first employer is contrary to the well established legal position, the effect of the employment by the second employer is wholly irrelevant.'

In paragraph 19, the Supreme Court pointed out how such a change of the conditions of service of employees offends Section 9-A of the Industrial Disputes Act and that no effort was made by the Corporation to indicate that the change was effected by giving notice as contemplated by the IV Schedule.

13. In the present case on hand also, no such notice was given to the workers and the workers are not parties to any proposed change. There is no compliance with the provisions of Section 9-A and the IV Schedule of the Industrial Disputes Act. As rightly pointed out by the Supreme Court, the change is ab initio void.

As against this decision, the respondent's counsel relies upon B.H.E.L. Worker's Association v. Union of India 1985-I-LLJ-428 and contends that violation of Contract Labour (Regulation and Abolition) Act, 1970, only entails the liability for prosecution and the aggrieved party will have to approach the Chief Labour Commissioner and they cannot seek a writ of mandamus. A careful reading of this decision clearly shows that out of the 16,000 and odd workers, working within the premises of the B.H.E.L. factory, thousand workers were treated as contract labourers and those contract labourers claimed a declaration from the court that the system of contract labour is illegal and that they are the direct employees of the B.H.E.L. and they are entitled to equal pay as the workmen of the B.H.E.L. The court observed as follows : (p. 431)

'The long title of the Act describes it as 'an Act to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith'. As the long title itself indicates the Act does not provide for the total abolition of contract labour, but only for its abolition in certain circumstances and for regulation of employment of contract labour in certain establishments.'

Then the court dealt with the scheme of the Act and observed in paragraph 6 that the contract labour is entitled to the same wages, holidays, hours of work and conditions of service as are applicable to workmen directly employed by the principal employer of the establishment on the same or similar kind of work, but if there is any dispute with regard to the type of work, the dispute has to be decided by the Chief Labour Commissioner (Central). It is clear that Parliament has not abolished contract labour as such but has provided for its abolition by the Central Government in appropriate cases under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970. This decision is not applicable to the facts of the present case on hand. Here the casual labourers were originally the employees of the second respondent. Only after the Government issued the memo dated June 7, 1988, to avoid implementing it, R. 2 introduced the device of introducing the contractor in a unilateral manner. In fact, even after the alleged contractor was introduced, we find that there are a number of certificates issued to the various casual labourers clearly indicating that they are the employees of the Institute. A large number of certificates are filed as additional material papers by the petitioners. There is ample material on record to indicate that the introduction of contractor is only a device invented to avoid implementation of the Government's Memo dated June 7, 1988. The petitioners are not the employees of the labour-contractor. They are the direct employees of the principal employer, namely, the second respondent.

14. POINT NO. 3 :

The whole law relating to casual workers underwent a change with the pronouncement of the Supreme Court's decision in Suridner Singh v. Engineer-in-Chief 1986-I-LLJ-402. In this decision, the Supreme Court dealt with the case of

daily wage employees of the C.P.W.D. who were working for several years and who demanded parity of wages with the permanent employees doing identical work. They also demanded to employ them on regular and permanent basis. In that context, the Supreme Court referred to the earlier decisions of the Supreme Court, especially, the decision in *Nehru Yuvaka Kendra's* case and observed as follows (pp. 404) :

'The Central Government, the State Government and the likewise all public sector undertakings are expected to function like model and enlightened employers and arguments such as those which were advanced before us that the principle of equal pay for equal work is an abstract doctrine which cannot be enforced in court of law should ill - come from the mouths of the State and the State Undertakings. We allow both the writ petitions and direct the respondents, as in the *Nehru Yuvak Kendra's* case (supra) to pay to the petitioners and all other daily rated employees, to pay the same salary and allowances as are paid to regular and permanent employees with effect from the date when they were respectively employed. The respondents will pay to each of the petitioners a sum of Rs. 1,000 towards their costs. We also record our regret that many employees are kept in service on a temporary daily-wages basis without their services being regularised. We hope that the Government will take appropriate action to regularise the services of all those who have been in continuous employment for more than six months'.

Immediately after this decision was given, the Central Government gave D.O.P.F. No. 49014/2/86/Estt. (C) dated June 7, 1988. As per this memo, the Ministries, Departments and officers are directed not to engage daily wage workers for work of a regular nature. Recruitment of daily-wages should be done only for work of casual, seasonal or intermittent nature for which regular posts cannot be created. The offices and departments were asked to re-assess output of the staff and productivity so that work being done by the casual labourers should be entrusted to the regular employees. The departments should also review the norms of staff for regular work and take steps to get them revised if necessary. It also directed that where the nature of work entrusted to casual workers and the regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the pay scale plus the Dearness Allowance for work of eight

hours a day. If the work done by casual workers is of a different kind, than the work done by the regular employees, they should be paid minimum wages notified by the Ministry of Labour, but if the department is paying higher wages, the practice should be continued. The Memo also directed that additional regular posts may be created to the barest minimum necessary with the concurrence of the Ministry of Finance. It further directed that regularisation of services of casual workers will continue to be governed by the instructions issued by the department in this regard. For purposes of regularisation, casual workers may be given relaxation in the upper age limit if at the time of initial recruitment, the workers had not crossed the upper age limit for the relevant post. Instruction No. 1(xi) clearly mentions that if a Department wants to make any departure from the above guidelines, it should obtain prior concurrence of the Ministry of Finance and the Department of Personnel and Training. It is crystal clear that in the present case, the Director N.I.N. has not taken anybody's approval or prior concurrence for introducing the system of labour-contractor. It was done unilaterally and high-handedly. The memo also directs that all eligible casual workers are to be adjusted against regular posts and casual workers not covered by regular absorption and whose retention is considered necessary, should be paid emoluments strictly in accordance with the guidelines. Remaining casual workers not covered by clauses (a) and (b) of Instruction No. 1(xi) are to be discharged from service. A time limit of six months was given for completing the review. Instruction No. 4 of this Memo clearly says cases of negligence in the matter of implementing these guidelines should be viewed very seriously and brought to the notice of the appropriate authorities for taking appropriate and suitable action against the defaulters.

We find that in spite of such clear-cut instructions, here is a case where the Director of N.I.N. failed to do the review, but, on the other hand, she tried to avoid implementing the guidelines and invented the system of introducing a contractor unilaterally to deprive the workers of the benefits that have accrued to them.

There are numerous decisions which clearly indicate the autonomous bodies should also implement these guidelines and they should fall in line with the pronouncements of the Supreme Court.

Daily R. C. Labour, P&T; Dept. v. Union of India, 1988-I-LLJ-370 clearly lays down that the casual labourer should be paid at the rates of minimum of pay-scale for regular workers. The court also directed in paragraph 9 that the respondents should prepare a scheme on a rational basis for absorbing as far as possible the casual labourers who have been continuously working for more than one year in the Posts & Telegraphs Department.

V. L. Chandra v. All India Institute of Medical Sciences, 1990-II-LLJ-29 is a decision where autonomous body like the All Institute of Medical Sciences was directed to build up a team of researchers and directed that the petitioners whose services were terminated on the ground that there is no work for them should be provided employment either as researchers or in any suitable alternative employment until their inclusion in a team of researchers is considered. The court directed that the Indian Council of Medical Research shall take appropriate steps to offer adequate employment to the three petitioners within two months.

Catering Cleaners of Southern Railway v. Union of India, 1987-I-LLJ-345 and Catering Cleaners v. Chief Commerl. Supdt, Southern Railways, : (1998)IIILLJ747SC and its sequel are two important decisions which require consideration in this context. In the first decision, the Court observed in paragraph 6 that in the earlier decision in Standard Vacuum Refining Co. of India Ltd. v. Its Workmen 1960-II-LLJ-233 the Supreme Court had occasion to refer to some of the pernicious features of the contract labour system, and characterised that this system is an archaic system and a relic of the early phase of capitalist production, which has now shown signs of revival in the more recent period, and then observed in paragraph 10 that the work of cleaning catering establishments and pantry cars is necessary and incidental to the industry or business of the Southern Railway and this is of a perennial nature and that the work is done through regular workmen in most Railways in the country and that the work requires employment of sufficient number of wholtime workmen and thus all relevant factors mentioned in Section 10(2) of the Contract Labour (Regulation and Abolition) Act, 1970 are satisfied. But the court refused to issue the writ of mandamus to abolish the contract labour system because the court felt that under Section 10 Parliament has vested that power in the appropriate Government and it is not for the court to

abolish it by way of a writ. The court felt that, in the circumstances, the appropriate order to make in the present case is to direct the Central Government to take appropriate action under Section 10 of the Act in the matter of prohibiting employment of contract labour in the work of cleaning catering establishments and pantry cars in the Southern Railways and directed that this should be done within six months. The court also held that without waiting for the decision of the Central Government, the administration of the Southern Railway will free, of its motion, to abolish the contract labour system and to regularise the services of those employed in the work of cleaning catering establishment and pantry cares in the Southern Railway. In any case, the administration of the Southern Railway will refrain, until the decision of the Central Government under S. 10, from employing contract labour. The Supreme Court further directed that the work of cleaning catering establishments and pantry cars will be done departmentally by employing these workmen who were previously employed by the contractor on the same wages and conditions of work as are applicable to those engaged in similar work by the Western Railway.

In *Catering Cleaners v. Chief Commr. Supdt. Southern Railways*, (supra), implementation of the decision in *Catering Cleaners of Southern Railway v. Union of India*, (supra) fell to be considered and the Court pointed that the Railways have treated the employees as departmental employees and has given temporary status and are being paid salary as distinguished from daily wages. Dealing with the question as to giving them permanent status and regularising the petitioners, the court observed as follows :

'As regards the question of regularising the petitioners in the sense of giving them a permanent status in employment, it has been pointed out by the learned counsel for the respondent and, in our opinion rightly, that the question of making particular employee permanent will arise only after a permanent post has become available.'

The court further indicated to avoid the petitioners being prejudiced in future, it is made clear that till they are made clear that till they are made permanent, or till they retire the services of none of the employees falling in that cadre shall be terminated.

15. On behalf of the respondents, Mr. Y. N. Lohita relies upon *S. Satyanarayana Sharma v. National Mineral Development Corpn. Ltd*, 1990-II-LLJ-596, *Dena Nath v. National Fertilizers Ltd.*, 1992 (1) SLR 229 (SC) and *D.D.H. Workers v. Delhi Admn.*, 1992-II-LLJ-452 and contends that where there is no work, there is no question of absorption of the temporary workers on a regular basis. *D.D.H. Workers, v. Delhi Admn.* (supra) is a decision which deals with workmen who were working under different schemes which were devised to provide wage employment to agricultural and landless labourers during lean periods. A reading of paragraph 3 clearly indicates the objects of the schemes under which the various individuals were appointed. In such a context, where the emphasis is to provide the relief to the men in distress and to provide wage-employment, there is no question of regularising the services of temporary employees. As can be seen from a full reading of the judgment, the petitioners were educated people and they were employed to guide the unskilled workers and those people raised the claim for regularisation. The court also pointed out that at no stage, any regular posts were created under the DRDA either for the Supervisors etc., or for the labourers as it was not possible to do so since the schemes were financed by the Government of India and the DRDA was only the implementing agency. So the work is of a temporary character and one meant to give relief to various unemployed and landless poor and unemployed agricultural labourers.

The principles applicable to such a case cannot be applied to the case of the casual labourers employed in a regular institution like the second respondent which has continued work for the casual labourers. That decision has no application to the facts of our case.

Satyanarayana Sharma v. National Mineral Development, Corpn. Ltd., (supra) is a case of daily-rated workers in Panna Diamond Mining Project claiming regularisation. In that case, the Supreme Court found that the petitioners have been continued on rolls on humanitarian grounds for several years even though there is no work for them and hence there is no question of regularising the petitioners and giving them the pay of regular workers; in fact, they were not doing any work since a long time. The Court also found that in view of a large number of employees becoming surplus, schemes for voluntary retirement were offered even

to regular workers as well as daily-rated workers and some of the daily-rated workers have accepted the scheme of voluntary retirement taking the payments of ex-gratia and compensation. The court observed in paragraph 4 as follows (p. 597) :

'We do not find any ground to interfere with the High Court's decision in view of the clear findings supported by evidence that there are no vacancies or work available in the establishment for absorption of the petitioners and that for quite some time they have been continued on rolls and paid in spite of there being no work for them. On these facts, the question of directing their absorption and regularisation does not arise.'

The court also pointed out that the principle of regularisation of a daily-rated workman and payment to him of the pay equal to that of a regular workman arises only when the daily-rated workman is doing the same work as the regular workman and there being a vacancy available to him.

On facts, that decision is not all applicable to the present case on hand. In the present case on hand, the respondents admit that there is work, but they wish to get it done through the agency of a contractor. The present case is not a case of there being no work. On the other hand, the material on record shows that there is continuous work for the casual workers.

16. The decisions relied upon by the respondent's advocate, namely, *B.H.E.L. Worker's Association v. Union of India*, (supra) *D.D.H. workers v. Delhi Admn.*, (supra) and *Satyanarayana Sharma v. National Development Corpn. Ltd.*, (supra) are not applicable to the facts of our case.

17. On consideration of the various decisions and the principles enunciated by the Supreme Court, I am fully convinced that such of the petitioners who satisfy the eligibility criteria are certainly entitled to be absorbed in regular vacancies. In case, they are not absorbed in regular vacancies, they are entitled to be paid wages on par with the regular employees doing similar or identical work.

18. There is further complication in these writ petitioners. The writ petitions have been drafted indicating that all the petitioners are eligible to be absorbed in posts of Group-D services which have the scale of 750-940. It should be remembered that under the rules applicable to the Central Government as well as to the State Government employees, only persons who have passed VIII Class and who have not crossed the age limit are alone entitled to be absorbed in the posts carrying pay-scale of Rs. 750-940. Judged in that light, we find that in Writ Petition No. 9445, out of the 12 petitioners only six of them satisfy the eligibility criteria. Serial Nos. 4,5,7,9,11 and 12 do not satisfy the educational qualifications, because two of them do not have any educational qualifications and four of them have qualifications which are below the standard. It should also be remembered that out of the 12 petitioners, Serial Nos. 1, 8 and 10 entered service after October, 1987. They have not completed five years' service by the time of the filing of the writ petition.

19. Similarly in Writ Petition No. 9897 of 1991, out of the 16 petitioners, eight alone have the educational qualifications. Out of these eight, excepting Y. Manohar who commenced service in March, 1983, others communicated their service in 1987 and 1988.

20. Similarly in Writ Petition No. 10272 of 1991, out of the seven petitioners, five alone have the requisite educational qualifications. Out of the five having requisite educational qualifications, only one man completed five years' service by the time of the filing of the writ petition. Others have commenced their service after July 1, 1987.

21. While directing absorption of the petitioners in the regular vacancies, certainly preference has to be given for those who have the educational qualifications for absorption in Group-D posts and preference should also be given according to the seniority of these people as casual workers. With regard to those employees who do not satisfy educational qualifications, they cannot be absorbed in the regular vacancies and they can only be continued as casual workers as long as there is work available for them.

22. After considering the entire material and the legal position, I hold that the petitioners are entitled to the relief of a writ of mandamus. The respondents are directed to frame a scheme for absorption of the petitioners who are eligible and who satisfy the educational requirements in regular vacancies. The scheme shall be prepared within six months from this day. While absorbing the petitioners, the petitioners with educational qualification of VIII Class and above shall be absorbed on the basis of their seniority giving first preference to people who have completed more than five years' service as casual workers by July 15, 1991. As regards the petitioners who do not satisfy the educational requirements for absorption in Group-D services posts, they shall be continued as casual workers, but they shall be paid wages at the rate of the minimum of the scale of Rs. 750-940 plus D.A. component. If respondent No. 2 wants to introduce the system of labour-contractor, it can do so only after implementing the Government Order dated June 7, 1988 and completing the process of absorption in regular vacancies and such a scheme of employing laborers through contractor shall be prospective in operation and it will apply to persons who are engaged as labourers on or after July 15, 1991. That should be done in strict accordance with the scheme of Contract Labour (Regulation & Abolition), Act 1970 and the rules framed thereunder. The writ petitions are accordingly allowed.

23. Each party shall bear its own costs in these writ petitions. Advocate's fees is fixed at 750/- in each writ petition.