

Rajendra Prasad and Others Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Jun-24-1998

Reported in : 1999(1)AWC357; (1999)1UPLBEC454

Judge : S.R. Singh, J.

Acts : [Constitution of India](#) - Articles 14, 16, 38, 39, 41 and 43; Uttar Pradesh Regularisation of Ad Hoc Appointments (On Posts Outside the Purview of the Public Service Commission) Rules, 1979; Uttar Pradesh Collection Amin Service Rules, 1974; Employment Exchange Act

Appeal No. : C.M.W.P. Nos. 13197 and 13246 of 1996 and 14281 of 1998

Appellant : Rajendra Prasad and Others

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Saghir Ahmad, Adv.

Judgement :

S.R. Singh, J.

1. Petitioners of the first two writ petitions, who were enlisted as daily-rated employees in the Public Works Department and the Minor Irrigation Department of

the Government of U. P. respectively, have invoked the procedure of this Court for the (win reliefs of mandamus to the respondents to regularise their services in their respective posts and to pay equal salary to them as admissible to the regular employees of the department performing similar duties.

2. The facts wrapped in brevity, are that the petitioners of Writ Petition No. 13197 of 1996 were allegedly appointed as class IV employees on daily wages on different dates between 1985 and 1989. The petitioners of Writ Petition No. 13246 of 1996 too entered the service as helpers allegedly on daily wages on different dates between 1982 and 1992. The third Writ Petition No. 14281 of 1998 instituted by Jal Vigyan Anusandhan Karamchari Union, Bahadurabad and five others, seeks the relief of mandamus commanding the respondents to regularise the services of the members of petitioner No. 1 from the date of their initial appointments in the Irrigation Department of the Government of U. P. and pay them the salary due to them with effect from the said date. It is alleged that petitioner Nos. 2 and 4 entered the service as 'Beldar' on daily wage basis in the year 1990, while petitioner Nos. 3, 5 and 6 made their debut in the service in the year 1990. 1982 and 1978 respectively. It is further alleged that they are at present being paid wages at the rate of Rs. 1,200 per month. It is stated that each of the petitioners herein, has been discharging his duties in unabated continuity ever since his appointment. Since these petitions are knit together by common questions of law and fact, they have been taken up together for being heard and disposed of by a common order with the consent of the counsel for the parties.

3. Learned counsel appearing for the petitioners emphatically canvassed that the petitioners were albeit, appointed on daily wages irrespective of the fact whether there was any vacancy, but their unabated continuance should be reckoned with to merit consideration that there is regular need for their services and that they are being made to work on daily wage basis with the specific purpose to a design of balking them of the benefits of permanency in service. The learned counsel placed credence on the decision of the Supreme Court in *State of Haryana v. Piara Singh*, JT 1992 (5) SC 179 : *Khagesh Kumar and others v. I. G. Registration and others*, JT 1995 (7) SC 545 and *State of U. P. and others v. Putti Lal*. (1998) 1 UPLBEC 313. Sri Saghir Ahmad, learned counsel for the petitioners in the first two petitions

submitted that in view of the observations made by the Apex Court in Khagesh Kumar (supra), the petitioners are entitled to be considered for regularisation under the provisions of the U. P. Regularisation of Ad Hoc Appointments (Posts Outside the Purview of the Public Service Commission) Rules, 1979, as amended upto date. Sri P. C. Jhingan, appearing for the petitioners in the third petition, pressed for regularisation and 'equal pay for equal work' especially on the dint of the decision of the Apex Court in the case of Dharwad District P.W.D. Literate Daily Employees' Association and others v. State of Karnataka and Others, 1990 (3) UPLBEC 2151, and the decision of this Court in the case of State of U. P. v. Putti Lal (supra). Learned standing counsel, on the other hand, quipped that the Rules of 1979 are not intended for application to the facts of the present case and in the absence of any scheme for regularisation and requisite number of posts, the petitioners were not entitled to claim regularisation nor were they entitled to claim parity in the matter of pay with their regularly recruited counter-parts in the department.

In re Regularisation

4. Question of regularisation of daily-rated employees has been weighed up by the Apex Court as well as this Court in a catena of decisions, but these decisions do not seem to have churned out any universally accepted principle governing regularisation of the daily-rated employees. My efforts herein will be angled at striking a reasonable balance between the conflicting interests of the administration and daily-rated employees in as best a manner as to secure 'justice' to the daily-rated employees sans any noticeable additional financial /fiscal burden upon the State exchequer and providing a somewhat lasting solution to the questions staring the Court in the instant petition and with this end in view. I would in the first instance, scan the authorities for its applicability on the questions involved herein. In R, N. Nanjudappa v. T. Thimmiah. (1972) 2 SCR 799, in which reliance was placed on an early decision in State of Mysore v. S. V, Narayanappa. AIR 1967 SC 1071, question of regularisation was considered thus ; 'Regularisation cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules. The Supreme Court held in

that case that if an appointment is made in infraction of the rules or if it is in violation of the provisions of the Constitution, such appointment being illegal, the same cannot be regularised for 'ratification' or 'regularisation', it was held, is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. In *B. N. Nagarajan and others LJ. State of Karnataka*. AIR 1979 SC 1676, it was held that 'the words 'regular' or 'regularisation' do not connote permanence' and further that these terms are 'calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to the methodology followed in making the appointments.' These terms, the Court observed, 'cannot be construed so as to convey an idea of the nature of tenure of the appointments'. In *Ashwani Kumar v. State of Bihar*. AIR 1997 SC 1627, the Supreme Court held that the question of confirmation or regularisation of an irregularly appointed candidate could arise if the candidate concerned is appointed in an irregular manner or on ad hoc basis against a possible vacancy which is already sanctioned but if initial entry is itself unauthorised and is not against any sanctioned vacancy, the question of regularising the incumbent on such non-existent vacancy could never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. The Apex Court held that regularisation of such appointment would amount to 'decorating a still-born baby.' In *Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi and others*, JT 1992 (1) SC 394 : (1992) Lab IC 847, the 'pernicious consequences' of the direction of regularisation of workmen on the only ground that they have put in works for 240 or more days, has been pointed out as under :

'Although there is Employment Exchange Act which requires recruitment on the basis of registration in Employment Exchange, it has become a common practice to ignore the Employment Exchange and the person registered in the Employment Exchange, and to employ and get employed directly those who are either not registered or are lower in the long waiting list in the Employment register. The Court can take judicial notice of the fact that such employment is sought and given directly for various illegal consideration including money. The employment is given for temporary periods with technical breaks to circumvent the relevant rules and is

continued for 240 or more days with a view to give the benefit of regularisation knowing the judicial trend that those who have completed 240 days or more days are directed to be automatically regularised. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchange for years.'

5. In *State of U. P. v. Ajay Kumar*, 1997 SCC 88, it has been held that there must exist a post and either administrative instructions or statutory rules must also be in operation to appoint a person to the post. Daily wage appointment, it was further held, would obviously be in relation to contingent Establishment in which there cannot exist any post and it continues so long as the work exists. In *Union of India v. Uma Maheshwari*. (1997) 11 SCC 228, it has been held that claim to regularisation by daily wage employees would not be sustainable in the absence of regular work and a scheme for regularisation. In *State of U. P. and others v. Putti Lal*. (1998) 1 UPLBEC 313, a Division Bench of this Court has held : 'The position in law as regards the regularisation of Daily Wagers/Muster Roll Employees, is settled according to which there cannot be a regularisation of their services unless there are posts/vacancies.' Reliance in this case was placed on *Ashwani Kumar* (supra).

6. In *State of Haryana v. Piara Singh*, JT 1995 (5) SC 179, the question regarding regularisation of ad hoc appointees came up for consideration before the Supreme Court. It was held that normal rule would be regular appointment through the prescribed agency but exigency of administration may sometime call for an ad hoc and/or temporary appointment to be made. Such ad hoc or temporary appointee, the Apex Court held, if allowed to continue for a fairly long span, the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and service record and appointment does not run counter to the reservation policy of the State. Direction given by the High Court in that case for regularisation of every ad hoc or temporary employees who had been continued for one year was held to be totally 'untenable' and 'unsustainable'.

7. In the conspectus of the above decisions, I am of the considered view that 'wholesale' and 'unconditional' orders cannot be issued by this Court directing the

respondents to regularise the services of the petitioners, and in no case such direction can be issued in the absence of posts and a scheme/rules visualising regularisation on certain principles and norms framed in consonance with the related constitutional provisions for 'regularisation' has not been claimed herein in the above sense of the term. Rather it comprehends induction into the cadre of the service which in the absence of posts and a legally framed scheme cannot be allowed except on pains of violating the Constitution and relevant service Rules. Petitioners' appointments are not referable to any vacant posts nor such appointments could be said to be ad hoc appointments de hors the rules. The question of 'regularisation' in the popular sense of the term, therefore, does not arise. The provisions of the U. P. Regularisation of Ad hoc Appointments (On Posts Outside the Purview of the Public Service Commission) Rules, 1979, have no application to such appointments. *Khagesh Kumar and others v. I. G. Registration and others*, JT 1995 (7) SC 545, reliance on which was placed for the petitioners, would not apply to the facts of the present case. There the appointments were made on posts referred to in paragraphs 95 and 96 of the Manual, i.e., posts on permanent and temporary strength of the Establishment' under the special sanction given by the Governor. It was under these circumstances that daily wage appointments were treated by the Supreme Court in that case as ad hoc appointments within the meaning of the Regularisation Rules referred to above.

In Re 'equal pay for equal work'

8. In *Harbans Lal v. State of Himachal Pradesh*, 1989 (4) SCC 459, the Supreme Court held that the daily-rated workmen who were before the Court in that case were entitled to be paid minimum wages admissible to such workmen as prescribed and not the minimum in the pay-scale applicable to similar employees in the regular service unless the employer had decided to make such minimum pay-scale applicable to the daily-rated workers. The same view finds its echo in the case of *Ghaziabad Development Authority v. Vikram Chaurasiya*. 1995 (5) SCC 210, In *State of U. P. v. J. P. Chaurasiya*. (1989) 1 SCC 121, the Supreme Court held that the principle of 'equal pay for equal work' had no automation-application in every case of similar work. It is settled by a catena of decisions that

differentiation in the matter of pay may be justified on the basis of quality of work ; degree of responsibility ; reliability and confidentiality ; qualification and mode of recruitment. The mode of payment, it has been held in some cases, is also a relevant factor to be weighed up while deciding claim for salary/wages predicated upon the doctrine of 'equal pay for equal work'. In *State of Haryana v. Jasmer Singh*, (1996) 11 SCC 77, the Apex Court declined to invoke the doctrine of 'equal pay for equal work' holding that the respondents therein who were harnessed on daily wages, were not required to be equipped with the qualifications prescribed for regular workers nor were they required to fulfil the requirements relating to age at the time of recruitment nor were they subjected to same selection process through which the regularly selected employees were recruited.

9. In *Union of India v. Dharampal*, (1996) 4 SCC 195, the Supreme Court gave nod of approval to the scheme framed by the authorities for regularisation of daily-rated workers/casual workers and held 'daily-rated workers/casual workers who are not regularised and work is taken from them, are entitled to minimum of scale of pay prescribed for that post. In addition to that, they are also entitled to 60% of the D.A. on Punjab Pattern which is being followed in all other cases.' In Civil Misc. Writ Petition No. 15627 of 1988, the question regarding payment of wages to daily-rated workers of the Forest Department was considered by me in which although in ultimate analysis, it was held that the daily rated workers were not entitled to be granted parity in the matter of pay qua the regularly appointed employees but such employees, it was further held, were entitled to be paid wages at the rates equivalent to the minimum pay in the pay scales of the regularly employed workers in the corresponding cadres. In addition, they were also directed to be paid corresponding dearness allowances and additional dearness allowances, if any. The view taken therein was met with approval by the Division Bench in the case of *State of U. P. v. Putti Lal*, (1998) 1 UPLBEC 313, wherein it was held that 'the benefits of the said judgment of the learned Judge have to go to all the Daily Wages/Muster Roll employees'. In *A. Krishnamacharyulu v. Dr. Venkateshwar Hindu College (Engineering)*, 1997 (3) SCC 571, the Supreme Court was considering the doctrine of 'equal pay for equal work' in respect of parity claimed by teachers, who were imparting education in non-Government institutions with the teachers of Government institutions. The ratio of the decision in that case is that

teachers who impart education, get an element of public interest in performance of their duties and the element of public interest calls for regulating the conditions of services of those employees in Juxtaposition with a Government employee.

10. In the perspective of the said decision, I am of the considered view that there is an element of public interest created by the Government in matters of appointment on daily wages for or in connection with the affairs of the State and consequently the daily-rated employees get an element of public interest in the performance of their duties. The element of public interest being so pronounced, it cannot be repudiated, exacts a set of rules to be framed in consonance with the imperatives of Articles 14, 16, 38, 39, 41 and 43 of the Constitution and compatible with the reservation policy of the State in the matters governing appointment on daily wages for or in connection with the affairs of the State. The appointments of daily-rated employees might be referable to contingent Establishment but payments of wages would nonetheless be the payments charged in the public fund and the State or its authority cannot be allowed to have a carte blanche of laddling out favour or bestowing benevolence on a chosen few on extraneous consideration and at the expense of public exchequer. The daily-rated employees engaged in Government departments, do acquire, in the course of time, a status and certain rights and privileges lending justification to interference by the Courts in order to protect such rights and privileges qua the provisions contained in Articles 38, 39, 41 and 43 of the Constitution. A constitutional duty/obligation is cast upon this Court to ensure that the laudable objectives sought to be achieved by the constitutional provisions aforesaid are not overreached by those whose duty it is to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice-social economic and political-informs all the institutions of the National Life ; to strive to minimise the inequality in income and endeavour to eliminate inequalities in status, facilities and opportunities amongst individuals ; to direct its policy towards securing 'equal pay for equal work', health and strength of workers ; and, within the limits of its economic capacity, to make effective provisions for securing the right to work. The Court can take judicial notice of the fact that the practice of appointment of daily-rated employees that is in vogue in Government Departments, cannot be abandoned except on pains of imperilling the public interest. The daily-rated

employees, if allowed to continue for a considerable length of time, acquire a status and regard being had to directive principles of State policy enshrined in Part IV of the Constitution, the Courts very often intervene in the matter with a view to doing justice to such employees and granting them full-fledged status of a Government servant. I would not scruple to say that the daily-rated/casual employees constitute themselves a class of Government servants. In *Chief Conservator of Forest v. Jagannath Maruti Kon Bhare*, 1996 AIR 967, the Supreme Court affirmed the decision of the Industrial Court holding that employment on casual /temporary basis for several years (5 to 6 years in that case) amounts to unfair labour practice. The same view has been reiterated by the Division Bench of this Court in *State of U. P. v. Putti Lal* (supra).

11. In the conspectus of the above discussion. I am persuaded to the considered view that the service conditions of the daily-rated employees must be modulated/refixed by making appropriate rules compatible with the constitutional provisions particularly those embodied in Articles 14, 16, 38, 39, 41 and 43 of the Constitution with particular reference to the doctrine of 'social justice' which the Supreme Court has expatiated upon in *Air India Statutory Corporation v. United Labour Union*, (1997) 9 SCC 377, as under:

'Social justice, equality and dignity of persons are cornerstone of social democracy. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits, tribals, and deprived sections of the society and to elevate them to the level of equality to live their lives with dignity of person.....Social security, just and humane conditions of work and leisure to workman are part of his meaningful right to life and to achieve self expression of his personality and to enjoy the life with dignity.'

12. As a result of foregoing discussions, the writ petitions are disposed of in terms of the following directions :

(i) The State Government shall nail down and prescribe service conditions of its daily-rated employees by making appropriate rules providing therein that a given percentage of class III and class IV posts under the Government, shall be filled in from amongst the daily-rated employees subject to fulfilment of such eligibility

conditions and qualifications as may be prescribed patterned on the provisions embodied in the U. P. Collection Amin Service Rules, 1974, wherein 35% vacancies are required to be filled from amongst the Seasonal Collection Amins and those of office memo dated 8.1.1996 wherein 50% posts of regular Collection peons are to be filled from amongst the Seasonal Collection peons ;

(ii) The rules so framed, shall provide the mode and conditions of daily wage appointments in Government departments in tune with the law of reservation ;

(iii) The wages payable to daily-rated employees shall not be less than the minimum of the scale of pay prescribed for the post and in addition to the wages so prescribed for the post, they shall be paid dearness allowances as well ' on the prescribed rate ; and

(iv) Until rules are so framed, all vacancies in class III and class IV posts under the State shall remain in abeyance.

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