

**Jitendra and Others Vs. State of U.P. and Another**

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**Court :** Allahabad

**Decided On :** Apr-26-2000

**Reported in :** 2000(3)AWC2088; [2000(87)FLR179]

**Judge :** Pradeep Kant, J.

**Acts :** [Constitution of India](#) - Article 14

**Appeal No. :** Writ Petition No. 6240 (S/S.) of 1991

**Appellant :** Jitendra and Others

**Respondent :** State of U.P. and Another

**Advocate for Def. :** C.S.C.

**Advocate for Pet/Ap. :** Jagdish Upadhyay, ;P.K. Jaiswal and ;D.S. Yadav, Advs.

**Judgement :**

**Pradeep Kant, J.**

1. The petitioners who are 13 in number have been working as daily wagers in the office of Director, Geology and Mining, U. P., Lucknow. Some of the petitioners were engaged in the year 1982, while some were engaged in 1983. 1984. 1985. 1986. 1987. and 1988. Admittedly the petitioners are continuously working till date as daily wagers and they have not been given the status of regular employees or

confirmed employees of the department. No doubt the wages have been revised from time to time. The petitioners being aggrieved by their non-absorption and non-regularization. approached this Court by means of present writ petition with the prayer that a direction be issued by this Court to the opposite parties to absorb the services of the petitioner on regular basis in the regular pay scale and to consider their regularization.

2. On the first date of hearing. i.e., 26.9.1991 this Court while granting six weeks' time to the learned standing counsel to seek instructions specifically directed the opposite parties to indicate if any steps for absorption and payment of salary in regular scale to the petitioner has been taken or not.

3. The claim of the petitioners are that since they have been working continuously and performing the duties of regular nature since the very first day of Inception of their services, they are entitled for regularization and for consequential benefits of service. It has also been urged that at no point of time any shortcoming has been Indicated or the petitioners have been warned about any mischief or inefficiency on their part in performance of their duties, as such, the petitioners are entitled for being regularized on the post on which they are working on dally wage basis.

4. The learned counsel for the State denied the claim of the petitioners and submitted that the petitioners are only daily wagers and they have no right to hold the post. Besides this, they were appointed for specific purpose and they were not being given regular status. The learned State counsel further urged that the petitioners are engaged in service only for a specified period and as such neither they are temporary nor permanent employee and therefore there is no question of regularization of their services.

5. The fact that the petitioners are continuing since 1982, 1983 and 1984 and so on till date as dally wagers in the department the argument of the learned standing counsel to the effect that the petitioners were appointed or engaged for specified work stands repelled. It is the prerogative of the State Government to employ persons according to the need and for specified purpose and for specific project and scheme and in such matters, the right to hold the post may not be there after the work is completed or the period comes to an end but wherein any department,

which is not of a temporary nature, the employees are permitted to work continuously for 15 years or more then it can very well be presumed that they are performing work of regular and perennial nature and that they have not been engaged for specified purpose or work. The mere non-recognition of petitioners as temporary or permanent employees would not divest their right to claim absorption or regularisation in the service. The State cannot act arbitrarily and discriminatorily in the matters of appointment or granting benefit of service with respect to conditions of service which should be applicable in the case of Government servants. It would also not be open for the Government in such cases where the daily wagers have been permitted to work for 15 to 20 years on a particular post to plead that there is no sanctioned post or there is no vacancy. The continuance of such an employee for such long period raises a presumption that the post and work exists on which such employees can be absorbed. The employees, who had devoted almost the entire youth of their life, and have a family to look after cannot be either permitted to remain in lurch throughout their service tenure, under the peeping fear of being ousted from service as their services have not been regularized nor can they be thrown on streets on the whims of the employer at this late stage of their service career. Of course, if an employee is not otherwise fit for absorption or has incurred any disqualification or is guilty of any misconduct then he can certainly be taken care of, but in the absence of any such contingency the employee who has served for such a long period, deserves to have security of job and protection in service. This security or protection can only be made available, when he is given the benefit of regularization and he becomes the member of the service.

6. The learned counsel for the petitioner has also relied upon a Division Bench Judgment of this Court in Vimal Chand Pandey and another v. Engineer in Chief, Public Works Department and others, (2000) 1 UPLBEC 240, wherein this Court while considering the case of the petitioner of that petition found as follows :

'In our opinion, the Department cannot keep a person as temporary or on dally wage basis indefinitely. It is indeed unfortunate that some employees are often kept on dally wage basis or on temporary basis for years on end. No doubt ordinarily confirmation of a temporary employee is the prerogative of the employer,

but the employer cannot act arbitrarily in this regard. As held by the Supreme Court in *Maneka Gandhi v. Union of India*, AIR 1978 SC 597. arbitrariness violates Article 14 of the Constitution. Hence, the authorities must act in a non-arbitrary manner. In our opinion, in this case, the respondents have acted in an arbitrary manner by keeping the petitioners on daily wage basis for such a long period. The appellant No. 1 was appointed in 1985 and the appellant No. 2 in 1988 and hence they have been in service for 14 and 11 years respectively.'

7. The learned counsel for the State sought to distinguish this Judgment on the ground that in this case the persons junior to the petitioners were already regularized. Be that as it may, the ratio of the Judgment is not confined to the fact that the person junior to the petitioner of that writ petition were regularized but the orders have been passed after taking into consideration the action of the Government in permitting a daily wager in service in the same capacity for considerable long time i.e. 14 years and 11 years, and therefore, this Court passed an order for regularization of their service.

8. In another case which has been relied upon by the learned counsel for the petitioners *Awadhesh Kumar Yadav v. Divisional Forest Officer (D.F.O.) Social Forest Division, Mainpuri and others*, (2000) 1 UPLBEC 129, also the petitioner was working as Stenographer on daily wage basis, continuously and even after a lapse of 18 years he was not regularized. This Court vide aforesaid order relying upon the case of *Maneka Gandhi v. Union of India* and another. AIR 1978 SC 597, held that such an action was arbitrary as arbitrariness violates Article 14 of the Constitution, the Court also passed an order that the petitioner be regularized within a month from the date of production of the certified copy of this order and he shall be paid regular salary thereafter.

9. In the instant case, undoubtedly and undisputedly the petitioners are working for a period of more than 12 to 18 years, but no reasons have been indicated in the counter-affidavit as to why these petitioners have been continued in service on daily wage basis and why their cases for regularization have not been considered so far. The petitioners who have been working for such a long time are thus entitled for regularization.

10. I, therefore, allow the writ petition and Issue a writ of mandamus directing the opposite parties to regularize the services of the petitioners on the post on which they are working and to place them in regular pay scale from the date of their regularization. The regularization of the petitioners shall be considered within a period of six weeks from the date the certified copy of this order is produced before the concerned authority. However, if the petitioners have become overage. their age should not come in the way while considering their regularization and in passing the orders accordingly. The writ petition is allowed.

11. No orders as to costs.

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