

State of U.P. and ors. Vs. MohsIn Ali

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Court : Allahabad

Decided On : Oct-11-1999

Reported in : (2000)1UPLBEC255

Judge : S.H.A. Raza and ;R.P. Nigam, JJ.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Special Appeal No. 215 (S/B) of 1997

Appellant : State of U.P. and ors.

Respondent : MohsIn Ali

Advocate for Def. : A.R. Khan, Adv.

Advocate for Pet/Ap. : C.S.C.

Disposition : Appeal dismissed

Judgement :

S.H.A. Raza, J.

1. These special appeals have been filed against the interim order dated 12-8-1996 passed by the learned Single Judge in Writ Petition bearing No. 3358 (S/S) of 1995 (Mohsin Ali and Ors. v. State of U.P. and Ors.) that the petitioners of this Writ Petition shall also be entitled to the similar benefits as have been given to the

petitioners of Writ Petition No. 4295 (S/S) of 1996 and 4409 (S/S) of 1996 and those petitioners who have put in five years or more shall be entitled to minimum of the pay scale to which a regularly placed class IV employee is entitled this benefit shall be made effective with effect from 15th August, 1996.

2. The Special Appeal No. 83 (S/B) of 1999 was filed against the order dated 18th March, 1998 in which the Hon'ble Single Judge passed an order that till further orders of this Court the petitioners shall continue to get their salary as they had drawn upto 25-1-1998 as per the revised pay scale. The petitioners shall also be entitled to other benefits. The salary including the arrears shall be released forth-writ as directed above.

3. The contention of the learned Standing Counsel is that the Hon'ble Single Judge, by means of the interim relief, have more or less allowed the writ petition because the final relief which could have been granted have been granted at the initial stage and the said order runs contrary to the conditions of engagement of daily wager/muster role worker as contained in Paras 429 and 430 of the Financial Handbook, Vol. VI. The daily wager/muster role workers cannot claim as a matter of right their regularisation irrespective of number of years they put in as daily wagers/muster role. It was submitted that the State of U.P. itself has devised a scheme on 18-1-92 which was issued by the Engineer-in-Chief, Public Works Department for regularisation of those daily wagers/muster role who have completed three years continuous engagement on or before 1-3-87. None of the respondents have completed three years continuous engagement on or before 1-3-87. It was also submitted that in the absence of any other relief, the Government is not bound to regularise the services of such daily wager/muster role workers in view of this fact that for the purposes of regularisation, the Engineer-in-Chief, Public Works Department has devised a scheme and cut of date was mentioned in the process of regularisation. It was not within the jurisdiction of the Court to take a decision on said subject matter.

4. As far as question of regularisation is concerned. Hon'ble Single Judge has not passed any order. Hon'ble Single Judge has only directed that those respondents who have completed ten years as daily wagers be paid salary in the minimum of

the pay scale to which regular employee of that category is being paid. The question of regularisation may be considered by the Court when the matter may be heard and- disposed of finally, In view of the aforesaid reasons, it was unnecessary on the part of learned Standing Counsel to argue that the Court could have not ordered for the regularisation of their services, particularly when no such order was ever passed in the writ petition by Hon'ble Single Judge.

5. Next contention of learned Standing Counsel was that no interim order can be passed by the Court in the terms which has to be passed finally after hearing of the parties is concerned, the Court has neither passed any order for regularisation of the services of respondents, nor directed that the respondents be paid pay scale to which regular employee of that category is being paid. The Court has only ordered that the daily wagers be paid in the minimum of pay scale to which a regular employee of that category is being paid, hence it cannot be said that by means of the interim order, Hon'ble the Single Judge has passed final order, which could be passed after hearing of the writ petition, itself.

6. Now, we have to examine as to whether the order passed by Hon'ble Single Judge directing that those respondents who have worked for more than ten years, be paid salary in the minimum of pay scale, to which regular employee of that category is being is paid, is in accordance with law or not.

7. As far as the case of the appellants that the respondents cannot be paid salary in the minimum of pay scale to which regular employee of that category is being paid, is concerned, the law has been settled since the decision of Hon'ble Supreme Court in *Dhirendra, Chamoli v. State of U.P.*, (1986) 1 SCC 637, wherein certain casual labours working in the Nehru Yuvak Kendras approached Hon'ble Supreme Court under Article 32 of the [Constitution of India](#), raising grievance that while regular employees of the said Kendras were paid higher emoluments but they were denied the same although they have render, dissimilar services. In the light of the facts and circumstances of the case, Hon'ble Supreme Court directed as under :

'The Central Government to accord to those persons who are employed by the Nehru Yuvak Kendras and who are concededly performing the same duties as

Class IV 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.'

8. In the case of *Surendra Singh v. Engineer-in-Chief, CPWD*, 1986(1) SCC 639, the petitioners who were employed by the Central Public Works Department on daily wage basis raised a grievance that although they have been working as casual labours for several years, they were not paid the same wages as the permanent employees employed in the said department doing identical work, were paid. Hon'ble Supreme Court on the basis of earlier judgment held as under :

'One would have thought that the judgment in *Nehru Yuvak Kendras* case concluded further argument on the question. However, Sri K.C. Mahajan, learned Counsel for the Central Govt. reiterated the same argument and also contended that the doctrine of 'equal pay for equal work' was a mere abstract doctrine and that it was not capable of being enforced in a Court of law. He referred to us to the observations of this Court in *Kishori Mohanlal Bakshi v. Union of India*, AIR 1962 SC 1139. We are not a little surprised that such an argument should be advanced on behalf of the Central Government, 36 years after the passing of the Constitution and 11 years after the Forty Second Amendment proclaiming India as a socialist republic, the Central Government, like all organs of the State, is committed to Directive Principles of State Policy and Article 39 enshrines the principle of equal pay for equal work. In *Randhir Singh v. Union of India* (supra), this Court has occasion to explain the observations in *Kishori Mohanlal Bakshi v. Union of India*, and to point out how the Principles of equal pay for equal work is not an abstract doctrine and how it is a vital and vigorous doctrine accepted throughout the World, particularly by all socialist countries. For the benefit of those who do not seem to be aware of it. We may point out that the decision in *Randhir Singh* case has been followed in many number of cases by this Court and has been affirmed by a Constitution Bench of this Court in *D.S. Nakara v. Union of India*, AIR 1983 L&S;

145. The Central Government, the State Government and likewise all public sectors undertakings, are expected to function like model and enlightened employers and arguments such as those which were advanced before us that the Principles of equal pay for equal work is an abstract doctrine which cannot be enforced in a Court of law should ill come from the mouths of the State and the State undertakings.'

9. In the case of R.D. Gupta v. Ltd. Governor, Delhi Administration, 1987(4) SCC 505, and the case of Bhagwan Das v. State of Haryana, 1987(4) SCC 634. Hon'ble Supreme Court reaffirmed its earlier view, Thereafter, in the case of Jaipal v. State of Haryana. 1998(3) SCC 354, while reiterating and reemphasizing the earlier decision of Hon'ble Supreme Court indicated as under :

'There is no doubt that instructors and squad teachers are employees of the same employer doing work of similar nature in the same department, therefore, the appointment on a temporary basis or on regular basis does not effect the doctrine of equal pay for equal work Article 36(d) contained in Part-IV of the Constitution ordains the State to direct its policy towards securing equal pay for equal work for both men and women. Though Article 39 is included in the Chapter on Directive Principles of State Policy, but it is fundamental nature. The purpose of the Article is to fix certain social and economic goals for avoiding any discrimination amongst the people doing similar work in matters relating to pay. The doctrine of equal pay for equal work has been implemented by this Court in Randhir Singh v. Union of India, Dhirendra, Chamoli v. State of U.P. and Surendera Singh v. Engineer-in-Chief, CPWD. In view of these authorities it is too late in the date to disregard the doctrine of equal pay for equal work on the ground of the employment being temporary and the other being permanent in nature, A temporary or casual employee performing the same duties and functions is entitled employee to the same pay as paid to a permanent.'

10. Hon'ble Supreme Court in the case of Daily Rated Casual Labour Employed under P and T Department v. Union of India, 1998(1) SCC 122, indicated as under :

'It is urged that the State cannot deny at least the minimum pay in the pay scales of regularly employed workmen even though the Govt. may not be compelled to extend all the benefits enjoyed by regularly recruited employees. We are of the view that such denial amounts to exploitation of labour. The Govt. cannot take advantage of its dominant position, and compel any worker to work even as a casual labourer on starvation wages. It may be that the casual labourer has agreed to work on such low wages. That he has done because he has no other choice. It is property that has ariven him to that State. The Govt. should be a model employer. We are of the view that on the facts and in the circumstances of this case the classification of employees into regularly recruited employees and casual employees for the purpose of paying less than the minimum pay payable to employees in the corresponding regular cadre particularly in the lowest rung of the department where the pay scales are the lowest, is not tenable.'

11. In the case of Bhagwati Prasad v. Delhi Mineral Development Corporation, 1990(1) SCC 461. Hon'ble Supreme Court was approached by daily rated workers working in the Delhi State Mineral Development Corporation and sought a relief under Article 32 of the [Constitution of India](#) for the issuance of writ of mandamus to regularise the services in the respective units and to pay them equal wages with initial basic wages, D.A. and other allowances at par with regularly absorbed workmen performing the same or similar duties, In Para 6 of the said judgment, Hon'ble Supreme Court indicate as under ;

'The main controversy centres round the question whether some petitioners are possessed of their 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 ever since, they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always, and the person to effectively discharge the duties, is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubted a factor to be reckoned with, but it is so at the time of the initial entry into the service. 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 them the conformation 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 respondent, in the circumstances would be sufficient for confirmation. If there is a gap of more than three months between the period of termination and re-appointment that period may be excluded in the computation of the 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 1, 1991 and promoted to the next higher post according to the standing orders. All the petitioners are entitled to equal pay to par with the persons appointed on regular basis to the similar posts or discharge similar duties and are entitled to the scale of pay and all allowances revised from time to time for the said posts.'

12. In the case of U.P. Income Tax Department Contingent Paid Staff Welfare Association v. Union of India, 1988 SCC (L&S;) 344, Hon'ble Supreme Court directed the respondents to pay wages to the workmen, who were not employed as contingent paid staff of the Income Tax Department throughout India, doing the work of Class IV employees at the rates equivalent to the minimum pay in the pay scale of the regularly employed workers in the corresponding cadres. In the case of State of U.P. v. J.P. Chaurasia, 1989 SCC (L&S;) 71, Hon'ble Supreme Court again emphasized that equal pay for equal work for both men and women has been accepted as a Constitutional Goal, capable of being achieved through constitutional remedies. In the case of Bhagwan Sahai Carpenter v. Union of India, 1989 SCC (L&S;) 348, Hon'ble Supreme Court again re-emphasized and reiterated its view that equal pay for equal work is the necessary ingredients of Article 14 of the [Constitution of India](#).

13. In the case of Dharwad District PWD Literate Daily Wage Employees Association and Ors. v. State of Karnataka and Ors., 1990(2) SCC 396, Hon'ble the Chief Justice Rangnath Misra, speaking for the bench after reaffirming the earlier precedents framed a scheme for the payment of minimum wages to casual workers and regularisation of their services.

14. Hon'ble Supreme Court in K.C. Ranjeevan and. Fifteen Ors. v. State of Kerala and Ors., 1991(1) SCC 31, held as under :

'therefore, mandates that the State shall strive to promote the welfare of the people by minimizing the inequalities in income and eliminating inequalities in status, facilities and opportunities by directing its policy towards securing, amongst to others, the distribution of the material resources to the community to subserve the common good by so operating the economic system as not to result in concentration of wealth and by making effective provisions for securing the right to work as also to public assistance in cases of unemployment, albeit within the limits of its economic capacities. These are certain other provisions which enjoins on the State certain duties e.g. securing to all workers to work, a living wage, just and humane conditions of work, a decent standard of life, participation in management, etc. which are aimed at socio-economic justice, the fundamental rights confer certain justifiable socio-economic rights and the Directive Principles fix the socio-economic goals which the State must strive to attain. These three together constitute the core and conscience of the Constitution.'

15. In view of the aforesaid dictums of Hon'ble Supreme Court in catena of the cases, the State of Government cannot be permitted to act in violation of Article 39 of the [Constitution of India](#), which enshrine principles of equal pay for equal work. The State Government should have instead of filing this Special Appeal, paid at least the minimum scale of pay to the respondents, which the regular employees of that category are being paid. The State Government went to the extent of assailing the order passed by Hon'ble Single Judge ignoring Article 39(d) contained in Part-IV of the [Constitution of India](#), which ordains the State to direct its policy towards securing equal pay for equal work for both men and women. Although Article 39 is included in the Chapter under heading of Directive Principles of the State policy, but it is fundamental in nature, the purpose of which is to fix certain social and economic goals for avoiding any discrimination amongst the people doing similar work in matters relating to pay. It is not the case of the State Government that the respondents have not been performing similar work, which regular employees of that category perform. When temporary or casual employee, daily rated or work charged employee performed the same duties, which the

regular employees perform, then such employees are entitled to same pay as paid to permanent employees.

16. It is absurd on the part of the State to argue before this Court that it is prerogative of the State to decide as to how much salary is to be paid to daily wagers or muster role workers, and it is not for the Court to take decision on the said subject. It is needless to mention that considering the plight of such daily rate employees, Hon'ble Supreme Court not only directed the payment of equal wages for equal work to such employees, but also framed scheme for the regularisation of services of such employees. The Court cannot shirk its responsibility when it find that the State Government has not been following con-commitment of the command of Constitution and has been discriminating its employees in the matter of payment of salaries, particularly when they perform similar duties. In several cases, few of which we have cited, hereinabove, Hon'ble Supreme Court even went to the extent of directing the State to absorb such workers and regularize their services.

17. In the case of Shri Ram Kishan and Ors. v. Union of India and Ors., in Writ Petition (Civil) No. 853 of 1990, with W.P. (Civil) Nos. 1060 of 1990, 1070 of 1990 and 80 of 1991, which were filed by Assistant 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 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 other allowances excepting D.A. admissible to similar category of officers employed under G.D.A.

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 regularization may, as far as possible, 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 regularization the period spent on duty shall be adjusted against the age prescribed and the Public Services 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 Authority within three months from now. The Vice Chairman of the Authority is authorised to comply with 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.

18. 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 2200 and 2300 per month. It was further observed that we had also indicated that D.A. would not be admissible to the petitioners and 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 with our previous direction, shall be disbursed within (sic) weeks from today.

19. In the matter of Sandeep Kumar and Ors. v. State of U.P. and Ors., W.P. (C) No. 533 of 1991, with W.P. (C) No. 534 of 1991, Ram Naresh and Ors., v. Union of India and Ors., W.P. (C) No. 689 of 1991, Rajeev Kumar Tripathi and Ors. v. Union of India and Ors., alongwith Om Prakash Singh Ors. v. Union of India, Hon'ble Supreme Court while dealing with the matter of U.P, Bridge Corporation on 17-9-1991 indicated as under :

'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. 1800 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 petitioners are degree holders. There is no reason to make distinction between petitioner-diploma 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 among the petitioners should therefore be paid Rs. 1400/- p.m.'

20. Regarding regularization, Hon'ble Supreme Court indicated that :

'So far as regularization 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 over

looking 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 regularizing the employees like the petitioners who directly employed by the Corporation and as and when that is not possible for some reason, on temporary basis deputationists may be accepted so as to ensure that no deputationists function 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 the Government may consider the request favourably and with a sense of immediacy.'

21. 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 as under :

'We have been told that the nature of work is essentially slum clearance 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 benefits. 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 District P.W.D. Literate Daiiv Wage Employees Association and Ors. v. State of Karnataka and Ors., 1990(2) SCC 396.'

'From the facts placed before it. it appears that the scheme under which the petitioner, 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 petitioners 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 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 petitioners 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.'

22. As we have pointed out earlier, Hon'ble Single Judge, did not order for regularisation. The question as to whether their services can be regularised or not, will be decided finally by the Court in the writ petition, itself, which is still pending. There was no necessity for this Court to delve into that question but as both the questions are intermixed with each other. We have cited certain cases only to point out that the contention which has been raised in his special appeal, is devoid of merits. But, in the present case, we are definitely of the view that the State Government, whose duty is to follow the dictate of the Constitution, has done injustice, to those daily rated or work charged employees who are working since last ten years, by denying them at least the minimum scale of pay, which regular employees of that category are being paid. It was expected from the State Government have acted as model employer for an example to other instrumentalities of the State, but it has failed to carry out the command of the Constitution, as the scale of pay of Class IV employees have been revised. There is no reason as to why the petitioners who have put in long services be not paid the same revised pay scale. At least they are entitled for the payment of minimum of the revised scale which their counter-parts have been getting, who have been regularly selected, along with other allowances.

23. In view of the aforesaid reasons. We are of the view that Special Appeals are devoid of merits and deserves to be dismissed,

24. Special Appeals are dismissed. Special Appeals dismissed.

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