

Mohd.Sayeed and Another Vs State of U.P. and Others

Court: Allahabad High Court

Date of Decision: May 7, 2013

Acts Referred: Constitution of India, 1950 " Article 14, 16, 23, 38, 39

Hon'ble Judges: Sabhajeet Yadav, J

Final Decision: Allowed

Judgement

Sabhajeet Yadav, J.

It is stated that the petitioner no.1 was appointed as part time sweeper on 30.7.2004 and petitioner no.2 on

5.8.2004 on contract basis for a consolidated and fixed pay of Rs.2000/ per month in the District Judgeship, Jaunpur and it is stated that though

the appointments of the petitioners were made as part time sweeper but they are working as full time sweeper and are engaged for whole day

work in the Judgeship. By this petition, they have sought a writ of mandamus directing the respondents to convert their post into full time and also

pay salary in regular pay scale admissible to the Class IV employees in the Judgeship. In this connection a reference can be made to a letter of

District Judge, Jaunpur dated 15.2.2006 to the Registrar General, High Court, Allahabad, wherein it has been stated that although the petitioners

are appointed as part time sweeper but they are working full time. It has also been stated in the said letter that having regard to the increase of

work a demand for sanction of two more permanent posts of full time sweeper has already been made by the District Judge Jaunpur vide letters

dated 4.3.2005 and 3.6.2005. In another letter dated 26.7.2007 addressed to Registrar Budget, High Court, Allahabad the District Judge,

Jaunpur has again stated that though the petitioners are engaged as part time sweeper on contract basis but they are working like regular sweeper

for last three years and are discharging their duties sincerely. It was further requested by the said letter that in prevailing facts and circumstances of

the case having regard to the increase and bulkiness of work these two posts of part time sweeper should be sanctioned on regular basis as

permanent posts.

2. The aforesaid letters of District Judge, Jaunpur have been brought on record as Annexure I and II of the supplementary affidavit filed by the

petitioners in instant writ petition. The same are quoted as under:

3. In the supplementary counter affidavit filed on behalf of Judgeship the factum of sending of aforesaid letters dated 15.2.2006 and 26.7.2007 by

the District Judge, Jaunpur to the Registrar General and Registrar Budget, High Court, Allahabad and contents of said letters have not been

disputed/denied by Sri Firtu Ram, Senior Administrative Officer, District Judgeship, Jaunpur who has filed supplementary counter affidavit on

25.4.2013 in reply to the said supplementary affidavit. However, it has been stated that no permanent post of sweeper has been created or

sanctioned by the High Court and only part time sweepers are allowed to work by the Hon"ble High Court, on which the petitioners are working.

In para 6 of the supplementary counter affidavit it is further stated that the petitioners are merely performing their part time duty in the Judgeship

and they are getting payment in respect of their part time job Rs.2000/ per month as consolidated payment as per the Government Order dated

19.10.2000, under which the petitioners have been engaged by two orders dated 30.7.2004 and 5.8.2004 respectively on contractual basis. The

petitioners were appointed neither on any regular post nor they appeared in any process of regular selection, as such for these reasons they are not

entitled to get the same salary which is admissible to the regular Class IV employees of the Judgeship.

4. From a careful reading of letters of District Judge, Jaunpur dated 15.2.2006 and 26.7.2007 addressed to the Registrar General and Registrar

Budget, High Court, Allahabad extracted herein before, it is clear that by the said letters the District Judge has clearly stated that although the

petitioners are appointed as part time sweeper but they are working as regular and full time sweeper very sincerely and efficiently for last three

years. The factum of sending of the aforesaid letters by the District Judge, Jaunpur on 15.2.2006 and 26.7.2007 to the Registrar General and

Registrar Budget, High Court and contents thereof have not been disputed and denied by the respondent in the supplementary counter affidavit,

therefore, in such situation it is very difficult for this Court to accept the averments of supplementary counter affidavit that the petitioners are not

working as full time sweeper in the Judgeship contrary to the contents of aforesaid letters of District Judge. Accordingly, the statement of District

Judge, Jaunpur has to be accepted and averments contrary made in the supplementary counter affidavit filed by Senior Administrative Officer,

Jaunpur has to be rejected.

5. Thus, in view of clear statement of fact stated in the aforesaid letters of the District Judge, Jaunpur there can be no scope for doubt to hold that

although the petitioners were appointed as part time sweeper in the Judgeship but having regard to the increase of work they have been directed to

work full time during working days and are working as full time sweeper like regular sweeper on permanent post from very inception of their such

appointment. In case they are working as full time sweeper even if their engagement was made as part time sweeper on contractual basis at

Rs.2000/ per month fixed salary, in my view it is exploitation of the petitioners by the respondent in view of the provisions of Article 23 of the

Constitution of India. I am of the opinion that the State has no license to exploit the labour and workman like petitioners by engaging them to work

as full time sweeper and designating them as part time worker/sweeper.

6. In this connection, it would be useful to extract the provisions of Article 23 of the Constitution of India, which deals with the prohibition of traffic

in human beings and forced labour in any form, as under:

23. Prohibition of traffic in human beings and forced labour. (1) Traffic in human beings and begar and other similar forms of forced labour are

prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall

not make any discrimination on grounds only of religion, race, caste or class or any of them.

7. In People's Union for Democratic Rights and others. Vs. Union of India and others A.I.R. 1982 SC 1473, while interpreting the provisions of

Article 23 of the Constitution of India the Apex Court held that it is not merely "begar" which is constitutionally prohibited by Article 23 but also all

other similar forms of "forced labour". This article strikes at "forced labour" in whatever form it may manifest itself because it is violative of human

dignity and is contrary to basic human values. It was further observed that where a person provides labour or service to another for remuneration

which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour

under Article 23. What Article 23 prohibits is "forced labour" that is labour or service which a person is forced to provide which may arise in

several ways including not only physical or legal force but also force arising from the economic compulsion like distress, hunger, poverty, want and

destitution which leaves no choice of alternative to a person in want and compels him to provide labour or service even though the remuneration

received for it is less than minimum wage.

8. The pertinent observations made by Apex Court in paras 14 and 15 of the aforesaid decision are quoted as under:

14..... Every form of forced labour, "begar" or otherwise, is within the inhibition of Article 23 and it makes no difference whether the person

who is forced to give his labour or service to another is remunerated or not. Even if remuneration is paid, labour supplied by a person would be hit

by this Article if it is forced labour, that is, labour supplied not willingly but as a result of force or compulsion.....

15. Now the next question that arises for consideration is whether there is any breach of Article 23 when a person provides labour or service to

the State or to any other person and is paid less than the minimum wage for it. It is obvious that ordinarily no one would willingly supply labour or

service to another for less than the minimum wage, when he knows that under the law he is entitled to get minimum wage for the labour or service

provided by him. It may therefore be legitimately presumed that when a person provides labour or service to another against receipt of

remuneration which is less than the minimum wage, he is acting under the force of some compulsion which drives him to work though he is paid less

than what he is entitled under law to receive. What Article 23 prohibits is "forced labour" that is labour or service which a person is forced to

provide and "force" which would make such labour or service "forced labour" may arise in several ways. It may be physical force which may

compel a person to provide labour or service to another or it may be force exerted through a legal provision such as a provision for imprisonment

or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution.

Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded

as "force" and if labour or service is compelled as a result of such "force", it would be "forced labour". Where a person is suffering from hunger or

starvation, when he has no resources at all to fight disease or to feed his wife and children or even to hide their nakedness, where utter grinding

poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the

rigour of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered to him is less than the

minimum wage. He would be in no position to bargain with the employer; he would have to accept what is offered to him. And in doing so he

would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or

service provided by him would be clearly "forced labour." There is no reason why the word "forced" should be read in a narrow and restricted

manner so as to be confined only to physical or legal "force" particularly when the national charter, its fundamental document has promised to build

a new socialist republic where there will be socioeconomic justice for all and every one shall have the right to work, to education and to adequate

means of livelihood. The constitution makers have given us one of the most remarkable documents in history for ushering in a new socioeconomic

order and the Constitution which they have forged for us has a social purpose and an economic mission and therefore every word or phrase in the

Constitution must be interpreted in a manner which would advance the socioeconomic objective of the Constitution. It is not unoften that in a

capitalist society economic circumstances exert much greater pressure on an individual in driving him to a particular course of action than physical

compulsion or force of legislative provision. The word "force" must therefore be construed to include not only physical or legal force but also force

arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide

labour or service even though the remuneration received for it is less than the minimum wage.....

9. From aforesaid legal position stated by Apex Court it is clear that where a person provides labour or service to another for remuneration which

is less than minimum wage, the labour or service provided by him clearly falls within the scope and ambit of words ""forced labour"" under Article 23

of the Constitution of India which is prohibited under said Article. In common and legal parlance, the minimum wage for a post or job means a

wage or salary prescribed by the Government for said post or job, along with other admissible allowances including dearness allowance.

10. Since I have already held that the petitioners are discharging the duties of full time sweeper as regular sweeper from inception of their

appointment and admittedly are getting salary less than the salary admissible to the post of regular sweeper which is Class IV post in the Judgeship,

therefore, in my opinion, the denial of salary to the petitioners admissible to the Class IV employees of Judgeship as regular sweeper or payment of

Rs.2000/ per month salary to the petitioners which is admittedly less than salary of regular sweeper in the Judgeship falls within the ambit of Article

23 of the Constitution of India which is prohibited by said Article. In such situation, the condition of their appointment on consolidated pay of

Rs.2000/ per month has to be held violative of Article 23 of the Constitution of India and can also be held to be defeating the aforesaid provisions

of the Constitution and as such opposed to the Public policy, therefore, such condition of the appointment of the petitioners is treated to be void

under Section 23 of the Contract Act and is liable to be ignored and struck down by this Court.

11. While dealing with the similar condition in contract of service based on unconscionable bargaining, the Apex Court in Central Inland Water

Transport Corporation Ltd. Vs. Brojo Nath A.I.R. 1986 S.C. 1571 in paras 90 and 94 of the judgment held that the courts will not enforce and

will, when called upon to do so, strike down an unfair and unreasonable clause in a contract, entered into between parties who are not equal in

bargaining power. The pertinent observations made by Apex Court in paras 90 and 94 of the aforesaid judgment are quoted as under:

90..... The courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and

unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all

bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some

illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic

strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It

will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the

terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give

his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however

unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where both

parties are businessmen and the contract is a commercial transaction....

94..... The types of contracts to which the principle formulated by us above applies are not contracts which are tainted with illegality but are

contracts which contain terms which are so unfair and unreasonable that they shock the conscience of the court. They are opposed to public policy

and require to be adjudged void.

12. Thus, from the legal position stated by the Apex Court it is clear that where inequality of bargaining power is the result of the great disparity in

the economic strength of the contracting parties or where the inequality is the result of circumstances, whether of the creation of the parties or not.

Where weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger

party or go without them or where a man has no choice, rather no meaningful choice but to give his assent to a contract or to sign on the dotted line

in a prescribed standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that

contract or form or rules may be. Such contract or condition of contract will be struck down by the courts when called upon to do so as unfair and

unreasonable contract or condition of contract. Such type of contracts are not contracts which are tainted with illegality but are contracts which

contain terms which are so unfair and unreasonable that they shock the conscience of the court. They are opposed to public policy and require to

be adjudged void.

13. It is also to be noted that the denial of equal pay for equal work to class III and class IV employees of Judgeship, who have been appointed

on contract basis on a fixed consolidated salary, in my opinion, is also violative of provisions of Articles 38 and 39 of the Constitution, which

mandate the State to promote the welfare of people by securing a social order in which justice, social, economic and political, shall inform all the

institutions of the national life and to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and other

opportunities amongst the individuals and to provide equal pay for equal work for both men and women.

14. For ready reference the provisions of Article 38 and 39 of the Constitution are extracted in extenso as under:

38. State to secure a social order for the promotion of welfare of the people. {(1) The State shall strive 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, shall inform all the institutions of the

national life.

{(2) The State shall, in particular, strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and

opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.}

39. Certain principles of policy to be followed by the State. The State shall, in particular, direct its policy towards securing

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by

economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and

youth are protected against exploitation and against moral and material abandonment.}

15. Besides this, it is to be further noted that denial of dearness allowances and other allowances to class III and class IV employees appointed on

contract basis on a fixed consolidated pay in various Judgeships is also discriminatory and violative of Articles 14 and 16 of the Constitution of

India as class III and class IV employees appointed on contract basis on a fixed consolidated salary are also doing similar and identical work to

that of regular class III and class IV employees of Judgeship. Therefore, in my opinion, all class III and class IV employees appointed on contract

basis on a fixed salary in various Judgeships are entitled to the same minimum pay scale alongwith dearness allowances and other admissible

allowances paid to the regular class III and class IV employees of Judgeship.

16. In view of foregoing discussions, I am of considered opinion that the petitioners are entitled to get salary in minimum pay scale plus dearness

allowances and other allowances admissible to the post of regular sweeper in Judgeship from very inception of their appointments on the post of

part time sweeper in the Judgeship, Jaunpur and payment of salary to them at a rate of Rs. 2000/ per month as fixed salary without dearness

allowances and any other allowances and denial of minimum pay scale alongwith dearness allowances and other allowances to them admissible to

the regular class IV employees on the post of sweeper is clearly violative of Articles 14, 16, 23, 38 and 39 of the Constitution of India, as such

wholly erroneous and not justified under law.

17. In similar facts and circumstances of the case, this Court vide judgment and order dated 11.9.2002 passed in Writ Petition No.30469 of 2001

Kamlesh Yadav Vs. Joint Secretary Government of U.P., Lucknow and others has directed the respondents to pay salary to the part time

sweeper in the same pay scale which is applicable to the regular sweeper.

18. In view of the foregoing discussions and observations, the respondents are directed to pay minimum pay scale plus dearness and other

allowances to the petitioners admissible to the regular Class IV employees on the post of sweeper in the Judgeship irrespective of the fact that they

have been appointed as part time sweeper on contract basis on consolidated pay of Rs.2000/ per month from very inception of their appointment

and go on paying the same salary in future as and when it becomes due to them. The arrears of salary shall be paid to them within three months by

adjusting the amount already paid to them.

19. A writ of mandamus of general nature is also issued directing all the District Judges of the State Judiciary of Uttar Pradesh to pay minimum pay

scale plus dearness and other allowances admissible to regular class III and class IV posts in the Judgeships to all class III and class IV employees

of Judgeship appointed on contract basis on a fixed consolidated salary regularly month to month in future as and when it becomes due to them.

The Registrar General of this court is directed to ensure compliance of this directions forthwith by communicating this order to all District Judges of

State of Uttar Pradesh.

20. It is also directed that the petitioners' services shall not be dispensed with except in accordance with law merely for the reason that they have

been appointed on contract basis on fixed pay and for fixed period. In case any regular selection is made, they shall also be permitted to

participate in the process of selection if the post held by them is sanctioned on regular basis and while making selection they should be given age

relaxation inasmuch as weightage for their past service on the said post.

21. With the aforesaid observations and directions, writ petition succeeds and is allowed.