

(1998) 08 AHC CK 0061**Allahabad High Court****Case No:** Civil Miscellaneous Writ Petition No. 9072 of 1989

Chaturth Shreni Karmchari
Sangh Sichai Vibhag U.P.

APPELLANT**Vs**

State of U.P.

RESPONDENT**Date of Decision:** Aug. 13, 1998**Hon'ble Judges:** M.C.Agarwal, J**Final Decision:** Dismissed**Judgement**

M.C. Agarwal, J.

By this petition under Article 226 of the Constitution of India, the petitioner, a Union of Class IV employees of the Irrigation Department of the Government of U.P. and several of the members have sought a writ of mandamus directing the respondents to regularise the service of the petitioners and to pay equal wages and other benefits to the petitioners as are admissible to the permanent Class IV employees of the Irrigation Department. A further writ of mandamus is sought to declare the petitioners as permanent employees of the Department for having worked for more than 2 to 7 years on their respective posts.

2. Counter and rejoinder affidavits have been exchanged.

3. I have heard Sri Swaraj Prakash, learned Counsel for the petitioner and Sri C.P. Gupta, learned Standing Counsel for the respondents.

4. The case pf the petitioners is that its members who have been mentioned in the title of the writ petition numbering 20, have been working on the posts of Chaukidar, Dhawak (Runner), CookcumBearer, Beldar, Seenchpal, Driver, Supervisor, Helper, Typist etc. in the Irrigation Divisions I, II, III, IV and V from various dates mentioned in paragraph 3 of the writ petition. Udaibir Singh, Prem Chand and Ramjit Yadav mentioned at serial Nos. 1, 2 and 4 were stated to be working from 1061982, 57 1982 and 1531982, respectively, till the filing of the writ petition. Pancham Das at serial No. 8, Kallu at serial No. 12 and Ayodhya Prasad at

serial No. 18 were stated to be working continuously from 181980, 181981 and 171979. The rest are also stated to have been working from various dates mentioned against their names. They were all muster roll employees on daily wage basis and had not been granted leave even on National Holidays or festivals. It was claimed that each of them has worked for more than 240 days in a calendar year. It was claimed that the said Irrigation Divisions are permanent Irrigation Division of the Irrigation Department, under the State of U.P. and many other persons have been appointed on permanent basis in the Department for doing similar work. The performance of the petitioners was claimed to have been satisfactory and they were given assurance for regularisation and in some cases some of the petitioners were recommended for regularising their services. The petitioners state the rates of wages being paid to the various categories of employees, referred to above, on daytoday basis which ranges from Rs. 13.50 p. per day for a chaukidar to Rs. 32.50 for Driver and Supervisor. The regular employees of the Department are paid salaries on monthly basis and their daily salary comes to about Rs. 45/ per day. The petitioners assert a right of equal pay for equal work. It was claimed that a representation has been made on 2791988 on behalf of the Union claiming that persons who have been working for more than three years should be made permanent. It was claimed that the kind of work the petitioners are doing is of a permanent nature and hence the petitioners should have been regularised and confirmed in their posts. It is claimed that the petitioners are being subjected to discrimination and unfair labour practice.

5. In the counteraffidavit filed on behalf of the respondents and sworn by Sri Kailash Nath, an Executive Engineer, it has been denied that the petitioners are in continuous employment of the various offices. It is averred on behalf of the respondents that the petitioners were engaged as per requirement for different spells of times as casual labourers in muster roll. A statement showing the period of working of the petitioners is annexed to the counteraffidavit as Annexure CA1 which shows that most of the petitioners were not in current employments of the Government when this writ petition was filed. According to the chart contained in Annexure CA1, the above named Udaibir Singh worked during August, 1982 to March 1983 for different spells of time. In 198384 he worked for various spells of time between April 1983 to August 1984. He worked in December, 1985 and did not work at all during the years 198687 and 198788. Ramjeet Yadav is shown to have worked only in December 1985, Lallan Prasad and Prem Chandra are not shown to have worked at all. Chhotey Lal, Babu Lal and Sada Shiv are also mentioned not to have worked at all and so is the case of Sangam Lal Misra. According this chart, none of the petitioners has worked continuously as alleged. In the rejoinderaffidavit a vague allegation has been made that the counteraffidavit does not disclose the correct state of affairs of the working of the petitioners. No material has been placed on record to establish the allegation that the petitioners are in continuous employment, as alleged by them, even at the time of the filing of the writ petition. In

any case this being a disputed question of fact could not have been investigated and determined in writ jurisdiction under Article 226 of the Constitution of India.

6. Learned Counsel for the petitioners placed reliance on a judgment of a Division Bench of this Court in State of U.P. v. PuttiLal, 1998 (1) UPLBEC313, by which a large number of matters relating to the claim of regularisation of daily wages and muster roll employees of the Forest Department of the State of U.P. were decided. The Division Bench noticed that the position of law, as regards the regularisation of Daily Wagers/Muster Roll employees, is settled, according to which there cannot be regularisation of their services unless there are posts/vacancies and that in this connection it will be sufficient to refer to Ashwani Kumar & Ors. v. State of Bihar & Ors., 1977 (2) SCC 1, only where the Supreme Court lays down that service of the Daily Wagers cannot be regularised unless the posts/vacancies are available for their absorption. (See paragraph 8). The Division Bench observed that the real question is whether the Government can run its Department primarily by Daily Wagers/Muster Roll employees at Class III and Class IV level without giving them job security and without paying them the wages/salary equivalent to that which is paid to the regular employees belonging to those Classes. The Division Bench took note of the long periods during which the petitioners in those cases had been in employment and the various cases decided by this Court and directions given. It was observed as under:

"In pursuance of the directions issued by this Court pending these cases the Government of U.P has submitted more than one Scheme for regularisation of the petitioners, but those Schemes hardly contain any hope for their regularisation. It has been stated therein that the petitioners can be considered for regularisation against available vacancies after amending service rules. Available vacancies being few no substantial help can be expected from them. That apart, the Government while framing those Schemes has not applied its mind to the questions dealt with herein above. These are aspects which are to be considered by the Government before framing Scheme for absorption of the petitioners. In the present case the appropriate pleadings are also not there so as to declare the employment of the petitioners as daily wager for considerable long period as "unfair labour practice". We, are, therefore, not expressing and final opinion on this Question also. The questions dealt with hereinabove are to be considered and decided by the Government before framing the Scheme for regularisation/absorption of the petitioners and other similarly placed employees."

Ultimately the following order was passed:

"For the reasons given above, these writ petitions and the Appeals are partly allowed. The judgments impugned in the Appeals are set aside. The Government of U.P is directed to appoint a Committee consisting of Secretaries of Finance and Forest Departments and the Legal Remembrancer or their nominees within a month of production of certified copy of this judgment before the Secretary Forest

Department, Uttar Pradesh. The Committee to be appointed will consider the question of framing Scheme for regularisation/absorption of the petitioners and other similarly placed employees working in the Forest Department and the Schemes undertaken by the said Department. The Committee will pass speaking order and will submit its report within a period of three months of the date of its constitution by the Government. It will be open to the Association Union of the petitioners to make representation containing all their grievances in this regard before the Committee and if such a representation is made the same shall also be decided by speaking order by the said Committee within the same time specified above. The Government will thereafter pass appropriate order taking into consideration the report of the Committee and material available on record, within one month of the receipt of the report of the Committee. The whole exercise by the Committee as well as by the Government should be completed within six months from the date of production of certified copy of this judgment before the Government. Till then the parties shall maintain status quo."

7. Thus, the Court did not find any material for coming to a conclusion that the State Government was adopting unfair labour practice and no effective relief was granted to the petitioners and the State Government was directed to consider the question of framing a Scheme for the regularisation/absorption of the petitioners and other similarly placed employees working in the various Departments.

8. The learned Standing Counsel pointed out that the Government has preferred a Special Leave Petition No. 8456 of 1998 from the said judgment before the Hon'ble Supreme Court which has directed a status quo as to the payments to be maintained. Meaning thereby that the exercise for consideration of the question of framing Scheme will go on.

9. In another recent judgment in Writ Petition No. 13197 of 1996 decided on 24th June, 1998, a learned Single Judge considered the claim for regularisation of daily rated employees in Public Works and Minor Irrigation Department of the Government of U.P in which the following directions have been issued:

"The State Government shall lay 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 fulfillment 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 8196 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."

This judgment is the subjectmatter of Special Appeal No. 463 of 1998 in which the Division Bench stayed the directions No. 3 and 4, referred to above. Thus, according to the two decisions, cited above, the State Government has to frame a Scheme and Rules on the subject prescribing which category of daily wagers can be regularised.

10. In *Delhi Development Horticulture Employees Union v. Delhi Administration*, 1992 (1) JT 394, the Hon"ble Supreme Court took note of the arbitrariness, favouritism and nepotism which is practised in employing persons on daily wage basis. It observed as under:

"Apart from the fact that the petitioners cannot be directed to be regularised for the reasons given above, we may take note of the pernicious consequences to which the direction for regularisation of workman on the only ground that they have put in work for 240 or more days, has been leading. Although there is Employment Exchange Act which requires recruitment on the basis of registration in the Employment Exchange, it has become a common practice to ignore the Employment Exchange and the persons registered in the Employment Exchange and to employ and get employed directly those who are either not registered with the Employment Exchange or who though registered are lower in the Song waiting list in the employment Register, the Courts can take judicial notice of the fact that such employment is sought and given directly for various illegal considerations including money. The employment is given first for temporary periods with technical breaks to circumbent the relevant rules and is contained for 240 or more days with a view to give the benefit of regularisation knowing the judicial trend that those who have completed 240 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 Exchanges for years. Not all those who gain such backdoor entry in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secured prospects. That is why most of the cases which come to the Courts are of employment in Government Departments, Public Undertakings or Agencies. Ultimately it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect of indiscriminate regularisation has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and essential for fear that if those who are employed on such works are required to be continued for 240 or more days have to be absorbed as regular employees although the works are time bound and there is no need of

the workmen beyond the completion of the works undertaken. The public interests are thus jeopardized on both counts."

11. Following this judgment, a Division Bench of this Court in *ZakirHussain v. EngineerinChief, Irrigation Department*, 1993 ALJ 811, held that a person who is appointed on daily wage basis and ad hoc basis does not have any right to the post arid his service can be terminated at any lime. He cannot claim regularisation of his services merely because he has completed 240 days of Service.

12. As regards the plea of equal pay for equal work, the matter is concluded by a judgment of Hon"ble the Supreme Court in *State of Haryana v. Jasmer Singh*, AIR 1997 SC 1788, in which it was held that the requirement and mode of selection, qualification possessed by regular employees and their liability to be transferred etc. are not required to be fulfilled by daily wagers and hence they cannot be treated on par with regular employees and are not entitled to pay equal to that of regular employees. A daily wager is not a public servant at all and is not subject to the discipline required of a public servant. Therefore, he cannot claim wages equal to that of a regular employees.

13. In view of the above discussion, I am of the opinion that the petitioners cannot be granted reliefs claimed in this writ petition. The matter is pending before Hon"ble the Supreme Court, as well as, before the Government that, as stated above, has been directed to frame a Scheme/rules for the purpose. As and when such rules/Scheme is framed, the petitioners, if still in employment on daily wage basis, may lay their claims before the appropriate authorities.

14. In the result, the writ petition is dismissed.

15. The parties will bear their own costs. Petition dismissed.