Chandan Kr. Ghosh and Others Vs State of Tripura and Others

Court: Gauhati High Court (Agartala Bench)

Date of Decision: June 26, 2001

Acts Referred: Constitution of India, 1950 â€" Article 14, 16, 39

Citation: (2001) 3 GLT 440

Hon'ble Judges: N.S. Singh, J

Bench: Single Bench

Advocate: P.B. Dhar, for the Appellant; U.B. Saha and A. Bhattacharjee, for the Respondent

Judgement

1. These two cases involved common question of facts and law and, as such, these have been taken up together for hearing jointly and

accordingly, these two cases are hereby disposed of finally on their own merit with the following common judgment and order:

2. Two writ petitioners in Civil Rule No. 291/92 and the writ petitioners 10 in number in Civil Rule No. 3 of 1993 made the same and similar

prayer for a direction to the respondents/authority concerned for affording similar time scales of pay amongst the Class-IV employees of the

Government and permanent labourers working under the respondent department. In other words, to forbear from granting two different scales of

pay to Class IV employees and the permanent labourers by contending, inter alia, that these petitioners were initially engaged and employed as

Daily Rated Workers (for short DRW) since a pretty long time i.e. since the year ranging from 1974, 1975, 1976 and 1977 respectively and they

have been given their place of posting at different places under the control of the Director of Animal Husbandry, Government of Tripura and since

then they have been discharging their duties sincerely and diligently and in the year 1987 by virtue of a related Government order bearing No.

F.2(459)-AHD/ESTT/83 dated 1st August, 1987 as is Annexure-1 to the writ petitions these petitioners 12 in number have been engaged as

permanent labourer @ Rs.11.50 per day plus usual allowances as admissible from time to time on no work no pay basis with effect from 1.7.1987

and their services shall be regulated under Clause 7, 8(a)(b) and 9(a)(b) of Chapter III of the Tripura Government Animal Husbandry Permanent

Labourers (Recruitment and Conditions of Service) Rules, 1985 and Amendment Rules, 1987 herein after referred to as ""Service Rules"" of 1985.

It is also the case of the petitioners that as per related revised pay Rules, 1988, a Class IV regular employees like a Peon etc. i.e. the posts with

various designations common to all departments in Grade-I, Grade-II and Grade-Ill the initial time scale of pay of Rs.370-650, 330-640, 340-530

have been revised as Rs. 850-2150; 800-1520; 775-1130 respectively.

3. Mr. P.B. Dhar, learned counsel for the petitioners in these two cases contended that these petitioners have been engaged in similar types of

works in which Class IV employees on regular basis have been discharging in other words, these petitioners have been discharging same and

similar duties like that of the Class IV employee and they are better qualified, more skillful in working yet they are discriminated in wages than

those of other regular Class IV employees under the same department. It is also contended by Mr. P.B. Dhar, learned counsel for the petitioners

that the State respondent/ Government had been taking advantage of the dominant position and compelling the band of labourers by classifying

them as Permanent Labourers under the said Rules of 1985 to work on such low and starving wages in utter violation of the principles enshrined in

Articles 14 and 16 read with Article 39(d) of the Constitution of India.

4. At the hearing Mr. P.B. Dhar, learned counsel for the petitioners produced a related Government office order/letter dated 30th May, 1987 of

the Government of Tripura, Animal Husbandry Department on the subject ""Farm Rules - Implementation Progress"", issued by the Joint Secretary

to the Government of Tripura, and submitted that the Government had decided that the eligible DRW/CWs working in the Farms and Institution

under the Animal Husbandry Department should be engaged as permanent labourers on the basis of combined seniority list under the Rules of

1985 and, thereafter, the authorised strength of the permanent labourers may be increased and fixed to 968 in place of 83 and 700 SREP workers

with 3 years continued engagement be also engaged as permanent labourer on the basis of seniority list to be drawn up and finalised. But all such

SREP workers for whom seniority list will be drawn up should be junior to the DRW/CW for whom seniority list stand finalised and that,

appointment to Group "D" (Class-IV) post both created and vacant, may be filled up according to the Recruitment Rules. The Permanent

Labourers engaged under the Rules may also be appointed as Group ""D"" (Class-IV) on the inter se seniority basis provided they are found eligible

according to the Recruitment Rules.

5. I have perused it. To meet the ends of justice I took judicial notice of this office letter/order dated 30th May, 1987 and accordingly, it is hereby

formed as part of the record and marked as Annexure-"X" for identification.

6. Mr. P.B. Dhar, learned counsel for the petitioners contended that the State respondents are bound to give the same and similar scale of pay to

the, petitioners on the principle of equal pay for equal work. Supporting his submission Mr. Dhar has relied upon a decision of the Apex Court

rendered in Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others, and contended that denial of

minimum pay in pay scales of regularly employed workmen amounts to exploitation of labour and classification of casual labourers for purpose of

payment of different rates of wages is violative of Articles 14 and 16 of the Constitution and Article 7 of International Covenant (International

Covenent on Economic, Social and Cultural Rights (1966). The learned counsel for the petitioners also cited another decision of the Apex Court

rendered in Food Corporation of India Vs. Shyamal K. Chatterjee and Others, and submitted that contracts - causal workers doing same jobs

which are actually work of Class-IV staff, are entitled to wages on par with Class-IV employees of the Government Undertaking (Food

Corporation of India) on the basis of the principles of equal pay for equal work.

7. Mr. Dhar, learned counsel further relied upon another decision of the Apex Court rendered in Delhi Municipal Karamchari Ekta Union (Regd.)

Vs. P.L. Singh and Others, and contended that there is no justification of the authority concerned extracting the same amount of work from the

workmen concerned on payment of daily wages at rates lower than the minimum salary which is being paid to other workmen who have been

recruited regularly even though the workmen involved in this case have been working for a number of years.

These are sum and substance of the argument advanced by Mr. P.B. Dhar, learned counsel for the petitioners.

8. The cases of the present petitioners are resisted by the respondents State by filing counter affidavit. At the hearing Mr. U.B. Saha, learned

senior counsel argued that the service condition of these writ petitioners are governed by a related Service Rules, framed under Article 309 of the

Constitution of India called the Tripura Government Animal Husbandry Permanent Labourers (Recruitment and Condition of Service) Rules, 1985,

what has been referred as Rules of 1988 and, therefore, they have no right to claim for equal pay for equal work and they are not entitled for the

time scale of pay attached to the post of Class-IV employee or Group "D" employees whatsoever the case may be as the said Rules, 1985

provides the terms and conditions of the service of the writ petitioners like qualifying service, method of declaration of permanent labourers,

financial absorption, fixation of wages, on monthly basis, terminal benefits like a lump sum pension amount, service gratuity etc. etc. As these writ

petitioners are governed by this Service Rules of 1985, they have no legitimate right to claim the time scale of pay attached to the post of Class-IV

employees or Group "D" employees and, as such, the petitioners have no enforcible legal right, Mr. Shah, argued. It Is also submitted by Mr.

Saha, learned senior counsel that there is no provision under the Service Rules, 1985 for appointment or absorption of these petitioners to regular

post of Group "D" or Class-IV post in the Animal Husbandry Department, and, as such, the appointment shall be done/made only in terms of the

related service rules not by way of absorption or regularisation and it can never be possible to fill up any vacant post of Group "D1 or Class-IV

post from the list of permanent labourers or dally rated workers on seniority basis. It is also contended that the nature of works and the duties and

responsibilities of a permanent labourers like these petitioners Is quite different from that of Group "D" or Class-IV employees as the same are not

similar and of different types. For Group "D"/Class-LV employees, the scale of pay is higher than the scale of the permanent labourers and the

same cannot be equated as they have different nature of duties and responsibilities. Mr. U.B. Saha, contended.

9. Supporting the case of the State respondent, Mr. UB Saha, learned senior counsel has drawn my attention to the decision of the Apex Court

rendered in State of U.P. and Ors. v. Ministerial Karmachari Sangh, respondents, reported in AIR 1998 SC 303 and also another decision

between Union of India and another Vs. S.K. Sareen, and submitted that even the employees holding the same and similar post performing similar

works in different department under the same Government for whom different time scale of pay can be fixed as they are governed by a different

Recruitment Rules wherein qualification arid promotion is different from one department to another department and apart from that burden of proof

lies upon the persons/employees who claimed to parity in pay scale. Coming to the case in hand Mr. Saha submitted that these two category of

services like permanent employee/permanent labourer and that of the Group "D; or Class-IV are governed by different recruitment rules and, as

such, their time scale of pay cannot be equated and the authority/Government has ample right to fix the different scales of pay for these two

different categories of service and that these petitioners could not establish a case for equality in work with those of the Group "D"/Grade-IV

employees. The learned senior counsel also relied upon other two decisions of the Apex Court reported in AIR 1989 SC 19 (State of U.P. and

Ors. Appellants v. J.P. Chaurasia and Ors. respondents) and Gujrat High Court judgment reported in 1997 (2) SLR 285 Bharatkuraar Shiva bhai

Jadav v. Deputy District Development Officer Kheda and Ors..) and submitted that the Court should not normally interfere with the opinion of the

Pay Commission, an expert body, and these petitioners cannot claim any exemption from the provisions of Rule 1985 and that of the Service Rules

pertaining to the recruitment to the post of Group "D" or Class-IV employees,

10. Now, this Court is to see and examine as to whether the writ petitioners have enforcible legal rights in the instant case or not?

11. It is not disputed that the petitioner No. 1 Shri Chandan Kr. Ghosh was initially engaged as Daily rated worker since 16th July, 1974 and like-

wise the petitioner No. 2 Shri Beni Madhan Roy in Civil Rule No. 291 of 1992 was initially engaged as Daily rated worker since 1st July, 1976

and like-wise those 10 petitioners in Civil Rule No. 3 of 1993 have been initially engaged as Daily rated workers in the month of August. 1974,

January, 1976, April 1975, October 1975, March 1975. June 1977, July 1975. 17th August, 1982, December 1977 and March, 1975

respectively and subsequently under the common order dated 1st August, 1987 as in Annexure-1, they have been engaged as permanent labourer

(c) Rs. 11.50 per day plus other usual allowances as admissible from time to time in terms of the Rules of 1985. In other words, the petitioners

have been rendering their services ranging from 19 years to 27 years and by virtue of the said Rule of 1985 these petitioners services could not be

absorbed or regularised in the Group "D"/Class-IV posts under the Department of Animal Husbandry Government of Tripura. According to me,

the service conditions of these labourers/employees is governed and control by a strict and water tight service rules of 1985. Even in case of daily

rated workers and Apex Court in Air India Statutory Corporation, Appellant v. United Labour Union and Ors., respondents reported in 1977(2)

ST 1965 ; and in U.P Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., and Food Corporation of India Vs.

M/s. Kamdhenu Cattle Feed Industries, the authority concerned have been directed to absorb those aggrieved employees/workers in regular

service thus formulating a scheme on rational basis for absorption of them or regularisation of their services. It is also my considered view that the

State respondents are under a public duty of treating these writ petitioners/workers/labourers equally with other similar situated employees who

had been discharging the same and similar duties and functions and afford equal pay for equal work to them and their rights of equality in the matter

of public employment and the right to decent livelihood should not be denied. I made this observation keeping in view of the Government"s own

decision which finds its place in the office letter/order dated 30th May, 1987 marked as "X" for identification issued by the Joint Secretary to the

Government of Tripura. The relevant orders/points for decision which is available in the said office letter dated 30th May, 1987 is quoted below:

Points for decision.

(a) The eligible DRW/CW working in the Farms and in Institutions under Animal Husbandry Department should first be engaged as permanent

labourer on the basis of combined seniority list under the Tripura Government Animal Husbandry Permanent Labourer (Recruitment and

Conditions of Services) Rules, 1985.

(b) The authorised strength of permanent labourers appearing in chapter III Clause 3(b) may be increased and fixed to 968 in place of 83.

(c) 700 S.R.E.P Workers with 3 years continued engagement be also engaged as Permanent Labourer on the basis of seniority list to be drawn up

and finalised. But all such S.R.E.P workers for whom seniority list will be drawn up should be Junior to the DRW/CW for whom seniority list stand

finalised.

(d) Appointment to Group "D" (Class-IV) post both created and vacant, may be filled up according to Recruitment Rules. The Permanent

Labourers engaged under the Rules may also be appointed as Group "D" (Class-IV) on the inter se seniority basis provided they are found eligible

according to Recruitment Rules.

12. A bare perusal of this office order/letter dated 30th May, 1987 shows that the permanent labourers like the present petitioners engaged under

the Rules of 1985 may also be appointed as Group "D"/Class-IV on the inter se seniority basis provided they are found eligible according to the

Recruitment Rules. It prima facie shows that the Government had examined the matter and, accordingly, took these decisions as mentioned above,

but on the other hand, the Government in their counter affidavit took another plea that the case of the petitioners cannot be considered for

absorption or appointment or regularisation in the category of service. Group "D" or Class-IV employees as discussed above. Therefore, there are

tow inconsistents pleas and stands of the State respondents which in my opinion this should, be avoided and erased by the State respondents. It is

true that the service conditions of these poor labourers is governed by the said rules of 1985, but it appears to me that these rules of 1985 is

against the mandates of the service jurisprudence and violative of Articles 14 and 16 of the Constitution with the following reasons:

(1) By virtue of the said Rule 7, a permanent labour like the present petitioners shall be required to work for 8 hours in a day for which he is to get

initially a miserable amount of v/ages but subsequently by virtue of the order dated 1st August, 1987 as in Annexure-1, he or she is to get Rs.11.50

per day plus usual other allowances as admissible from time to time. From the available materials on record, it appears to me that the services

rendered by these permanent labourers i.e. the writ petitioners are more or similar in nature with the duties of the other Grade-IV

employees/Group "D" employees like Peon, Dresser, Bull keeper Bull attendant, Carrier, Jarnadar etc. etc. under the same department. But the

State respondents had been taking advantage of a dominant position, thus compelling these labourers to remain as it is in a stagnant status

classifying them as permanent labourer under the Rules of 1985. I am also of the view that for the last many years the case of these petitioners have

been ignored by the State respondents under the Government of a Socialist State. Even if the writ petitioners had voluntarily accepted the

employment under the terms of the said Rules of 1985 on or equal terms, the State should not deny the basis human rights for survival and comfort

in the life and the equal pay for equal work too keeping in view of the provision of Articles 39{d) and 14 and 16 of the Constitution of India. It is

also true that the Court generally and ordinarily do not interfere with the decision making process of the competent authority unless there is any

infirmity in it. A decision of a public authority will be liable to be quashed or otherwise dealt with in judicial review in proceedings where the Court

concludes that the decision in such that no authority properly directing itself on relevant law actually, reasonably could have reached it and it is

open to the Court to review the decision makers evaluation of facts. The Court would interfere where the facts taken as a whole could not logically

warrant the conclusion of the decision maker. If the weight of facts appointing to one course of action is overwhelming than a decision, the other

way cannot be upheld. A decision should be regarded as unreasonable If it is partial and unequal in its operation as between different classes. The

first part of this proposition are the words of Lord Greene, M.R. and second part of this principle of reasonableness is a decision of the Apex

Court rendered in Tata Cellular case reported in (1994) 6 SCC 651. This shows that the decision of the authority/public body should be fair and

just and it should be consistence and in accordance with the mandate of the law of the land and it should not be partial and unequal in its operation.

13. Keeping the casual employees or Daily rated workers for a long period without regularisation of their services is not a wise policy as held by

the Apex Court in Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others, Though the right to

work was not declared as a fundamental right, right to work of workman, lower class, middle class and the poor people is means to development

and source to earn livelihood and to make their right to life and dignity of person real and meaningful as held by the Supreme Court in Air India

Statutory Corporation v. United Labour Union and Ors., reported in 1997 2 ST 165. In the said case the Apex Court held thus:

That all essential facilities and opportunities to the poor people are fundamental means to development, to live with minimum comforts, food,

shelter, clothing and health. Due to economic constraints, though right to work was not declared as a fundamental right, right to work of workman,

lower class, middle class and poor people is means to development and source to earn livelihood. Though, right to employment cannot, as a right,

be claimed but after the appointment to a post or an office, be it under the State, its agency instrumentality, jurisdic person or private entrepreneur

it is required to be dealt with as per public element and to act in public Interest assuring equality, which is a genus of Article 14 and all other

concomitant right emanating therefrom are species to make their right to life and dignity of person real and meaningful. In a socialist democracy

governed by the rule of law, private property, right of the citizen for development and his right to employment and his entitlement for employment

to the labour, would all harmoniously be blended to serve larger social interest aind public purpose.

14. Now, I hereby recalled wednesbury principles of reasonableness with reference to the Rules of 1985 as to whether this Rule is reasonable in

the eye of law or not and also recalled the principles of Lord Denning who brought common sense in interpretation of statute of law with reference

to these Rules, 1985.

15. These Rules of 1985 has been made by the State respondents by exercising their powers conferred upon them under Article 309 of the

Constitution by which a labour has been qualified as permanent labourer with little wages as seen in the relevant documents and discussed above

and, such permanent labourer would require to work 8 hours a day with little wages without regularising their services and making their services as

stagnent for ever despite negligible terminal benefits in the form of pension or service gratuity subject to the minimum of pension of Rs. 100 per

month and for the purpose of gratuity a permanent labourer retiring on super- annuation or invalidation while on duty before completing 10 years of

qualifying services shall be entitled to service gratuity @ 1/2 months average wages for each completed 6 months period of total qualifying service

and these permanent labourers shall be paid their wages on monthly basis at the rate prescribed by the Government of Tripura from time to time

and there is no such reply from the State respondents how far they have implemented the Rule of 1985 and there is also no specified minimum

wages prescribed under these Rules of 1985. Whether this Rule of 1985 is ultra virus, unconstitutional and is violative of Articles 14 and 16 of the

Constitution and whether it amounts to force labour? This can be answered by a common man. Certainly a common man would say that a great

injustice have been done to these writ petitioners as the writ petitioners had been rendering their services ranging from 19 to 27 years with a little

wages without getting comfort of life and dignity to survive with stagnant service condition.

16. As I highlight that Lord Denning brought common sense to the interpretation of law and in that regard J.R. Lucas of Merton College, Oxford,

in an article in the Times on 17th September, 1980 said ""Although some think that the law should always be clear, in practice it is not, and we have

recourse to judges for authoritative interpretations. The only question is whether in interpreting what is unclear the law should be guided by

common sense and give weight to considerations of expediency, justice and morality. Lord Denning thinks it should. Others think not. Mr. Lucas

argued that a non-common sense decision is no more certain than one based on common sense. For the layman the law would be more

predictable if based on common sense. Since laws apply to laymen there is a good argument for the development of the law to be influenced by

common sense as well as legal reasoning. In a doubtful case there is a strong case for the use of common sense as it makes the law easier to

predict and worthier of respect. It is not that Lord Denning is excessively liberal. It is merely that he always seems to decide a case the way you or

I would... But an odd man out who has the gift of bending it (the laws) in the right direction, is something for which we can be truly grateful.

17. Keeping in view of these enshrined principles of law and words of these great Jurist and great man of law. I hereby opined that these Rules of

1985 is not in order as the same curtails the rights of citizen like the present writ petitioners.

18. So far the argument advanced by the learned senior counsel Mr. U.B. Saha, for the State respondents, on the issue of equal pay for equal

work and the service conditions of the present writ petitioners, I am of the view that the State respondents had completely Ignored the case of

these writ petitioners despite the existence of their own decision as discussed above. Instead of implementing of their own decision as seen in the

document marked "X" for Identification, the State respondents are confined their stand that these writ petitioners are strictly governed by the said

rules of 1985, thus, losing the sight of the established principles of law of the land and also the mandates of our Constitution. At this stage, I also

referred a decision of this Court rendered in the case of All Manipur Forest Department Employees" Association, petitioner v. Principal, Chief

Conservator and Ors., respondents, reported in 1998 (3) GLT 247 wherein this Court considered the long services of casual peons/casual mali,

casual animal attendants, casual chowkidar, casual LDC, casual animal watchers and casual forest guards etc. etc. and directed the authority

concerned to prepare a scheme on rational basis, taking into account of the length of services of those workers of the said department with the

vacancy position of the related post/posts, within a period of three months from the date of receipt of the judgment and this Court further made

clear that the benefit of the past services of those employees/workers shall be counted for the purpose of their retiral service benefits and other

pensionary benefits and for the purpose of absorption too and apart from that this Court further made clear, that the employees/workers of the

department concerned who are equally situated with the employees/workers involved In the said case shall be treated equally by the authority.

19. In the instant case also this Court requires the State respondents to examine and consider the case of"these petitioners in the light of the above

principles of law laid down by the Apex Court and this Court and also apply their good common sense in the matter pertaining to the regularisation

or absorption or appointment of these writ petitioners in the category of Group "D"/Class-IV taking into account of their length of services ranging

from 19 to 27 years under the department with the vacancy position of the related post/posts within a period of 3 months from the date of receipt

of the judgment and order. It is also made clear that at the time of consideration of the case of the petitioners, the case of other

labourers/employees who are similarly situated with the petitioners, shall also be considered and the State respondents should also act on its own

decision dated 30th May, 1987 as highlighted above and ventilate their grievances so that the labourers may feel that justice has been done to them

from the end of the State respondents/authority. It is further made clear that this Court is not interfering at this stage with the said Rules of 1985.

But the authority concerned should see that all essential service facilities/opportunities should be made available to these writ petitioners for their

minimum comforts; like food, shelter, clothing and health. This Court further requires the authority concerned to re-examine the said Rules of 1985

In the light of the above observations within their best wisdom.

20. For the reasons, observation and direction made above, these two writ petitions are disposed of, but no order as to costs.