
**AIR 2003 SC 33 : (2003) 1 ALLMR 378 : (2003) 1 AWC 273 Supp : (2003) 95 CLT 287 :
(2002) 95 FLR 954 : (2002) 8 JT 477 : (2002) 3 LLJ 1115 : (2003) 1 OLR 200 : (2003) 1
SCC 250 : (2003) SCC(L&S) 65 : (2002) 2 UJ 1535 : (2003) 1 UPLBEC 239**

Supreme Court of India

Case No: Civil Appeal No. 7342 of 1993 Civil Appeal No. 7343 of 1993 Civil Appeal No. 751 of
1995: 3. The respondent in this appeal

State of Orissa and
Others

APPELLANT

Vs

Balaram Sahu and
Others, etc. etc.

RESPONDENT

Date of Decision: Oct. 29, 2002

Acts Referred:

Industrial Disputes Act, 1947 " Section 2

Citation: AIR 2003 SC 33 : (2003) 1 ALLMR 378 : (2003) 1 AWC 273 Supp : (2003) 95 CLT
287 : (2002) 95 FLR 954 : (2002) 8 JT 477 : (2002) 3 LLJ 1115 : (2003) 1 OLR 200 : (2003) 1
SCC 250 : (2003) SCC(L&S) 65 : (2002) 2 UJ 1535 : (2003) 1 UPLBEC 239

Hon'ble Judges: H. K. Sema, J; Doraiswamy Rajuu Raju, J

Bench: Division Bench

Advocate: G.L. Sanghi, Jana Kalyan Das, Bharat Sangal, Sangeeta Panicker, Rana Ranjit
Kumar Singh, G. Biswas, S. Misra, J.R. Das, Ejaz Maqbool, Ujjawal Kr. Jha, Kirti Renu Mishra,
Y. Prabhakar Rao and J.P. Mishra, for the Appellant;

Final Decision: Dismissed

Judgement

D. Raju, J.

Civil Appeal No. 7342 of 1993:

1. The respondents in this appeal, who are N.M.R. workers, have filed Writ Petition in the
High Court of Orissa for payment of remuneration on

the same scale and basis paid to the regularly employed staff, claiming that they are
discharging the same duties and functions, invoking the

principle of "equal pay for equal work". They also sought for regularization of their services on the ground that they have been found working for

considerably long period of time to justify their regularization. The appellant-State contested the claim by contending that the duties and

responsibilities of the employees in the regular establishment were more onerous than that of the duties of N.M.R. workers, who are employed in

various projects on daily basis and that their engagement also depended on the availability of the work in the different projects and consequently,

they cannot claim any parity for equal pay. The Division Bench of the High Court by a judgment dated 10.3.1992 upheld the claim for

regularization by observing that the said aspect of the matter was not seriously challenged. As for the claim for equal pay, the High Court was of

the view that there was no reason to deny them the equal scales of pay and sustained their claim on par with those employed on regular basis with

effect from 2.1.1990, namely, the date of filing of the Writ Petition, with a further direction that those who have served continuously for a period of

five years by then should be regularized. Aggrieved, the above appeal has been filed.

Civil Appeal No. 7343 of 1993:

2. The respondents in this appeal, who are N.M.R. workers in the Rengali Power Project, also claim for similar relief as in the other appeal,

noticed supra. Overruling the objections of the appellants, while directing regularization of the workers, who have completed five years of

continuous service as on the date of the order, the High Court also applying the principles laid down in the earlier cases, upheld in this case as well

the right to get equal pay though in the matter of actual payment taking into account the negligible difference, a lump sum amount was directed to

be made available to take care of the claim of all the respondents. Aggrieved, this appeal has been filed.

Civil Appeal No. 751 of 1995:

3. The respondent in this appeal, who are N.M.R. workers employed in the various projects of the Irrigation Department of the State Government,

sought for relief of regularization of their services and equal pay as that of the regularly employed staff. As in the other cases, the claims were

sustained necessitating this appeal also by the State.

Civil Appeal Nos. of 2002

(Arising out of S.L.P.[C] Nos. 16204-16205 of 1996):

4. Delay condoned.

5. Special leave granted.

6. The respondents in these appeals are also the N.M.R. workers in the projects of the Irrigation Department and their claims for regularization as

well as payment of salary on equal par with their counterparts in the regular establishment. This claim, applying the ratio of the earlier orders, was

also sustained, resulting in the filing of these appeals by the State.

7. Heard Shri Jana Kalyan Das, Advocate, for the State of Orissa, and Shri G.L. Sanghi, Senior Advocate, for the appellant-Rengali Power

Project. Mr. Bharat Sangal, Mr. Ejaz Maqbool, Mrs. Kirti Renu Mishra and Mr. Y. Prabhakar Rao, Advocates, were heard for the respondents.

8. The learned counsel for the appellants placed strong reliance upon the decision reported in 262480 in support of their stand, whereas the

learned counsel for the respondents sought to place reliance upon the decisions reported in 296306 and 291854 in support of their stand to justify

the relief granted by the High Court. Reliance was also placed upon orders in SLP (C) No. 4727/93 dated 3.8.93; C.A. Nos. 2541-42/94 dated

18.4.94 and C.A. Nos. 2628-29/94 dated 21.4.94. The learned counsel for the respondents also sought to lay emphasis by claiming that what

they were asking for is not for any parity of treatment or equal pay in comparison with their counterparts in the different organizations or in different

departments but equal pay on par with the regularly employed staff in their own units or establishments and as such there could be no sufficient

cause or justification to deny an equal treatment to the respondents. In substance, learned counsel vehemently contended that the fact they were

engaged as N.M.R. workmen or as casuals on daily basis has no relevance or significance, as long as they performed the same and identical job

and work as that of the regularly employed staff and consequently there was no justification to discriminate or deny equal pay for them. It was also

claimed that the decision in Chief Conservator of Forests (supra) of a Bench consisting of three learned Judges of this Court has to be preferred to

the one rendered by a Bench of two learned Judges in Jasmer Singh's case (supra).

9. We have carefully considered the submissions of the learned counsel appearing on either side. The decision in Jasmer Singh (supra) though by a

Bench of two learned Judges consisting of A.M. Ahmadi, C.J., and Sujata V. Manohar, J., is directly on point, Sujata V. Manohar, J., speaking

for the bench and after a careful analysis of a catena of earlier decisions on the point, held as follows:-

10. The respondents, therefore, in the present appeals who are employed on daily wages cannot be treated as on a par with persons in regular

service of the State of Haryana holding similar posts. Daily rated workers are not required to possess the qualifications prescribed for regular

workers, nor do they have to fulfill the requirement relating to age at the time of recruitment. They are not selected in the manner in which regular

employees are selected. In other words, the requirements for selection are not as rigorous. There are also other provisions relating to regular

service such as the liability of a member of the service to be transferred, and his being subject to the disciplinary jurisdiction of the authorities as

prescribed, which the daily-rated workmen are not subjected to. They cannot, therefore, be equated with regular workmen for the purposes for

their wages. Nor can they claim the minimum of the regular pay scale of the regularly employed.

11. The High Court was, therefore, not right in directing that the respondents should be paid the same salary and allowances as are being paid to

regular employees holding similar posts with effect from the dates when the respondents were employed. If a minimum wage is prescribed for such

workers, the respondents would be entitled to it if it is more than what they are being paid.

10. The decision in Chief Conservator of Forests (*supra*), on which strong reliance has been placed for the respondents, was rendered by a Bench

comprising A.M. Ahmadi, C.J., and B.L. Hansaria and S.C. Sen, JJ. The question as to the scales of pay to be paid to the N.M.R. workers and

whether they should also be paid on equal par with the regularly employed staff, by the application of the principle of "equal pay for equal work"

does not appear to have been either in the center of controversy or consideration in this decision. As could be seen from the reported decision,

two questions, which fell for consideration of the Bench, were as to whether the Forest Department of the State Government is an "Industry"

within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 and for the purposes of the Maharashtra Recognition of Trade Unions and

Prevention of Unfair Labour Practices Act, 1971, and whether the State Government had indulged in unfair labour practice visualized by Item 6 of

Schedule-IV of the Maharashtra Act, as alleged by the workers before the Industrial Court, in keeping such workers continuously for years on

casual basis. The Industrial Court, which adjudicated the claims, granted relief to make the workmen permanent with all the benefits of a

permanent worker, which would include payment of wages, etc. at the rate meant for a permanent worker. While adverting to the question as to

whether the finding relating to the adoption of "Unfair labour practice" within the meaning of the State Act and the relief granted on that basis called

for any interference, this court came to the conclusion that permanency was writ large on the face of both types of work, and that permanent status

was denied to the workers concerned therein with the object of denying higher rates as would be payable for permanent workers, in violation of

the provisions of the State Act. Consequently, this Court declined to interfere. It is in this context that the claim of the State that if the casual

employees to the tune of 1.4 lakhs have to be regularized all of a sudden, it would involve a heavy financial commitments, keeping in view the

scales of pay, which have to be paid on their becoming permanent; that a passing reference was made with reference to the scales of pay to be

paid and that too only as and when they become permanent and not for the period when they were mere casuals. The conspicuous omission either

to refer to or deal with and consider any question based on "equal pay for equal work" to workers even as they stood employed as N.M.R.

workers or advert to or notice any one of the decisions elaborately considered in the other decision reported in Jasmer Singh (supra) as to the

principles to be applied before doing so would inevitably go to show that the questions of the nature exhaustively considered and decided in the

latter decision reported in Jasmer Singh (supra) were not at all the subject-matter for consideration or decision in the Chief Conservator of Forests

case (supra). This assumption is well fortified by the conclusions arrived at in Paragraph 29, which read as follows:-

We wish to say further that if Shri Bhandare"s submission is taken to its logical end, the justification for paying even minimum wages could wither

away, leaving any employer, not to speak of model employer like the State, to exploit unemployed persons. To be fair to Shri Bhandare it may,

however, be stated that the learned counsel did not extend his submissions this far, but we find it difficult to limit the submission of Shri Bhandare to

payment of, say fair wages, as distinguished from minimum wages. We have said so, because if a pay scale has been provided for permanent

workmen that has been done by the State Government keeping in view its legal obligations and must be one which had been recommended by the

State Pay Commission and accepted by the Government. We cannot deny this relief of permanency to the respondents-workmen only because in

that case they would be required to be paid wages meant for permanent workers. This right flows automatically from the relief of regularization to

which no objection can reasonably be taken, as already pointed out. We would, however, observe that the relief made available to the

respondents is not one, which would be available ipso facto to all the casual employees either of the Forest Department or any other Department

of the State. Claim of casual employees for permanency or for higher pay shall have to be decided on the merit of their own cases."" (Emphasis

supplied)

11. The decision reported in Piara Singh (supra) is no authority for the proposition that temporary, ad hoc or daily wages like N.M.Rs. should be

treated on par for purposes of pay-scales with the regularly employed permanent staff in the establishment and merely envisaged a serious and

sincere effort on the part of the State to regularize such casual labourers or work-charged employees as far as and as early as possible, subject to

their fulfilling the qualifications, if any, prescribed for the post and subject also to the availability of the work meaning thereby the post as well as

scope for providing employment. In paragraph 42 of the judgment, this Court, while setting aside the directions of the High Court, observed as

follows:

With respect to direction No. 8 (equal pay for equal work) we find the judgment singularly devoid of any discussion. The direction given is totally

vague. It does not make it clear who will get what pay and on what basis. The said direction is liable to be set aside on this account and is,

accordingly, set aside.

Though "equal pay for equal work" is considered to be a concomitant of Article 14 as much as "equal pay for unequal work" will also be a

negation of that right, equal pay would depend upon not only the nature or the volume of work, but also on the qualitative difference as regards

reliability and responsibilities do make a real and substantial difference.

12. In 292594 , this Court observed that substantial similarity in duties and responsibilities and interchangeability of posts may not also necessarily

attract the principle of "equal pay for equal work" when there are other distinguishing features like educational qualifications for appointment, mode

of recruitment, status, nature of duties, functions, measure of responsibility and over all duties and responsibilities even outside duty hours. The

principles laid down in Jasmer Singh (supra) were also applied and followed in the decision reported in 281059 .

13. On a careful consideration of the materials placed on record, we are of the view that the principles firmly laid down in the well considered

decision of Jasmer Singh (supra) squarely applied on all fours to the cases on hand and the respondents-workers would be entitled to only, apart

from the regularization ordered for which the appellants have had no serious objections, the payment of minimum wage prescribed for such

workers if it is more than what they were being paid and that the High Court was in serious error in directing that the respondents should be paid

the same salary and allowances as were being paid to the regular employees holding similar posts. The respondent-workers cannot be held to hold

any posts to claim even any comparison with the regular and permanent staff, for any or all purposes including a claim for equal pay and

allowances. The fact that no materials were placed before the High Court as to the nature of duties of either categories should have been viewed as

a disentitling factor so far as the workers are concerned and dissuaded the High Court from embarking upon an inquiry in the abstract and with no

factual basis and not to empower the court to assume and presume equality in the absence of proof to the contra or of any unequal nature of the

work performed by them. To claim a relief on the basis of equality, it is for the claimants to substantiate a clear-cut basis of equivalence and a

resultant hostile discrimination before becoming eligible to claim rights on par with the other group vis-a-vis an alleged discrimination. In the light of

the decision directly on this issue rendered in Jasmer Singh (supra), we are unable to persuade ourselves to countenance the claim for minimum

basis salary given in some unreported decisions brought to our notice which appear on the face of it to be certain directions given on the peculiar

facts and circumstances of the same without an objective consideration of any principle of law. An order made to merely dispose of the case

before court by issuing certain directions on the facts and for the purposes of the said case, cannot have the value or effect of any binding

precedent and particularly in the teeth of the decision in Jasmer Singh's case (supra).

14. For all the reasons stated above, the appeals are allowed and the orders of the High Court are set aside insofar as the pay equal to that of the

regular employed staff has been ordered to be given to the N.M.R./daily wager/casual workers, as indicated above, to which they will not be

eligible or entitled, till they are regularized and taken as the permanent members of the establishment. For the period prior to such permanent

status-regularization, they would be entitled to be paid only at the rate of the minimum wages prescribed or notified, if it is more than what they

were being paid as ordered by this Court in Jasmer Singh's case (supra). There will be no order as to costs.