

Jagrit Mazdoor Union (Regd.) and Others

Vs

Mahanagar Telephone Nigam Ltd. and Another
Reserve Trained Pool Telephone Operators, Bombay

Vs

Union of India and Others

All India Postal Employees' Union, Class III, Bombay

Vs

Mahanagar Telephone Nigam Ltd., Bombay

All India RMS and MMS Employees' Union

Vs

Union of India

Writ Petitions Nos. 1119, 1276, 1623 and 1624 of 1986

(Ranganath Misra, P. B. Sawant, K. Ramaswamy JJ)

29.11.1989

JUDGMENT

RANGANATH MISRA, J. –

1. The first of these applications under Article 32 of the Constitution is on behalf of the Delhi Reserve Trained Pool Telephone Operators (RTPTCs) asking for a direction to to Mahanagar Telephone Nigam Limited to treat all the telephone operators at par after their absorption as regular employees. There letters addressed to the learned Chief Justice of this Court have been treated as writ petitions and are the remaining ones under Article 32 of the Constitution. The first one (Writ Petition No. 1276 of 1986) is by the reserve Trained Pool Telephone Operators of Bombay. They claim the self-same relief as asked for in the earlier case; the second one (writ Petition No. 1623 of 1986) is on behalf of the Reserve Trained Pool Operators in the Department of Posts and they have claimed relief of being placed at par with regular, permanent or temporary employees in the matter of service conditions. The third one (Writ Petition No. 1624 of 1986) is on behalf of substitute employees and casual labourers in the Department of Posts. They have claimed that substitute employees and casual labourers be paid the same emoluments as regular employees.

2. In an earlier Writ Petition No. 11764 of 1985 filed by the All India Telegraph Engineering Employees Union Class III of Bombay Telephones where the prayer for treating the Reserve Trained Pool Telephones Operators at par with regular staff had also been asked for, this Court

made the following order on May 1, 1986 :

"The matter is adjourned to July 28, 1986 to enable the newly added respondent 3 to file counter-affidavit on or before July 15, 1986. Rejoinder, if any, will be filed within one week thereafter. Meanwhile, the respondent will pay to the operators drawn from the Reserve Trained Pool of the Telephone Operators from Bombay and Delhi Telephones @ Rs. 4.90 per hour provided that the total salary of the Telephone Operators from the Reserve. Trained Pool shall not exceed the salary of regularly appointed Telephone Operators."

On July 23, 1986, this Court in that writ petition further ordered :

"The order passed by the court on May 1, 1986 shall be final, The wages shall be paid in accordance with the terms contained in that order. We, however, make it clear that if the dearness allowance and other allowances are varied hereafter the workers concerned shall get DA and other allowances accordingly subject to the limit that the total emoluments would not exceed the salary of regularly appointed Telephone Operators. If the petitioners have any other grievance they are at liberty to agitate. This order will apply to all RTPA employees who are similarly situated."

3. It is stand of the respondents that the order of this Court has been implemented with effect from July 28, 1986. After that was done, the RTPTOs of Bombay and Delhi have in their respective writ petitions applied for further reliefs as already indicated. According to the petitioners in these two writ petitions, the RTPTOs are entitled to be brought on par with the regular staff for grant of other service benefits as they have been performing the same duties as performed by regular operators.

4. The two petitions have been opposed by the relevant Ministry by filing counter-affidavits where the stand is that RTPTOs are a special class by themselves with their own incidents of service and they cannot be treated at par with regular employees. The differences between the two services have been highlighted in the counter-affidavits. It is also the stand of the respondents that the order of this Court referred to above dated July 28, 1986 finally disposed of the major claim raised in the two petitions of the employees of the two Telephone Nigams and fresh action was not appropriate. It is also pointed out that on February 10, 1986, there was an agreement of settlement and the present petition was an attempt to reopen the matter. On January 31, 1989, when Writ Petition No. 1276 of 1986 came up for hearing before this Court, the following order was made

"Learned counsel for the petitioners concedes that the regularisation of 21,000 employees in the Department of Telecommunications has been effected but complains that no such proceeding has taken place in respect of the postal employees. He states that there is pressing need for operate of service conditions including pay, house rent allowance and other allowances between the temporary employees and the regular employees covered by this category. The learned Additional Solicitor General of India assures us that the scheme will be finalized latest by first week of April 1989 and that complete position will be placed the court at that stage..."

5. The scheme known as Casual Labourers (Grant of Temporary Status in Regularisation) Scheme has been formulated and put into operation from October 1, 1989 and copy thereof has been placed for our consideration. We find that the scheme is comprehensive and apart from provision for conferment of temporary status, it also specifies the benefits available on conferment of such status.

Counsel for the respondent-Nigams have told us that the scheme will be given full effect another benefits contemplated by the scheme shall be worked out. In these circumstances, no further specific direction is necessary in the two applications relating to the two Nigams of Bombay and Delhi except calling upon the respondents to implement every term of the scheme at an early date.

6. The two remaining writ petitions relate to the Department of Posts. Though as assurance had been held out by the learned Additional Solicitor General that a separate scheme for the postal employees would be prepared and placed before the court within a time frame, that has not been done. At the hearing, a note containing tentative proposals and a statement as to what has been done by way of improving the conditions of service have, however, been placed before the court. The statement relating to improvements brought about indicates that after April 1986, about 7000 RTPs have been absorbed. Since the RTP category is no more expanding, only about 2900 of them remain to be absorbed. We have been told by learned counsel for the department that equal number of justified and supernumerary posts are being created and the Ministry's proposal is in the hands of the Ministry of Finance for approval and is expected to be finalized soon. This has to be done within a time frame and we direct the posts of both the categories to be created by the end of January 1990, and the process of absorption to be completed by March 31, 1990. With such absorption made, the RTPs will become regular employees. All their claims would, thereafter, be regulated on the basis of entitlement in accordance with extant rules.

7. So far as the claim of earned leave is concerned, we find that Telecommunications Regularisation Rules provide for leave entitlement on pro rata basis--one day for every ten days for work. The same benefit would be admissible to the employees of the Department of Posts as we find no reason to adopt a different basis.

8. In *Daily Rated Casual Labour v. Union Of India* this Court directed : (SCC p. 130, para 8)

"The Union of India and other respondents are directed to pay wages to the workmen who are employed as casual labourers belonging to the several categories of employees in the Posts and Telegraphs Department at the rates equivalent to the minimum pay in the pay scales of the regularly employed workers in the corresponding cadres but without any increments with effect from February 5, 1986 on which date the first of the above two petitions, namely, Writ Petition No. 302 of 1986 was filed. The petitioners are entitled to corresponding dearness allowance and additional dearness allowance, if any, payable thereon. Whatever other benefits which are now being enjoyed by the casual labourers shall continue to be extended to them."

9. It has been stated that in compliance with that direction the department has already formulated a scheme for absorption of casual labourers and about a thousand justified posts are being created with concurrence of the Nodal Ministry. As per existing recruitment rules, extra-departmental agents are given preference in the matter of absorption as Group 'D' postmen. Directions have already been issued for their absorption against the vacancies. It has been pointed out again that casual labourers are being paid bonus while substitutes are not entitled under the existing scheme.

10. The other note placed before us at the hearing indicates :

1. Justified (by necessity) posts in Groups 'C' and 'D' will be created in the administrative and operative establishments as per the existing norms for creation of

posts in consultation with the Finance Ministry;

2. On creation of the posts, recruitment will be done following the existing recruitment rules giving preference to extradepartmental agents over casual labourers;

3. If on the basis of established norms, casual labourers are in excess, their services shall be dispensed with in accordance with law; and

4. If any casual labourers cannot be retrenched straightway, they shall be paid wages for three months at the existing rates.

11. This tentative scheme does not take into account the several specific claims advanced by the petitioners in the two writ petitions. These are House Rent Allowance, City Compensatory Allowance, Bonus and Earned Leave. There are also demands for weekly off day, postal holiday and maternity leave. Weekly off has now been given to RTPs, casual labourers and substitutes under order of this Court and the claim does not survive for adjudication. All these three categories in these two writ petitions are also being given three National Holidays. For the remaining postal holidays, the claim has been pressed but we are of the view that until absorption, they may not be granted. It was been agreed before us that the claim of bonus may be left to arbitration or for being dealt with by the Consultative Council.

12. As regards House Rent Allowance, City Compensatory Allowance and Maternity Leave, we see no justification for treating the employees of the Postal Department differently from those covered under the Regularisation Rules in the Telecommunications Department. Temporary status would be available to the casual labourers in the Postal Department on completion of one year of continuous service with at least 240 days of work (206 days in the case of officers observing five days' week) and on conferment of temporary status, House Rent Allowance and City Compensatory Allowance and City Compensatory Allowance shall be admissible. There would be no justification to withhold Maternity Leave as that is an obligation of the employer under the law and the State as an ideal employer fulfilling the Directive Principles of State Policy envisaged in Part IV of the Constitution Should provide the same. After rendering three years of continuous service with temporary status, the casual labourers shall be treated at par with temporary Grade 'D' employees of the Department of Posts and would thereby be entitled to such benefits as are admissible to Group 'D' employees on regular basis.

13. So far as the substitutes are concerned, it has been stated to us that orders have been issued for considering their claims against Group 'D' vacancies and a copy of the department's letter has been produced. We hope and trust that the direction shall be implemented in its true spirit. The claim on behalf of substitutes ordinarily is not entertainable but we have been told that there are substitutes who work for long periods continuously. We are inclined to agree with counsel for the petitioners that in such cases their claims should have been appropriately considered by the department.

14. The writ petitions are disposed of with the aforesaid directions without any order as to costs.

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