

Sandeep Kumar and others

Vs

State of U.P. and others

Writ Petns. (C) Nos. 533,534 with 689 of 1991

(CJI Ranganath Misra, P. B. Sawant, A. M. Ahmadi JJ)

17.09.1991

ORDER

1. Petitioners, five in number, are working as Junior Engineers in a project placed under the control of the Executive Officer, City Board, Ghaziabad. We have been told that the nature of work is essentially slum clearance and the project is financed partly by the State of Uttar Pradesh and partly by World Bank funds. Petitioners have alleged that they are employed on daily rate basis and on an average receive Rs. 1,000/per month. It is stated that no payment is made for the holidays and they are not entitled to any other benefit for the work done. Reliance has been placed on this Court's decision in the case of Ghaziabad Development Authority Engineers and some other decisions including the one in the case of Dharwad Distt. P.W.D. Literate Daily Wage Employees Association v. State of Karnataka (1990) 2 SCC 396: (AIR 1990 SC 883).

2. From the facts placed before us, it appears that the scheme under which the petitioners are working is of a very specific nature. There is no permanent need for the work and since it is a project for a particular purpose, it will not be possible to direct that the petitioners may be regularised in service. From the materials, however, it appears that similarly qualified engineers when employed for the work which the petitioners are called upon to do, on regular basis are paid a minimum grade pay of Rs. 1,400/-. We see no justification to discriminate between the petitioners and the regularly employed Junior Engineers who on appointment receive Rs. 1,400/-. Accordingly, we direct that the petitioners shall be paid a sum of Rs. 1,400/- per month instead of Rs. 1,000/- as at present and since the pay shall be for the month the question of holidays will not be taken into account.

3. We further clarify that petitioners are entitled to regularisation of their service by recruitment through the State Public Service Commission for vacancies other than employment under the project and as and when such vacancies arise and are duly notified the claim of the petitioners be considered for appointment subject to their satisfying the requisite qualifications prescribed therefor under the rules and the employer would not stand in the way of regularisation of their service. It is open to the State Public Service Commission to consider if any weightage would be available to them for their service but we make no direction. Continuity of service of the petitioners may be taken into account for overcoming the age bar as directed in similar cases. Mr. Rana has agreed that this will be given effect to from 1st October, 1991.

4. Writ Petition is disposed of. No cost.

WRIT PETITIONS NOS. 534 AND 766 OF 1991

5. Some of the petitioners in these applications under Art. 32 of the Constitution are degree-holders in Engineering and are designated as Assistant Engineers while the others are diploma holders in Engineering and are designated as Junior Engineers. They are employed on daily rated basis under the U. P. Bridge Corporation - respondent No.3 which is a public sector undertaking of the State of Uttar Pradesh. The main dispute canvassed in these writ petitions is two fold : - (1) regarding the appropriate salary for the work done; and (2) regularisation of service. From the papers placed before us and submissions advanced at the bar we find that the regular employees are being paid at the rate of Rs. 1,400/- for diploma holders and Rupees 1,800/- for degree-holders whereas the petitioners who are employed on casual basis are being paid at the rate of Rs.1,800/- (for degree-holders) and Rs.1,280/- (for diploma holders). The distinction maintained has been explained by saying that since they are not regular employees no payment is being made for the holidays when no work is taken. It is difficult to accept this contention. The petitioner-degree-holders are paid at the same rate as the regular degree-holders. There is no reason to make distinction between petitioner-diploma holders and the regular diploma holders. Besides even under the Minimum Wages Act a paid day of rest in every period of seven days is mandatory. The diploma degree-holders among the petitioners should therefore be paid Rs. 1,400/P.M.

6. So far as regularisation is concerned it is the stand of the petitioners that even when vacancies occur, those are being filled up by receiving employees from the regular establishments of the State of Uttar Pradesh on Deputation thereby overlooking the claims of employees under the Corporation. Counsel for the Corporation has agreed, and we must accept the position that his agreement is justified, that all such vacancies which would occur henceforth shall ordinarily be filled up by regularising the employees like the petitioners who are directly employed by the Corporation and as and when that is not possible for some reason, on temporary basis deputationists may be accepted so as to ensure that no deputationists functions for more than six months. Persons already on deputation are not intended to be covered by this order. As and when the Corporation suggests to Government for filling up of the vacancies, we suggest that Government may consider the request favourably and with a sense of immediacy.

7. The writ petitions are disposed of. No order for costs.

WRIT PETITION NO. 689/91

8. Petitioners in this application under Art. 32 of the Constitution are diploma holders in Engineering and two of them are employed as draftsmen and the others as junior engineers. They are employed under respondent No. 3 - U. P. Small Industries Corporation Ltd., a Government Company set up for the purpose of providing aid and assistance to small scale industries within the State of Uttar Pradesh.

9. Petitioners have challenged the terms of their employment which are said to be daily rated and there is no dispute that they are in work charge employment.

10. We have heard counsel for the parties. Keeping the purpose of the Corporation - respondent No. 3 and the nature of work available under it in view, it is difficult to say that the petitioners could be regularised. The only direction which can be given is as and when any vacancy of permanent nature occurs preference for regularisation may be offered to the work charge employees including the petitioners on the basis of their seniority and entitlement according to rules. It is open to the employer to consider the feasibility of giving weightage of past service and condonation of age bar as they are already in service.

11. The writ petition is disposed of. No order for costs.

Order accordingly.

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