Delhi Development Horticulture Employees' Union, Petitioner

Vs

Delhi Administration, Delhi and others

Writ Petitions Nos. 323 with 324-25 of 1989

(P. B. Sawant, B. P. Jeevan Reddy JJ)

04.02.1992

JUDGEMENT

SAWANT J.:-

1. The petitioner-workmen who were employed on daily wages have filed these petitions for their absorption as regular employees in the Development Department of the Delhi Administration and for injunction prohibiting the termination of their services and also for the difference in wages paid to them and those paid to the regular employees. The petitions are resisted on behalf of the respondents contending that there is no scope for the absorption of the petitioners as they were employed on daily wages with a clear understanding that the schemes under which they were employed had no provision for regularisation of any workman.

2. To understand the controversy between the parties, it is necessary to refer to the facts with regard to the employment of the petitioners as brought on record by the respondents.

3. During the 5th Five Year Plan, the Central Government had formulated various schemes to provide wage-employment to agricultural and landless labourers during lean periods. One such scheme was "Food for work". Under this scheme, employment was given to the poorer sections of the population in the rural areas partly for food and partly for cash payment. During the 6th Five Year Plan, the objective of the programme was enlarged to include alleviation of rural poverty by distribution of income in favour of the poor and the needy population in the rural areas by providing employment opportunities to them. With this view, a new programme called the National Rural Employment Programme was started in October 1980 replacing the "Food for Work" programme. During the period of the same Plan, another scheme called "Rural Landless Employment Guarantee Programme" was launched on August 15, 1983 with the same objective of generating additional employment in the rural areas particularly for the landless workers. Under these programmes, works in rural areas resulting in durable community assets, social forestry, village roads etc. were taken up. Pursuant to them, a scheme for plantation of trees was taken up at various sites in the rural areas of Delhi. The entire said work was done by providing daily wage-employment to rural workers including the present petitioners. The labour was employed at these sites depending upon their availability in rural areas and without reference to any Employment Exchange either in the Union Territory of Delhi or anywhere else. Since the Social Forestry Programme involved knowledge of plantation and agricultural practices, some unemployed agricultural graduates/ diploma-holders who were ready to work on daily wage employment and had approached the District Rural Development Agency ('DRDA' for short) through various officials and non-officials, were also given daily wage employment under the said programmes.

4. For providing periodical daily wage employment, the officials of the DRDA made assessments with reference to particular sites. The number of workers who could be provided employment in the succeeding month was finalised in the last week of the preceding month. Since the schemes themselves were meant only to provide daily wage employment, the workers were paid only for actual working days. The educated workers like the petitioners were employed to guide unskilled workers in actual plantation work and were paid higher daily wages compared to those paid to the unskilled workers. However, the wages conformed to the minimum wages as notified by the Delhi Administration for different categories. To identify the educated workers from the uneducated and unskilled workers and to facilitate payment of the wages, the educated workers were called Supervisors /Work Assistants etc. and others were known as labourers. At no stage any regular posts were created under the DRDA either for the Supervisors etc. or for the labourers, as it was not possible to do so since the schemes were financed by the Government of India, and the DRDA was only the implementing machinery for the employment programme under the said schemes.

5. In 1988-90 the Central Government announced a new scheme for intensive employment in backward districts where acute poverty and unemployment prevailed. In all 120 districts were identified for the purpose and the new scheme was named as "JawaharIal Nehru Rozgar Yojna". The Government of India then decided to merge Rural Employment Programme and Rural Landless Employment Guarantee Programme as well as the Jawaharlal Nehru Rozgar Yojna into one rural employment programme to be known as "Jawahar Rozgar Yojna". Under this Programme, the assistance received from the Central Government as well as the State Governments/Union Territories was required to be given to the village panchayats to increase the coverage of the programme and to ensure fuller participation of the people in its implementation.

6. In view of the transfer of the responsibility to implement the programme to village panchayats from the DRDA,the latter ceased to be the machinery for employing either the Supervisors or the unskilled labourers and for choosing the works to be implemented and for distributing the funds, since the funds were thereafter placed by the Central Government directly in the hands of the village panchayats. The DRDA thus ceased to be the implementing machinery w.e.f. July 31, 1989.

7. The Union Territory of Delhi has 191 panchayats. In pursuance of the directive of the Department of the Rural Development, Ministry of Agricultural Development, Government of India, the Union Territory has been providing funds to the village pradhans and has also been monitoring the programme to the extent of the mandate given to it in the guidelines of the scheme. However, as stated earlier, the choice of work and of the workforce which was hitherto made by the DRDA is now made by the panchayats taking into consideration the funds allotted to the panchayats and within the overall guidelines issued by the Central Government. The works taken up by the panchayats also include the Social Forestry works. Thus the DRDA was no longer directly concerned with the Social Forestry work or the employment under it or with the payment of wages to the workers which is exclusively left to village panchayats.

8. It is necessary in this connection to note two more facts. The DRDA, Delhi is an autonomous body registered as a Society under the Societies Registration Act. It is neither a department of the Delhi Administration nor of the Central Government. It only implements policies of the Central Government under the supervision of the Delhi Administration. It has no funds of its own. For the implementation of the programmes of employment, the funds were always placed at its disposal by the Central Government and it had to spend them as per the prescribed guidelines. As stated earlier, the employment programme under Jawahar Rozgar Yojna has since been transferred to the Panchayats. On behalf of the petitioners, it was contended that DRDA was a department either of

the Central Government or of the Delhi Administration and was not an autonomous body much less was it registered under the Societies Registration Act. In view of what is stated in paragraph 4 of the affidavit filed by the Director, Rural Development-cum-Project Director, DRDA in May 1990, we are of the view that the fact that DRDA is registered as a Society and is an autonomous body cannot be disputed. In one of the affidavits filed by Shri Tej Pal Singh on behalf of the petitioners, it was accepted that the DRDA was an autonomous body. However, the contention was that it was under Delhi Administration. The history of the registration of the DRDA as a Society speaks for itself In 1971, it was named as "Marginal Farmers and Agricultural Labourers Development Agency" registered as a Society under registration No. 4940 dated 8-2-1971. A per the by-laws of the Society, the Development Commissioner of Delhi Administration was nominated as Chairman of the Society. Ever since then the Society continued to function as such with the governing body of the Society taking major policy decisions and with the Project Officer acting as Chief Executive to run the affairs of the Society. In May 1976, the name of the Society was changed to "Small Farmers Development Agency". The changed name was duly communicated to the Registrar of Firms and Societies. The name underwent yet another change in 1981 and the society was given the present name - the "District Rural Development Agency". This change was also duly communicated to the Registrar of Firms and Societies. All these changes are borne out by the minutes of the meetings of the Governing body of the Society.

9.It was also sought to be contended on behalf of the petitioners that the DRDA continues to be the employing agency because the tenure of the Pradhans of the village panchayats in the Delhi region has expired and at present the administration of the Panchayats is carried on by the Block Development Officers. We are not impressed by this contention, for the simple reason that village panchayats continue as legal entities. The Block Development Officers are administering the affairs of the Panchayats till such time as fresh elections are not held. The vesting of administration of the panchayats in the Block Development Officers during the intervening period does not change the fact that it is the village panchayats (and at present the Block Development Officers on their behalf), which are allotted the funds for the Rural Employment Programme under the Jawahar Rozgar Yojna and it is they who choose the works to be carried out and the necessary work-force to be employed. Hence, they are the implementing agencies. The DRDA is not re-vested with the powers of implementing the employment programme.

10.The next important fact which requires to be borne in mind is that the Horticulture Department of the Delhi Administration and the workers employed by the Delhi Administration in the said department have nothing to do with the Jawahar Rozgar Yojna and its predecessor schemes and the workers employed on daily-wages basis by the DRDA under the said schemes. It has become necessary to stress this aspect because we notice from certain orders passed by this Court and produced before us that a good deal of confusion between the two sets of workers has been responsible for some of them. The Orders in question are :- (i) Order dated September 29, 1988 in Shri Niader v. Delhi Administration in Writ Petitions Nos. 960910/83, (ii) Order dated March 12, 1990 in Vijay Pal Sharma v. Delhi Administration, in Writ Petition No. 818/ 89, (iii) Order dated 3 1 st October, 1990 in Delhi Administration v. Vijay Pal Sharma in Review Petition No. 562/90 in Writ Petition No. 818/89 (iv) Orders dated 8-8-91 and 13-9-91 in Contempt Petition No. 262/90 in Writ Petition No. 818/89, and (v) Order dated March 6,1990 in Rattan Lal v. Lt. Governor in Writ Petitions Nos. 98, 99, 216, 938, 940188. It is the Delhi Administration and DRDA which are mainly responsible,for this confusion. They failed to put in appearance at the proper time and present the correct facts before the Court.

11.Writ Petitions Nos. 9609-10 of 1983 in which the first order of September 29, 1988 was passed

related to, casual labourers on daily wages working in the Soil Conservation Department, Agricultural Section, Delhi Administration. They were working in the said Department for nearly 20 years as casual labourers. On these facts, this Court had directed the Delhi Administration to prepare a scheme for absorbing the casual labourers who had worked for one or more years in the Soil Conservation Department, as regular employees within six months from the date of the order and to absorb all such casual labourers who were found fit to be regularised under the scheme to be so prepared. The Court had also directed that until they were so absorbed, the Delhi Administration should pay w.e.f. 1-10-1988 to each of the said casual labourers working in the Soil Conservation Department the salary or wages at the rate equivalent to the minimum salary paid to a regular employee in the comparable post in the said Department.

12.In Writ Petitions Nos. 98, 99, 216, 938, 940 of 1988 the workers belonged to the Development Department of the Delhi Administration and, therefore, their case was on par with the petitioner-workers in Niader v. Delhi Administration, in W. P: Nos. 9609-10 of 1983 decided on 29th September, 1988.

13.In Writ Petition No. 818 of 1989 (Vijay Pal Sharma v. Delhi Administration) decided on March 12, 1990 the petitioners were casual daily wage workers employed under the Jawahar Rozgar Yojna. They were not employed in the Horticulture Department of the Delhi Administration. It appears from the record that an application for interim relief, viz., I.A. No. 2 of 1990 was filed in the said petition for directing the respondents therein who, among others, were the Delhi Administration and the DRDA, to pay to the petitioners the same salary as paid to the regular employees in the Horticulture Department. Although the main petition was served on the DRDA, the interlocutory application was not served on them. The result was that at the nearing of the interim application, the DRDA was not present. It further appears that the Court at the time of the disposal of the interim application also disposed of the main petition and on the basis of the earlier decision referred to above in Writ Petitions Nos. 9609-10 of 1983 decided on 29th September, 1988 directed the Delhi Administration to absorb the petitioner-workers under the scheme which had been made effective by the earlier decision from Ist October, 1988 and gave identical directions as were given in the earlier case for paying to the workers the minimum salary paid to regular employees in the Horticulture Department. Unfortunately the Review Petition filed against the said decision, viz., Review Petition No. 562 of 1990 came to be dismissed on 31st October, 1990. In the Contempt Petition No. 262 of 1990 decided on 8th August, 1991 again there was no discussion on the subject and the Administration was given time to comply with the orders passed by this Court on 12th March, 1990. The Contempt Petition was adjourned by two weeks for enabling the Delhi Administration to comply with the directions given on 12th March, 1990. The Contempt Petition again came up for hearing on September 13, 1991 and the Court required the Delhi Administration to submit compliance report within two weeks with regard to the "treatment meted out to the petitioners similar to that meted out to 1200 employees who were covered under the scheme". The matter was directed to be placed on Board after two weeks.

14.It may be mentioned in this connection that the present writ petitions were filed on March 14, 1989 where as the order in Writ Petitions Nos. 98, 99, 216, 938, 940 of 1988 was made on March 6, 1990 and the order in Writ Petition No. 818 of 1989 was made on March 12, 1990. The subsequent order in Review Petition No. 562 of 1990 was passed on 31st October, 1990 whereas the orders in contempt petition arising out of Writ Petition No. 818 of 1989 were passed, as stated above, on 8th August, 1991 and 13th September, 1991.

15.We may also mention here that the decision dated March 10, 1988 in Writ Petition No. 1351 of

1987 (R. K. Soni v. Delhi Administration) on which the petitioners have placed reliance related to workers employed in the departments of the Delhi Administration and they were working in the said departments for more than 4 to 5 years. In that case this Court had directed the absorption of the workers on regular basis. They were first to be absorbed against Group 'D' posts and as and when promotion opportunities arose they were to be considered for promotion in Group 'C' posts. Similarly it appears that SLP No. 7660 of 1989 (Delhi Administration v. Yoginder Singh) is directed against the order of the Labour Court in LCA Nos. 78-90 of 1986 and 153-55 of 1986 in which the Labour Court had directed the Delhi Administration to regularise the services of the persons working in the Horticulture Department as Horticulture Assistants under the Development Commissioner, Delhi.

16. The aforesaid review of the orders passed by this Court in various petitions shows that the order passed by this Court in W. P. No. 818 of 1989 had proceeded on the assumption of wrong facts in the absence of the appearance by the DRDA. Unfortunately, as stated above, the Review Petition filed against the said order was also dismissed on 31st October, 1990. We are not aware as to how many workers were involved in the said petition but we will say no more on the subject. We are informed that under the pain of contempt proceedings the workers involved in that petition have since been employed by the DRDA. The petitioners in the present petition cannot rely upon their employment in such circumstances to plead discrimination against them. For regularisation, there must be regular and permanent posts or it must be established that although the work is of regular and permanent nature, the device of appointing and keeping the workers on ad hoc or temporary basis has been resorted to, to deny them the legitimate benefits of permanent employment.

17. The situation that emerges out of the facts which we have narrated above, however, is that the Delhi Administration had at no stage engaged any of the present petitioners for its work. It is the DRDA which as an implementing machinery of the Jawahar Rozgar Yojna had given to the present petitioners work on daily wage basis under the said Yojna. The Yojna has not and cannot have by its very nature any sanctioned strength of posts or workers. Even when the DRDA was implementing the said Yojna they were being funded by the Central Government directly for the purpose of giving employment under the said Yojna. They had to decide the rural works which they would undertake in the next month and for that purpose to estimate in the last week of the preceding month the number of workers required for the same. The works by their very nature had to be undertaken on daily wage basis and as soon as the works at particular sites were over, the workers were required to be shifted to other sites. The workers were engaged from the areas concerned and those like the petitioners who were willing to go to the sites where the work was available, were also given the employment under the scheme. Even that responsibility of the implementation of the Yojna was transferred by the Central Government from the DRDA to the panchayats directly who, as stated above, were the only agencies which could choose the works to be carried out as well as the workforce to be employed for the works. The finance was also directly given to the panchayats for the purpose. The only task that was entrusted to the DRDA was to monitor the working of the scheme by the panchayats. In the circumstances, by the very,nature of things neither the DRDA nor the panchayats could be asked either to ensure work to the petitioners every day or to regularise them. There was no scope for regularisation since there were no sanctioned posts or the sanctioned strength of workers.

18. It further appears from the annexures to the written submissions filed by the petitioners and the respondent-Union of India that the Central Government decided to discontinue even the Jawahar Rozgar Yojna in the Union Territory of Delhi w.e.f. 1-1-1992 and the Development Commissionercum-Chairman, DRDA has been asked by the Government under their letter dated 26-

11-1991 addressed by the Joint Secretary, Government of India, Ministry of Rural Development to take steps to wind up the employment programme under the said Yojna.

19. In view of the aforesaid facts reliance placed on behalf of the petitioners on the decisions of this Court where regularisation has been directed is misplaced and the contentions based on them are misconceived.

20. There is no doubt that broadly interpreted and as a necessary logical corollary, right to life would include the right to livelihood and, therefore, right to work. It is for this reason that this Court in Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180, while considering the consequences of eviction of the pavement dwellers had pointed out that in that case the eviction not merely resulted in deprivation of shelter but also deprivation of livelihood inasmuch as the pavement dwellers were employed in the vicinity of their dwellings. The Court had therefore, emphasised that the problem of eviction of the pavement dwellers had to be viewed also in that context. This was, however, in the context of Article 21 which seeks to protect persons against the deprivation of their life except according to procedure established by law. This country has so far not found it feasible to incorporate the right to livelihood as a fundamental right in the Constitution. This is because the country has so far not attained the capacity to guarantee it, and not because it considers it any the less fundamental to life. Advisedly, therefore, it has been placed in the Chapter on Directive Principles Article 41 of which enjoins upon , the State to make effective provision for securing the same "within the limits of its economic capacity and development". Thus even while giving the direction to the State to ensure the right to work, the Constitution makers thought it prudent not to do so without qualifying it.

21. Viewed in the context of the facts of the present case it is apparent that the schemes under which the petitioners were given employment have been evolved to provide income for those who are below the poverty line and particularly during the periods when they are without any source of livelihood and, therefore, without any income whatsoever. The schemes were further meant for the rural poor, for the object of the schemes was to start tackling the problem of poverty from that end. The object was not to provide the right to work as such even to the rural poor - much less to the unemployed in general. As has been pointed out by the Union of India in their additional affidavit, in 1987-88, 33 per cent. of the total rural population was below the poverty line. This meant about 35 million families. To eliminate poverty and to generate full employment 2500-3000 million mandays of work in a year was necessary. As against that, the Jawahar Rozgar Yojna could provide only 870 million mandays of employment on intermittent basis in neighbourhood projects. Within the available resources of Rs. 2600 crores, in all 3.10 million people Alone could be provided with permanent employment, if they were to be provided work for 273 days in a year on minimum wages. However, under the scheme meant for providing work for only 80-90 days work could be provided to 9.30 million people.

22.The above figures show that if the resources used for the Jawahar Rozgar Yojna were in their entirety to be used for providing full employment throughout the year, they would have given employment only to a small percentage of the population in need of income, the remaining vast majority being left with no income whatsoever. No fault could, therefore, be found with the limited object of the scheme given the limited resources at the disposal of the State. Those employed under the scheme, therefore, could not ask for more than what the scheme intended to give them. To get an employment under such scheme and to claim on the basis of the said employment, a right to regularisation is to frustrate the scheme itself. No Court can be a party to such exercise. It is wrong to approach the problems of those employed under such schemes with a view to providing them

with full employment and guaranteeing equal pay for equal work. These concepts, in the context of such schemes are both unwarranted and misplaced. They will do more harm than good by depriving the many of the little income that they may get to keep them from starvation. They would benefit a few at the cost of the many starving poor for whom the schemes are meant. That would also force the State to wind up the existing schemes and forbid them from introducing the new ones, for want of resources. This is not to say that the problems of the un-employed deserve no consideration or sympathy. This is only to emphasise that even among the unemployed a distinction exists between those who live below and above the poverty line, those in need of partial and those in need of full employment, the educated and uneducated, the rural and urban unemployed etc.

23. 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 workmen 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 Exchanges, 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 long 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 consideration including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules, and is continued 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 back-door entry in the employment are in need of the partitcular 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 continued for 240 or more days have to the 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 jeopardised on both counts.

24. In the circumstances, it is not possible to accede to the request of the petitioners that the respondents be directed to regularise them. The most that can be done for them is to direct the respondent-Delhi Administration to keep them on a panel and if they are registered with the Employment Exchange and are qualified to be appointed on the relevant posts, give them a preference in employment whenever there occurs a vacancy in the regular posts, which direction we give hereby.

25.With the above recommendation, we dismiss the petition with no order as to costs. Petition dismissed.

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