

Raj Narain Prasad and Others

Vs

State of U.P. and Others

Writ Petitions (C) No. 140 of 1989 with Nos. 157, 860, 597, 1071 of 1989, 1037 of 1990, 651 of 1991, 61 of 1995

(CJI A.M. Ahmadi, Sujata V. Manohar JJ)

18.01.1996

ORDER

1. The question is regarding the regularisation of work-charged employees and muster-roll labour employed on different projects by the State of U.P. at different points of time. The respondent-State has furnished a list of almost 13 thousand such employees employed zonewise as per Annexure 'A-1' to the additional affidavit on behalf of the State. These are divided into two groups, namely, 7744 work-charged employees and 5516 muster-roll employees. A separate list of employees claiming regularisation in various pending cases has been appended as Annexure 'A-3'. A list of employees who came to be regularised pursuant to orders made by this Court from time to time since after 16-3-1993 is appended as Annexure 'A-4'. Annexure 'A-5' gives the list of vacant posts available in the regular establishment at the relevant point of time. The State of U.P. also contends that on account of financial constraints, it was forced to show down in pace of work for as many as 7 important projects. Pursuant to our order dated 11-10-1993 and in the light of the observations made in the State of Haryana v. Piara Singh [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403] we are told that the State has prepared a Scheme, the details whereof are given in the additional affidavit, para 6. According to this Scheme, broadly stated, the State has undertaken to regularise work-charged employees employed prior to 19-9-1985 who possess qualification for regular appointment on an equivalent post in the service of the establishment, i.e., who qualify under the recruitment rules in force for that post. The age criteria, however, would be relaxed but other qualifications for eligibility would have to be satisfied. The State has to prepare a seniority list of work-charged personnel on the basis of those who are qualified under the relevant recruitment rules and thereafter regularisation has to take place strictly in accordance with seniority. The estimated vacancies in the years 1993-94 are indicated and the projection for the specific years insofar as vacancies are concerned is estimated and mentioned in the additional affidavit. As regards daily-wage/muster-roll personnel, it is stated that since their work is of a contingent nature, it is not possible to regularise them unless suitable posts are required and created under the rules. The regularisation of daily-paid employees and muster-roll employees of the Irrigation Department, contends the deponent, is beyond the planning of the State and its financial capacity. To put it differently, therefore, the State has prepared a regularisation scheme so far as work-charged employees are concerned but has expressed its inability to prepare any such scheme for daily-rated/muster-roll employees. We have carefully perused the proposed scheme in regard to work-charged employees and we felt that in clause 'D' which talks of regularisation as per vacancies arising in regular posts on the establishment, a modification is necessary, in that, there should be a review of the cadre strength from year to year and based on the past requirement and continuity of work-charged employees, the cadre strength should be increased by a certain percentage of the

work-charged, employees working over a period of time that may be fixed by the Government so that the pace of regularisation is accelerated and is not the same as obtaining in the past. For example, if 100 work-charged employees have been required throughout a period of time it could reasonably be estimated that even if shedding takes place, a certain percentage of those employees would certainly be retained and a part of them could be absorbed by increasing the cadre strength to that extent. An exercise of review in the cadre strength from year to year, thereafter, becomes necessary because while on the one side the financial difficulties of the State have to be kept in view, on the other side the welfare of the workmen who have served the State on different projects has to be balanced. Concern is also to be shown for those who have worked for a number of years and have become ineligible for any other employment anywhere, be that the private sector or the public sector. Therefore, a balance has to be struck between the two competing interests and that can be struck by a periodical revision of the cadre strength from year to year. We must also impress on the State Government that if work-charged employees have been on the establishment for long periods, the State should be liberal in the matter of revision of the cadre strength so that the benefit of regularisation is available to a reasonably good number of work-charged employees who have been associated with the State Departments for long periods. We would, therefore, direct that clause 'D' should be understood as taking into its fold a periodical year-to-year revision of the cadre strength and besides the estimated vacancies, the additional vacancies on account of the increase in the cadre strength should become available for regularisation. If the figures given in para 6-A are perused, it appears that 25 per cent were engaged on work-charged establishment between 1960-65, 50 per cent between 1965-70, 20 per cent between 1975-80 and 5 per cent between 1980-85. This would show that there are workmen on the work-charged establishment who had joined between 1960-65 and who, we believe, if continuing in service, would certainly be required by the departments concerned and could be considered for regularisation under the Scheme by an increase in the cadre strength. So also one can say that the workmen working between 1965-75, if still in employment, could be considered for regularisation by an increase in the workforce. Our emphasis is that while the State has to keep in view that financial constraints and the need for allocation of finances for development of projects, it should also show concern for those who are working in different departments of the State so that at the end when they are relieved from service on their attaining the age of superannuation, they may have something to fall back on. Keeping this in mind, we think that a liberal increase in the workforce for the first few years would satisfy the large number of work-charged employees who are working on different projects of each department for a number of years.

2. That takes us to the question regarding the regularisation of muster-roll employees. Because they can only stand next to work-charged employees, we would recommend that they could be absorbed as work-charged employees to the extent or at a certain percentage of posts falling vacant on the latter being regularised under the Scheme. That would satisfy a certain percentage of the category of daily-wage/muster-roll employees also. We would like the State to undertake a review of the cadre strength by March this year and thereafter in December every year so that budgetary support could be provided for in the next financial year for the added strength to the cadre. With these observations and recommendations, we approve the Scheme but we would once again impress upon the State that the spirit of our observations in Piara Singh case [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403] should be observed. The petitions shall stand disposed of accordingly.

3. Contempt petitions in WP (C) No. 860 of 1989 are also disposed of.

WP (C) No. 651 of 1991

4. We writ petition is dismissed.