

State of Haryana

Vs

Surinder Kumar and Others

Civil Appeals Nos. 1969-70 of 1997

(K. Ramaswamy, G. T. Nanavati JJ)

10.03.1997

ORDER

1. Order dated 2-8-1996 is recalled. Special leave petitions are restored.
2. Leave granted. These appeals by special leave arise from the judgment of the Division Bench of the Punjab and Haryana High Court, dated 23-11-1995 and 28-7-1995 in CWPs Nos. 15828 of 1995 and 1479 of 1995 respectively.
3. The admitted position is that the respondents came to be appointed as daily-wagers on contract basis to the post of clerk. They filed a writ petition in the High Court for their regularisation. The High Court in the impugned order has directed payment of wages on the principle of equal pay for equal work and also regularisation of their services. Thus these appeals, by special leave.
4. The controversy is no longer res judicata. This Court State of Haryana v. Piara Singh [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403] has laid down the guidelines for appointment by recruitment and if need be by regularisation of Class IV employees. As a consequence, any appointment made to the service shall be accordance with the statutory rules and also the guidelines laid down thereunder. Therefore, the appellant is directed to consider their cases in accordance with law and guidelines laid down therein for appointment of the respondents to the service as per law provided they are otherwise eligible. If they have become age-barred, age may be relaxed for the period they have worked. On appointment, from that date they will be entitled to equal pay on a par with the regular clerks.
5. Shri Manoj Swarup, learned counsel for the respondents, contends that the posts held by the respondents are interchangeable and in fact they have been interchanged to enable them to hold the posts. That contention cannot be given acceptance for the reason that since the respondents were appointed on contract basis on daily wages, they cannot have any right to a post as such until they are duly selected and appointed. Merely because they are able to manage to have the posts interchanged, they cannot become entitled to the same pay scale which the regular clerks are holding by claiming that they are discharging their duties as regular employees. The very object of selection is to test the eligibility and then to make selection in accordance with rules prescribed for recruitment. Obviously the respondents' recruitment was not made in accordance with the rules. This Court has also pointed out in State of Haryana v. Jasmer Singh [(1996) 11 SCC 77 : 1997 SCC (L&S) 210 : JT (1996) 10 SC 876] in that behalf. If any illegal actions have been taken by the officers after recruitment, it would be a grave matter of indiscipline by the officers and the higher authorities are directed to look into the matter and see that such actions are rectified, but that would not be a matter for this Court to give legitimacy to illegal acts done by the officers and to grant

relief on the basis of wrong or illegal actions of superior officers. The appropriate authority would look into and take suitable disciplinary action against the erring officers and submit the report of the action taken and the result thereof to the Registry of this Court.

6. The appeals are accordingly allowed and the orders of the High Court stand set aside, but the directions that would be followed are as indicated in the judgment. It is needless to mention that they would take expeditious action in following the directions. No costs.