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Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.211 of 1987 (C.M.Writ Petition No.3397
of 1985)

Bakridi Hussain and 5 others ... Applicants

Vs.

Union of India and 3 others Respondents.

Hon.D.S.Misra, AM
Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

This transferred application is a Civil Misc.

Writ Petition under Article 226 of the Constitution of India received by transfer from the High Court of Judicature at Allahabad under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The case of the applicants (hereinafter referred to as the petitioners) is that the petitioner nos. 1 and 2 were appointed as Welders, petitioner nos. 3 and 4 as Moulders and petitioner nos. 5 and 6 as Aligners i.e. all as casual Artisans in 1975 by the Assistant Engineer Northern Railway Roorkee- respondent no.4 and were paid their salary as Welders/Moulders/Aligners (hereinafter referred to as W/M/A). The jobs of the petitioners are of technical nature and require technical expertise. In 1980, the petitioners were appointed ~~on regular basis~~ in the Northern Railway as Gangmen in order to absorb them on regular basis and the Northern Railway continued to take the same work of W/M/A from the petitioners in view of their past experiences. The petitioners were informed by the railway authorities that they could not be absorbed on regular basis as Skilled Artisans and they could be absorbed only as Gangman at the initial stage. Before regularising the services of the petitioners, they were subjected to medical test

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and were given the regular appointment on finding them physically fit. The petitioners were thereafter sent for training as Welders in the Thermit Portion Plant (for short TPP) Lucknow by the respondents and after completion of the training, they were issued the competence certificate stating that they were fit to work as Welders. The petitioner nos. 1, 3 and 5 were given further training by the respondents in the month of Dec. 1983 and after the completion of the said training a person becomes eligible to the grade of Rs. 330-560. The grade of Gangman is Rs. 200-250 while the scale of W/M/A is Rs. 260-400. All the petitioners have been working as W/M/A in view of their expertise, experience, training and competency. The job of Gangman is unskilled and the petitioners never performed the duties as Gangmen.

3. It has been further alleged that in the Moradabad Division of the Northern Railway in which the petitioners are posted, there are several Gangmen who had joined their duties much after the petitioners and after getting their training and competency certificate, are being paid the salary in the scale of Rs. 260-400 from Feb. 1, 1985 as Welders but the same treatment has been denied to the petitioners which is in violation of Articles 14, 16 and 39 of the Constitution of India. The respondent no. 2 - General Manager Northern Railway had issued a circular according to which an Artisan after completing 1500 days on 31.10.1982 has been allowed the skilled grades and as all the petitioners had completed the said period of 1500 days on 31.10.1982, they are entitled to the salary in the skilled grade atleast from that date under the circular. Despite the representations made by the petitioners, the respondents have not paid the salary to the petitioners of the Artisan grade of Rs. 260-400. They, therefore, prayed that the

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respondents be directed to pay salary to the petitioners according to the sanctioned grade of W/M/A.

4. The respondents have contested the petition and in the reply filed on their behalf by the respondent no.4 it has been stated that the petitioner nos. 2 and 5 alone were appointed as casual labour w.e.f. 29.8.1985 by P.W.I/RAC in their capacity as Moulders, petitioner nos. 4 and 6 were appointed by the same officer as Khalasi w.e.f. 13.9.1976 and 29.8.1975 respectively, ^{and} the petitioner no. 3 was appointed as Looter by A.P.W.I (Spl.) w.e.f. 30.6.1973 and the petitioner no.1 was appointed as Gangman w.e.f. 29.8.1975 by P.W.I.(Spn.). The petitioners were not appointed in the mentioned trade and were appointed on special work of casual nature and none of them was appointed as Welder or Aligner. It was denied that the petitioners are employed on the job of technical nature. The petitioners are being paid their salary according to rules. The petitioners did not continuously work as W/M/A and they were engaged on such jobs only according to requirement. The petitioners are still working as casual labourers and after completing 120 days continuous service, were given benefits admissible to a temporary railway servant. The services of the petitioners are purely temporary and they have not been appointed on regular basis. The regular appointment of the petitioners can be made only against permanent vacancies after proper screening according to rules. After granting regular scale to the petitioners, they worked throughout as Gangmen but according to the requirement of jobs, their services were utilised for a short period as W/M/A. The petitioners were medically examined only for appointment in the category

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of Gangman and not as Skilled Artisans. The petitioners were never sent for training as Welders. Their training for 6 days in T.P.P. cannot be treated at par with the training for obtaining diploma/certificate in welding. The diploma or certificate course prescribed for welding is of one year and a person with diploma/certificate in welding alone is entitled for appointment as Welder. As none of the petitioners possesses a diploma or certificate in welding and has not passed any trade test for appointment or promotion in the skilled category, they cannot claim to be appointed as Welders. The petitioners are not entitled to the higher grade of Rs.260-400 or 330-560. The petitioners have throughout worked as Gangmen and their services on occasion, for a few days were utilised as W/M/A.

5. The respondents have further stated in their counter affidavit that the seniority of casual labour is maintained unit-wise and a unit as considered is that of an inspector (P.W.I.) and it is not maintained division-wise. No casual labour junior to the petitioners in their unit has been paid the salary in the grade of Rs.260-400 as Welder and the persons named by the petitioners in the writ petition are not working in their unit. The petitioners were put to work on short occasions as Artisans but they did not complete 1500 days as casual labour Artisan on 31.10.1982 and are not entitled to the benefit of the circular letter claimed by them. The petitioners thus neither possess the requisite qualifications for the job of W/M/A nor regularly worked on such post nor completed the required service of 1500 days as Artisans and as such, they are not entitled to any higher scale of pay and their petition deserves to be dismissed.

6. In the rejoinder filed on behalf of the petitioners, they reiterated the facts stated in their writ petition and further stated that all the petitioners actually discharged duties as W/M/A and are entitled to the salary payable to such Artisans. All the facilities available to the permanent staff have been given to the petitioners and it is incorrect to say that the petitioners are still working as casual labourers. The petitioners have regularly worked as W/M/A and they have not yet been paid their salaries as such. All the petitioners were trained as W/M/A in TPP Lucknow for 6 days and no diploma/certificate for Therman Unit is given by any institution in the country. The registers and muster rolls maintained by the respondents regarding employment of the petitioners will prove the allegations made in the writ petition and the respondents be required to produce the same before the Tribunal.

7. The petitioners have not claimed any arrears of pay in their petition. The petitioners have further alleged in para 1 of the petition that as casual labour, they were working as W/M/A and were paid equal salary as such. The services rendered by them as casual labour for a number of years thus ^{do not} appear to be material for consideration in this case. According to the allegations made in para 3 of the petition, all the petitioners were appointed on regular basis as Gangmen and petitioner nos. 2, 4 and 5 joined their duties as Gangman on 7.9.1980 while the remaining petitioners joined their duties on 20.12.1980. Thus the admitted case of the petitioners is that they were given the regular appointment as Gangmen and not as Artisans.

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8. The petitioners, however, claimed the salary of the grade of Rs.260-400 payable to Artisans on 3 grounds, namely, (i) the work of W/M/A is regularly being taken; (ii) they had completed 1500 days service as Skilled Artisans on 31.10.1982 and according to circular issued by the respondent no. 2, they are entitled to be regularised as Artisans; and (iii) some juniors to them have been regularised in the Artisans grade of Rs.260-400. The respondents have disputed the claim of the petitioners on all these grounds and as such, it was for the petitioners to establish their case according to law before us. The respondents have repeatedly stated in their counter affidavit that only on few occasions, the petitioners were put to work as W/M/A and the regular work of Skilled Artisans ~~was~~ never taken from them. In such a case, it was necessary for the petitioners to establish by producing the copies of the record that they were working as Skilled Artisans regularly and not casually. In the rejoinder, they alleged that the registers/muster rolls maintained by the respondents may be asked to be produced but the petitioners did not press this point at the time of arguments and as such, we have no material before us to establish that the petitioners are regularly working as Skilled Artisans in their capacity as W/M/A.

9. Annexure 9 is the copy of letter dated 26.11.1982 issued by the D.R.M.Moradabad- respondent no.3 stating that it has been decided by the DRM that casual labour Artisans who are charged to revenue and have completed 1500 days on 31.10.1982 can be allowed Skilled grades w.e.f. 1.11.1982. The allegation of the petitioners that they had completed their services of 1500 days as Artisans on 31.10.82 has again been denied by the respondents and the petitioners have not furnished ^{any} material before us in support of their this contention.

10. The only other point arising for determination is whether persons junior to the petitioners have been granted senior scale. On this point, the dispute between the parties is that according to the petitioners, the seniority has to be determined division-wise while according to the respondents the unit of an Inspector is to be taken for consideration in determining the seniority of class IV employees. No rule, instructions or circular letter on this point has been produced before us on behalf of any party and we are of the view that the contention of the respondents on this point appears to be correct and should be accepted and the seniority of class IV employees working in the railway should be determined according to the unit of an Inspector.

11. The petitioners have placed their reliance on the decision in Randhir Singh Vs. Union of India and others (A.I.R. 1982 S.C.-879) in which the Hon. Supreme Court had observed that the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right. But it certainly is a Constitutional goal. The principle of equality in pay may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer. Their Lordships of the Hon. Supreme Court in their subsequent decision in Surender Singh Vs. Engineer in Chief, C.P.W.D (A.I.R. 1986 S.C.-584) clearly held that the persons employed on daily wages are entitled not only to daily wages but are entitled to the same wages as other permanent employees in the department employed to do the identical work. So on the question of law, there appears to be no difficulty in accepting the contention of the petitioners and we are of the view that whenever the petitioners were asked to render their services as Artisans in their

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capacity as W/M/A they should have been paid the salary payable to such Artisans irrespective of the fact whether they possessed any diploma or certificate for such jobs or not. However, in view of paucity of evidence on the point, we are unable to determine in this case the period when the petitioners were required to discharge their duties as Artisans and as such, we cannot direct the respondents to make payment to the petitioners in the scale of Rs .260-400 from any previous date. Such direction can be given only for future.

12. The petition is accordingly allowed in part and the respondents are directed to pay the salary of W/M/A to the petitioners whenever they are required to discharge their duties on such jobs in future irrespective of their technical qualifications. This order will not prevent the respondents from reconsidering the claim of the petitioners for their absorption in service as W/M/A (Welders/Moulders/Aligners) and payment of arrears of pay for their working as Artisans in the past on the basis of their service record. Parties shall bear their own costs throughout.

MEMBER (A)

[Signature]
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Dated: January 18, 1988.
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MEMBER(J)