

**CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH**

**Original Application No.1518/2003**

New Delhi, this the 20<sup>th</sup> day of September, 2004

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman  
Hon'ble Mr. S.K. Naik, Member (A)**

Shri Mangat Ram & 32 others. ... Applicants

**(By Advocate: Sh. Sachin Chauhan)**

**Versus**

1. Union of India  
Ministry of Urban Development  
Through its Secretary  
C.P.W.D, Nirman Bhawan  
New Delhi.
2. The Director General (Works)  
Ministry of Urban Development  
C.P.W.D., Nirman Bhawan  
New Delhi.
3. Executive Engineer  
P.W.D. Division No.XV  
(NCTD) Below ISBT Birdge  
Kashmere Gate, Delhi. ... Respondents

**(By Advocate: Sh. R.N.Singh)**

Note: For details of the applicants, see Memo. of parties in the OA.

**ORDER**

**By Mr. Justice V.S.Aggarwal:**

Applicants (Mangat Ram & Others) by virtue of the present application seek quashing of the order passed by the respondents, copy of which is annexed at Annexure-I, and grant of consequential benefits in terms of seniority and pay and allowances from the date of initial appointment with the respondents. They further seek a direction to the respondents to grant the benefit of regularization from the date of their initial appointment.



-2-

2. Some of the relevant facts are that applicants had been employed in Central Public Works Department (for short 'CPWD'). They were appointed between 10.8.1978 and 1.2.1988 as Chowkidar, Beldar, Pump Operator, Wiremen, Khallasi and Plumber as Muster Roll Workers. They were regularized on the said posts from 26.4.1986 to 1996. They had collectively filed OA No.11/2003 which was disposed of by this Tribunal directed the respondents to dispose of their representation. Their representation has been rejected by the respondents holding that they were regularized from prospective dates and their regularization cannot be from the initial date of appointment.

3. Applicants' contentions are that since their initial appointment, they have rendered the same duties and functions which were being rendered by the regular employees and therefore, they press into service the principle of 'equal pay for equal work' and further plea raised is that they should be regularized from the date of their initial appointment. In this regard, they contend that they are being discriminated.

4. To keep the record straight, we refer with advantage to the impugned order which reads:

"2. Regularisation of services of Muster Roll Workers are to be done against available vacancies in the particular category. Regularisation is also subject to fulfillment of certain terms and conditions and provisions of the Recruitment Rules. Shri Mangat has been regularized with effect from 29.4.93 keeping in view the above mentioned terms and conditions and provisions of recruitment rules and also keeping in view the availability of vacancies.

3. It is also brought to your notice that the 91 petitioners in the Writ Petition No.1324/90 were regularized in pursuance of the Hon'ble Supreme Court's order dated 25.3.92 from prospective dates only and not from the dates of their initial engagement in the department as casual labour. The Supreme Court in its judgement dated 17.1.86 in WP No.59/60/1982 and 563-570/1982 filed by Shri Surinder Singh and Others never directed the department to regularize the services of daily rated Muster Roll workers

*18 Ag* 

with effect from the date of their initial engagement. The Department had created 8982 posts in September, 1992 for regularization of all the eligible daily rated Muster roll Workers engaged prior to 19-11-1985. All such workers were regularized from prospective dates only after the posts were created and not from the dates of their initial engagements."

5. The application has been contested. It is denied that the applicants are entitled to regularization from the date they were appointed as Muster Roll Workers and further that they are not entitled to the pay of regular employee when they had not been regularized. Respondents' contention is that for that period, they were not holders of the posts. Therefore, they were neither entitled to seniority from their initial engagement on Muster Roll Basis nor they were entitled to the arrears.

6. We have heard the parties' counsel and have seen the relevant record.

7. Learned counsel for the applicants urged that the applicants joined as Daily Wagers on Muster Roll Basis. Since their services have been regularized subsequently, they are entitled to regularization from the date they were inducted and further as already pointed above, since they have discharged the same duties as regularly employed persons therefore, principle of 'equal pay for equal work' would be attracted. He further contends that in this regard, arrears should be paid and benefits should be accorded to them for purposes of pension. As against this, respondents have pleaded that they were not holding any post till they were regularized. Daily Wager is not entitled to pensionary benefits nor in the facts can they take advantage of the principle of 'equal pay for equal work'.

8. In support of his claim, the applicants' learned counsel had relied on certain precedents to which we refer to hereinafter. Strong reliance has been placed on the decision of this Tribunal in the case of SMT. SHEELA RANI v.

*18 Ag*

-4-

**UNION OF INDIA & OTHERS**, O.A.No.1926/2003, decided on 25.2.2004. In

the cited case, Smt. Sheela Rani had joined as casual worker. She was not regularized despite rendering 17 years of service. She was regularized after the orders passed by this Tribunal, from 16.9.2001. This Tribunal held that even if no post is available, a supernumerary post could be created and it was further held that:

“.....The respondents have admitted that similarly situated employee Shri Chander Bhan has been regularized as a Mate w.e.f. 15.2.1999. However, the applicant has been regularized as a Mate only on 26.9.2001. There is nothing on record to indicate as to why she could not be regularized from the earlier date. ....”

9. It is obvious from the aforesaid that this Tribunal had simply proceeded on the premise that the applicant therein was discriminated. While certain other persons were regularized earlier and not the applicant, therefore, the case was remitted for reconsideration. It was not held that regularization has to be effected from the date she had been taken as casual worker. Thus, the cited decision is distinguishable.

10. As regards the decision rendered by the Delhi High Court in the case of Director General of Works, CPWD v. Regional Labour Commissioner (Central) & Others, Civil Writ Petition No.5471/2000 decided on 25.9.2001, there was an order passed by the Presiding Officer, Central Government, Labour Court, New Delhi. The Delhi High Court had noted the variance pertaining to two decisions of the Supreme Court and concluded that it was not proper to go behind the 'decree' in 'execution proceedings'. The language of the order of 1986 was held to be clear and explicit and therefore, the High Court had not desired to interfere. This is not the situation before us and we hold, therefore, that even this decision is of a little avail to the applicants.



11. Learned counsel for the applicants in that event referred to the decision of the Supreme Court in the case of SURINDER SINGH AND ANOHTER v. ENGINEER IN CHIEF, CPWD AND OTHERS, Writ Petition (Civil) Nos.59-60 and 563-70 of 1983, decided on 17.1.1986. In the cited case, the Supreme Court had permitted the principle of 'equal pay for equal work' and held:

“..... We are not little surprised that such an argument should be advanced on behalf of the Central Government 36 years after the passing of the Constitution and 11 years after the Forty Second amendment proclaiming India as a socialist republic. The Central Government like all organs of the State is committed to the Directive Principles of State Policy and Article 39 enshrines the principle of equal pay for equal work. In Randhir Singh vs. Union of India [SCR 1982 (3) 298] this court has occasion to explain the observation in Kishori Mohan Lal Bakshi vs. Union of India (supra) and to point out how the principle of equal pay for equal work is not an abstract doctrine and how it is a vital and vigorous doctrine accepted throughout the world, particularly by all socialist countries. For the benefit of those that do not seem to be aware of it, we may point out that the decision in Randhir Singh's case has been followed in any number of cases by this court and has been affirmed by a Constitution bench of this court in D.S.Nakara vs. Union of India [1983 (2) SCR 165]. The Central Government, the State Governments and likewise, all public sector undertakings are expected to function like model and enlightened employers and arguments such as those which were advanced before us that the principle of equal pay for equal work is an abstract doctrine which cannot be enforced in a court of law should ill-serve from the mouths of the State and the State Undertakings. We allow both the writ petitions and direct the respondents, as in the Nehru Yuvak Kendras case (supra) to pay to the petitioners and all other daily rated employees, to pay the same salary and allowances as are paid to regular and permanent employees with effect from the date when they were respectively employed. The respondents will pay to each of the petitioners a sum of Rs.1,000 towards their costs. We also record our regret that many employees are kept in service on a temporary daily-wage basis without their services being regularized. We hope that the Government will take appropriate action to regularize the services of all those who have been in continuous employment for more than six months.”

12. However, the later decision of the Supreme Court clearly indicates that the proposition enunciated by the learned counsel cannot be accepted. In the case

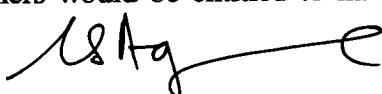


-6-

of DIVISIONAL MANAGER, APSRTC AND OTHERS v. P. LAKSHMOJI RAO AND OTHERS, 2004 AIR SCW 565, the Supreme Court was concerned with the similar situation. It was held that it can not be laid down as a proposition of service law that the employees selected on daily wage basis after selection, automatically become regular from the date one if they perform the duties similar to regular employees. In the absence of any service rule entitling the employees recruited on daily wages to get the status of regular employees with pay scale from the very date of joining, it would be difficult to countenance such proposition especially when there is no finding that the daily wage employment was a ploy or a colourable device to postpone regularization indefinitely. In the cited case also, the applicants had joined on Daily Wage Basis in the Andhra Pradesh State Road Transport Corporation. Later their services were regularized. They were placed in the time scale of pay and their seniority was counted from the date of their regularization. The pleas of the applicants that were raised in the present case, were also considered and rejected.

13. In the present case also, there is precious little for us to conclude that the applicants' induction on daily wages was a ploy or there was a colourable device to postpone regularization indefinitely. Therefore, the said contention raised by the learned counsel is of no avail.

14. More recently, the Supreme Court in the case of STATE OF HARYANA & ANR. v. TILAK RAJ & ORS., 2004 (1) AISLJ SC 92 also considered the same controversy. Therein also, the respondents were appointed on different points of time as Helper on daily wages in the Haryana Roadways. They had filed Writ Petition. They pressed for the principle of 'equal pay for equal work'. The High Court held that the petitioners would be entitled to the relief, but again not the regular pay scale which their regular counter parts are receiving. The petitioners would be entitled to minimum of the pay scale with



dearness allowance alone. The High Court granted the relief. The Supreme Court relied upon the earlier decision in the case of STATE OF HARYANA & ORS. v. JASMER SINGH & ORS., 1996 (11) SCC 77 and concluded:

“7. At this juncture, it would be proper to take note of what was stated in Jasmer Singh’s case (supra). In paragraphs 10 and 11, it was noted as under:

“10 The respondents, therefore, in the present appeals who are employed on daily wages cannot be treated as on a par with persons in regular service of the State of Haryana holding similar posts. Daily-rated workers are not required to possess the qualifications prescribed for regular workers, nor do they have to fulfil the requirement relating to age at the time of recruitment. They are not selected in the manner in which regular employees are selected. In other words the requirements for selection are not as rigorous. There are also other provisions relating to regular service such as the liability of a member of the service to be transferred, and his being subject to the disciplinary jurisdiction of the authorities as prescribed, which the daily-rated workmen are not subjected to. They cannot, therefore, be equated with regular workmen for the purposes for their wages. Nor can they claim the minimum of the regular pay scale of the regularly employed.

11. The High Court was, therefore, not right in directing that the respondents should be paid the same salary and allowances as are being paid to regular employees holding similar posts with effect from the dates when the respondents were employed. If a minimum wage is prescribed for such workers, the respondents would be entitled to it if it is more than what they are being paid.”

Thereafter, the Supreme Court further held:

“10. A scale of pay is attached to a define post and in case of a daily wager, he holds no posts. The respondent workers cannot be held to hold any posts to claim even any comparison with the regular and permanent staff for any or all purposes including a claim for equal pay and allowances. To claim a relief on the basis of equality, it is



for the claimants to substantiate a clear cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with the other group vis-à-vis an alleged discrimination. No material was placed before the High Court as to the nature of the duties of either categories and it is not possible to hold that the principle of 'equal pay for equal work' is an abstract one.

11. "Equal pay for equal work" is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula."

15. From the above said decision of the Supreme Court, it is clear that the applicants cannot claim that they are entitled to principle of 'equal pay for equal work' or regularization from the back date. Because necessary ingredients have not been satisfied, as a corollary it would in fact be unnecessary to adjudicate the matter pertaining to the question of giving them the benefit of the Daily Wage Service for pensionery purpose also. It cannot be granted.

16. For these reasons, the OA being without merit must fail and is accordingly dismissed.

↑  
Per ore  
(S.K.Naik)

Member (A)

  
(V.S. Aggarwal)  
Chairman

/NSN/