

UNION OF INDIA AND ORS.

v

SHEELA RANI

DECEMBER 8, 2006

[DR. AR. LAKSHMANAN AND TARUN CHATTERJEE, JJ.]

Labour Laws—Regularisation—Claim of—Regularisation of casual worker with retrospective effect, from the date of initial appointment—Held: Casual worker cannot be regularised from the date of initial appointment—Regularisation should be prospective and not retrospective—It should be as per the relevant Rules—Seniority of regular appointees cannot be ignored.

The question which arose for consideration in this appeal was whether the services of a casual worker can be regularised with retrospective effect i.e. from the date of initial appointment.

Allowing the appeal, the Court

HELD: 1.1. The regularization of casual worker should be prospective and not retrospective. Care must be taken to see that regularization of casual worker does not upset the seniorities of regular appointees. [504-D]

1.2. It is not in dispute that the respondent was engaged as a casual worker and the nature of the job assigned to her was to note down the complaints in the enquiry office. She was performing the duties at the enquiry office on muster roll as a casual worker to note down day to day complaints. Respondent has also not placed any documentary evidence in respect of her claim nor any such evidence is available on record. The date of registration of the respondent with the employment exchange is 25.3.1983 whereas the respondent is claiming that her name was referred to the appellant-department by the employment exchange. The respondent was engaged as casual worker on 17.11. 1982, therefore, employment exchange could not have referred as she was registered in employment exchange only on 25.8.1983. The respondent's claim, to regularize her services from 17.11.1982 is not correct as she was engaged only as casual worker. She was regularized w.e.f. 26.9.2001 as the regularization of casual worker is covered under the relevant Rules. [502-F-H; 503-A-B]

- A** *State of Haryana. v. Jasmer Singh.*, [1996] 11 SCC 83 and *Registrar General of India and Anr. v. V. Thippa Setty and Ors.*, [1998] 8 SCC 690, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5666 of 2006.

- B** From the final Judgment and Order dated 28-1-2004 of the High Court of Delhi at New Delhi in W.P. (C) No. 1479-82/2005.

R. Mohan, A.S.G., K. Radha Krishan Sunita Sharma, Shilpa Singh and V.K. Verma for the Appellants.

- C** S.M. Ratanpaul, Arun K. Sinha, Rakesh Singh and Mukesh Kr. Sinha for the Respondent.

The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN. Leave granted.

- D** The above appeal is directed against the final order and judgment dated 28.1.2005 passed by the Division Bench of the High Court of Delhi in Writ Petition (c) Nos. 1479-1482 of 2005. By the impugned judgment, the High Court dismissed the writ petitions preferred by the appellants herein.

- E** The question of law involved in this appeal is whether the services of a casual worker can be regularized with retrospective effect i.e. from the date of initial appointment.

- The respondent herein was engaged as a casual worker w.e.f. 17.11.1982 and since then besides other jobs of casual nature, she has been performing the job of noting down complaints at the enquiry offices/service stations of C.P.W.D. The respondent approached the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 and prayed that she should be regularized on the post of enquiry clerk in C.P.W.D. Before the Tribunal, the appellants submitted that no post of enquiry clerk was existing nor was there any scheme/rule for regularization in a Group-C post inasmuch as the clerks under the appellants are appointed in terms of the recruitment rules and through the Staff Selection Commission. It was also submitted that the engagement of the respondent was not against any vacancy hence she can not claim regularization on a particular post. The Tribunal vide its order dated 13.10.2000, allowed O.A.No. 2747/99 with a direction to the appellants herein to consider the
- F**
- G**
- H** regularization of the respondent within four months of the receipt of the

judgment. The respondent herein filed Contempt Petition No. 194 of 2001 in the aforesaid O.A. and alleged non-compliance of the Tribunal's order and judgment as the services of the respondent were not regularized with retrospective effect i.e. 17.11.1982 being the date of her initial engagement as casual worker. The services of the respondent was regularized as Mate w.e.f. 26.9.2001. The Tribunal vide its order dated 11.1.2002 discharged the notice and dropped the aforesaid Contempt Petition but gave a direction to the appellants herein to consider respondent's case for grant of regularization w.e.f. the date of her initial engagement i.e. 17.11.1982. Liberty was also given to the respondent for revival of the aforesaid C.P. No. 194 of 2001 in case the direction given by the Tribunal is not implemented within a period of eight weeks. In view of the aforesaid direction given to the appellants by the Tribunal, the claim of the respondent was considered and vide Office Memorandum dated 14.1.2003, the said claim for grant of regularization with retrospective effect i.e. from the date of initial appointment being 17.11.1982 was rejected. Aggrieved by the said order, the respondent filed O.A.No. 1926 of 2003 under Section 19 of the Administrative Tribunals Act before the Tribunal. The Tribunal allowed O.A. vide order dated 25.2.2004. Against the said order, the appellants preferred C.W.P. Nos. 1479-1482 of 2005 before the High Court. The High Court dismissed the aforesaid writ petitions. Against the said order of the High Court, the appellants filed the above appeal by way of special leave petitions before this Court.

We heard Mr. R. Mohan, learned Additional Solicitor General appearing for the appellants and Mr. S.M. Ratanpaul, learned counsel appearing for the respondent. We have carefully perused the judgment passed by the High Court.

Mr. R. Mohan, learned ASG, submitted that the High Court failed to appreciate that regularization of a casual worker cannot be made with retrospective effect i.e. with effect from the date of initial appointment and that regularization of a casual worker can only be done in accordance with the relevant scheme and rules and from the date when regular vacancy/post is available for such regularization. In support of his contention, he relied on the judgments of this Court in *State of Haryana v. Jasmer Singh* [1996] 11 SCC 83, and *Registrar General of India & Anr. v. Thippa Setty & Ors.*, [1998] 8 SCC 690.

Per contra, Mr. S.M. Ratanpaul, learned counsel appearing for the respondent, submitted that the appellants have regularized the services of the

A respondent as Mate w.e.f. 26.9.2001 depriving her of 19 years of continuous service since 17.11.1982. It was further submitted that the contempt petition was finally heard and the appellants herein were directed to regularize the respondent herein from the date of her initial appointment i.e. 17.11.1982. In view of a similar case of *P.M. Augustian v. Union of India & Ors.*, decided by Ernakulam Bench of the Tribunal and since the request for regularization was not complied with within the time stipulated in the contempt petition, the respondent herein filed revival of the petition which was allowed and the appellants herein issued revised orders again rejecting the prayer of the respondent herein for regularization from the date of her initial appointment. The Tribunal heard the revived contempt petition and decided that as the respondents/appellants herein have issued revised order dated 14.1.2003, there has not been any willful or contumacious disobedience of the Tribunal's order warranting any further action to be taken against the alleged contemnors under the provisions of the Contempt of Courts Act, 1971 read with Section 17 of the Administrative Tribunals Act, 1985. The contempt petition was dismissed and the notice to contemnors was discharged. However, the Tribunal granted liberty to the respondent herein as advised in accordance with law. Therefore, the respondent filed O.A. challenging Office Memorandum dated 14.1.2003 issued by the appellants herein rejecting the respondent's prayer for regularization from the initial date of her appointment i.e. 17.11.1982. Learned counsel further submitted that any casual employee who has been appointed after satisfying the requirements through proper channel, is eligible for consideration of regularization of the service if he is able to establish that he was continuously working and there was existing vacancy at the relevant time. The Tribunal, therefore, considered the case of the respondent and the long continuous service rendered by her and held that the respondent is entitled to regularization from the date of her initial appointment.

F Counter affidavit was filed in the above appeal reiterating the contentions raised before the Tribunal. It is not in dispute that the respondent was engaged as a casual worker and that is admitted by the respondent and the nature of the job assigned to her was to note down the complaints in the enquiry office. She was performing the duties at the enquiry office on muster roll as a casual worker to note down day to day complaints. The respondent has also not placed any documentary evidence in respect of her claim nor any such evidence is available on record. The date of registration of the respondent with the employment exchange is 25.3.1983 whereas the respondent is claiming that her name was referred to the appellants-department by the employment exchange. Therefore, the contention raised by the respondent is not correct

and misleading. The respondent was engaged as casual worker on 17.11.1982, therefore, employment exchange could not have referred as she was registered in employment exchange only on 25.8.1983. The respondent's claim, in our opinion, to regularize her services from 17.11.1982 is not correct. She was regularized w.e.f. 26.9.2001 as the regularization of casual worker is covered under the relevant Rules. In the rejoinder affidavit, the appellants have stated the following latest position of the workers, some of them have not been regularized so far and those regularized have not been regularized from the date of engagement:

Name	Designation	Date of Engagement	Date of regulation
Kashi Nath	Sr. Mech.	07.02.82	Not regularized so far but temporary status given
Kirti Ram	Sr.Mech	01.12.81	Not regularized so far but temporary status given
Bahunt Lal	Mech.	02.08.83	Not regularized so far but temporary status given
Joginder Singh	Lab. Asst.	14.11.82	Not regularized so far
Baleshwar Pandit	Pump Operator	01.01.82	Regularised w.e.f. 12.12.94
Joginder Thakur	Pump Operator	01.01.82	Regularised w.e.f. 12.12.94
Mahabir Singh	Welder	02.06.82	Regularised w.e.f. 11.12.96
Iqbal Singh	Auto Elect.	26.1.83	Regularised w.e.f. 19.4.96
Rakesh Kumar	Wireman	28.01.81	Not regularized so far

Perusal of the above list shows that these casual workers are technical people and they have been engaged prior to the respondent. In our opinion, the respondent's claim to be regularized from 17.11.1982 is not acceptable as she was engaged only as casual worker.

A The law is well settled on this issue. In *State of Haryana v. Jasmer Singh* (supra), a three-Judge Bench of this Court held that the regularization of daily rated workmen who had completed a certain number of years of service is a policy matter to be decided by the State. This Court held that the respondents who are employed on daily wages can not be treated on par with persons in regular service of the State holding similar post. Daily rated workers are not required to possess the qualifications prescribed for the regular work nor do they have to fulfill the requirement relating to age at the time of recruitment. They cannot, therefore, be equated with the regular workmen for the purposes of their wages nor can they claim the minimum wage regular pay scale of the regularly employed.

C In *Registrar General of India & Anr. v. V. Thippa Setty & Ors.*, (supra), the Tribunal's direction was to regularize the respondents w.e.f. the date of promulgation of the recruitment rules or from the date of their appointment depending on the seniority list. In pursuance of the said direction, on the new recruitment rules being promulgated on 11.5.1985, the regularization was given effect from that date. However, in the subsequent order passed by the Tribunal on 19.2.1993, the Tribunal has directed that they should be treated as having been conferred regular status w.e.f. 5.2.1981 i.e. the date of their entry into service as Investigators. This Court held that the employees had entered as ad hoc appointees and the question was whether they should be regularized in service since they had worked as *ad hoc* employees for a sufficient long time. If the ad hoc service is regularized from the back date in this manner, it will disturb the seniority of regularly appointed employees in the cadre and, therefore, ordinarily the regularization must take effect prospectively and not retrospectively. This Court ordered that care must be taken to see that regularization do not upset the seniorities of regular appointees. Whether they qualify in a given case or not is not relevant but what is relevant is that regularization should be prospective and not retrospective as the chances of their upsetting the seniorities cannot be overlooked.

G We, therefore, allow the appeal and set aside the judgment and order passed by the High Court and the order of retrospective regularization passed by the Tribunal. However, there shall be no order as to costs.

N.J.

Appeal allowed.