

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Reserve : 18.01.2008
Date of Decision : 01.02.2008

+ **WP(C) No. 7322/2000**

Hindustan Vegetable Oils Corporation Ltd.
Employees Union
having its Registered Office at
Narasinghapur, Chhota Jagulia,
Barasat, North 24 Parganas
West Bengal
through its General Secretary .. Petitioner

Versus

1. Union of India
Through its Secretary
Ministry of Consumer Affairs & Public Distribution
Department of Food & Public Distribution
(HVOG) Section, Room No.156,
Krishi Bhavan, New Delhi-110001.
2. The Chairman-cum-Managing Director,
M/s Hindustan Vegetable Oils Corporation Ltd.
Having registered office at
64-65, Satguru Ram Singh Marg,
Industrial Area, Kirti Nagar,
New Delhi-110015
3. The General Manager
M/s Hindustan Vegetable Oils Corporation Ltd.
Narasinghapur, Chhota Jagulia,
Barasat, North 24 Parganas
West Bengal .. Respondents

+ **WP(C) No. 373/2001**

HVOC Staff & Workers Welfare Association(Regd.)
having its registered office at
Hindustan Vegetable Oils Corporation
G.T. Road, Chheharta,
Amritsar-143001
Punjab

.. Petitioner

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Through its Secretary
Ministry of Consumer Affairs & Public Distribution
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- 3.The General Manager
M/s Hindustan Vegetable Oils Corporation Ltd.
G.T. Road, Chheharta,
Amritsar, Punjab

.. Respondents

Advocates who appeared in this case :

For the petitioner : Mr.Mohinder Rupal, Advocate

For the respondents : Mr.V.K. Shali, Advocate

CORAM :

HON'BLE MR. JUSTICE J.M. MALIK

1. Whether the Reporters of local papers No

WP(C) Nos.7322/2000, 373/2001

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may be allowed to see the judgment?

2.To be referred to Reporter or not? Yes

3.Whether the judgment should be reported in the Digest? Yes

J.M. MALIK, J.

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1. This judgment shall dispose of the above said two writ petitions as both are inter linked and are based on similar facts and common questions of law.

2. The petitioner union is espousing the cause of the 36 workmen/trainees belonging to West Bengal and 46 workmen/trainees belonging to Amritsar, Punjab. Every trainee on whose behalf the abovesaid two writ petitions are preferred have filed separate court fee for each of them at the time of filing of present petitions. According to the petitioners the writs were filed under its name without undergoing the rig morale of impleading all the trainees / workmen separately as petitioners and making the memo of parties cumbersome. M/s Hindustan Vegetable Oils Corporation Ltd. (to be referred as HVOC hereinafter) was originally known as Ganesh Flour Mills. This company is wholly owned by the Government, which was acquired by the Central Government, under the Ordinance,

1984, which was published in the Gazette of India on 28.01.1984. It was renamed as Hindustan Vegetable Oils Corporation Ltd. The respondent no. 2 has 11 factories spread all over India. The first writ is filed by the employees of West Bengal and the second writ is filed by employees of Amritsar. In September 1987, respondent nos. 2 & 3 took for employment 36 workmen on contract basis at their office located in West Bengal having its office at Narasinghapur, Chhota Jagulia, Barasat, North 24 Parganas. The said workmen continued to remain on contract basis till 1990 without any break in their service. On 21.02.1990 the said workmen were taken as casual workmen by respondents nos. 2 & 3 for working in its factory run by respondent no. 3. The status of workmen continued to remain as that of casual workmen till the year 1995. Since the workmen had already completed 240 days of employment without any break, therefore, the management was requested to regularise their service.

3. As the respondents failed to take any action, therefore, the petitioner union initiated conciliation proceedings before the Labour Commission, Barasat, West Bengal. The Assistant Labour Commissioner, vide his order dated 09.09.1992, observed that it was resolved at the joint conference that the local management

would write to the corporate body at New Delhi regarding regularisation of casual labourers in HVOC Ltd as per the statute i.e. on the basis of their employment with them for more than 240 days at a stretch and a copy of such correspondence would be forwarded to the concerned union to pursue the matter from their level also. However, on the contrary, the respondents changed the status of the above said workmen from “casual” to that of “trainees” w.e.f. 01.09.1995. Despite the fact that the respondents continuously put in service for more than 13 years, they were paid remuneration by way of monthly stipend of a sum of Rs.3,050/- only, but, the permanent employees used to draw a gross salary of Rs.5,700/-.

4. The petitioner union again initiated conciliation proceedings before the office of Assistant Labour Commissioner, Barasat, Government of West Bengal for demanding the regularisation of above 36 trainees. Conciliation Officer vide order dated 18.11.1996 came to the conclusion that there existed no logic in retaining these trainees as trainees beyond 31.08.1996 depriving thereby from their legitimate benefits as or being enjoyed by other regular / permanent workmen of the said organisation. He advised the representative of the management to take up the

matter with the appropriate authority for defusing such difference in status of the trainees and the regulars. Respondent no. 3 vide his letter dated 21.11.1996 assured the petitioner union that the suggestion of Additional Labour Commissioner would be complied with. On 11.03.1997 respondent no. 2 also recommended regularisation of the above said trainees to respondent no.1 but the needful could not be done. Vide order dated 25.02.1999 Mr. R.K. Shah, Additional Labour Commissioner, West Bengal impressed upon the respondents to consider the case of the workmen and take appropriate steps for giving due relief to those workmen. He also directed the representative of the local management to attend the next meeting on 15.03.1999 so as to finally resolve the matter. On 21.01.1999 the union sent a letter to the respondent no. 1 and demanded the regularisation of 36 trainee workmen. On 12.02.1999 respondent no. 3 gave them assurance that their matter will be considered favourably. Another representation was sent on 29.09.2000.

5. In the meantime, the respondents floated a Voluntary Retirement Scheme (VRS) inviting proposal from the workmen who were interested to avail the said Scheme, but that was not made applicable to the trainees. It was made clear that those

employees, who did not avail the Scheme would be retrenched.

6. Now I turn to the Facts of WP(C) No.373/2001. Respondent no. 2 took the employment of 46 workmen on contract basis in September 1982. The said workmen were taken as casual workmen working in its factory run by respondent no. 3 in Amritsar, Punjab. The status of those workmen continued to remain as that of casual workmen till the year 1992. The status of workmen changed from that of casual workmen to trainees and they were paid stipend of Rs.3,050/- P.M. only as against Rs.5700/- P.M. paid to Permanent/regular workmen. On 12.09.1993 the trainee workmen made representation for demanding the regularisation of their service. On 23.09.1993 respondent no. 3 sent a recommendation to respondent no. 2 for regularising the service of these trainee workmen. Respondent no. 2 did not take any action. On 04.11.1993 petitioner union made a representation by sending a letter to the respondent no. 1 for regularisation of 46 trainee workmen. Another representation was made on 20.09.1995. Respondent no. 3 strongly recommended for regularisation of the service of these trainees by sending a letter to respondent no. 2, but no action was taken. On 06.10.1997 workmen initiated conciliation proceedings. The

Senior Officer of respondent no. 3 attended the hearing wherein he was directed by the conciliation officer to take immediate steps for regularisation of service of the trainee workmen. Another representation was made on 10.11.1997. The trainee workmen approached the Labour Officer on 20.05.2000. On 31.10.2000 BIFR appointed IDBI as Operating Agency to give the Revival Scheme of various factory units of respondent nos. 2 & 3 by 28.02.2001. On 10.11.2000 the respondents floated a Voluntary Separation Scheme (VSS) inviting proposal from the permanent / regular workmen only. The said Scheme was operative till 08.02.2001.

7. Under these circumstances the present writ petitions were filed with the following similar prayers :

“(a) order, writ of certiorari/mandamus or any other writ or direction against the respondents jointly and severally and directing them not to discriminate and create disparity in conditions of service, status and wages between the “trainee” workmen who are similarly situated to the permanent / regular workmen;

(b) direct the respondents to regularise the service of the 36 or 46 “trainee” workmen whose details are given in Annexure “C” hereto with effect from 01.01.1991 and from 1983;

(c) direct payment of all arrears including all the consequential benefits attached to their course of employment as regular workmen commensurate with

the respective post and work done by the said "trainee" in the period with effect from 01.01.1991 and 1993 till date alongwith interest @24% per annum;

(d) direct the respondents to extend the benefits under the VRS and VSS to these 36 or 46 "trainee" workmen also, if they so desire; and

(e) pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

8. The respondents have contested the present petitions.

9. I have heard the counsel for the parties and considered their written submissions. First of all, they have locked horns over the question of jurisdiction. The learned counsel for the respondent argued with vehemence that this court does not have territorial jurisdiction. He pointed out that the above said workers / trainees were appointed in West Bengal and Amritsar only. The association had invoked the jurisdiction of Labour Department in West Bengal. It is pointed out that the cause of action had accrued in those places only. Consequently, High Courts of those places only have the territorial jurisdiction. In support of his case he has cited authorities reported in Vinod Kumar Vs. UOI, 135 (2006) DLT 414 (DB), ONGC Vs. Utpal Kumar, 1994 Z(4) SCC 711 and State of Rajasthan Vs. Swastika Properties, AIR 1985 SC 1289.

10. For the following reasons I do not find myself amenable to these arguments. The authorities cited by the respondent have no parallels with the facts of the present cases. The facts which go to distinguish the instant case with the above cited cases are enumerated as follows. First of all, M/s Hindustan Vegetable Oils Corporation Ltd. has its head office at 64-65, Satguru Ram Singh Marg, Industrial Area, Kirti Nagar, New Delhi. Its Chairman-cum-Managing Director and the General Manager who have been arrayed as respondent nos. 2 & 3 are stationed at New Delhi. Again Ministry of Consumer Affairs and Public Distribution, Department of Food and Public Distribution (HVOC) is also based in New Delhi. Section 12 of the above said Ordinance which was published in the Gazette of India on 28.01.1984 provides :

“12(1) every person who has been immediately before the appointed date, employed by the company in connection with the Ganesh Flour Mills shall become

(a) On and from the appointed day, an employee of the Central Government, and

(b) Where the Ganesh Flour Mills is directed, under sub-section (1) of Section 5, to vest in a Government company, an employee of that company on and from the date of such vesting.”

It is thus clear that the petitioners are the employees of the Central Government.

11. Again, as already stated above the Additional Labour Commissioner, West Bengal vide his order dated 25.02.1999 issued directions to the respondent no. 2 based in Delhi. Letter dated 11.03.1997 shows that respondent no. 2 had sent a letter to respondent no. 1 regarding the issue of regularization of above said trainee workmen. Letter dated 12.02.1999 sent by respondent no. 2 to unit Incharge Kolkata reveals that assurance was given that the conditions of service of the trainee workmen would be brought in parity to the permanent workmen. The above said VSS was also floated under the directions of respondent no. 1. The competent authority to consider the VSS is respondent no. 2 himself. It is apparent that cause of action also arose at New Delhi.

12. Again, it must be borne in mind that the above said two writ petitions were filed in the year 2000. After the lapse of 8 years it will not be proper to hold that this court has no jurisdiction to try this case. A Division Bench of this Court in a case reported in 135 (2006) DLT 414, was pleased to observe:

“We have already noticed that expeditious disposal is one of the underlining features of the amended provisions of Article 226 and to ensure balancing of convenience between the parties to the lis, it may be appropriate

that the Courts determine the question of jurisdiction at the very threshold of the proceedings. Proper exercise of jurisdiction would ex facie take in its ambit remedies which are effective and efficacious. If both or any of these ingredients are not satisfied, it would be a factor which will tilt the view of the Court against exercising its jurisdiction. The Court is expected to deal with the issue of jurisdiction right at the initial stages and normally while taking the petition as framed to be correct. Article 226 (2) opens with the words 'The power conferred by Clause (1) to issue directions.....' which clearly indicates amplification of jurisdiction and that the provision is meant to aid the powers vested in the High Court for issuance of writ, order or direction located within their territorial jurisdiction. The expression 'may also' would have to be given their true meaning while ensuring that such connotations are in consonance with the law enunciated by the Supreme Court and also spirit of constitutional territorial jurisdiction of a High Court."

Consequently, I clap no importance to this objection raised by the respondent.

13. The key argument urged by the counsel for the respondent was that this is an indisputable fact that units at Kolkata and Amritsar are lying closed. The BIFR declared it as a sick unit, therefore, there is no question of regularisation. It was further argued that when the organisation is in a very precarious financial condition it cannot be further burdened with financial burden.

14. The learned counsel for the petitioner contended that this objection is not sustainable. It was submitted that it came out from the horse's mouth itself as the management of the respondent itself admitted that these trainee workmen were required to be regularised forthwith i.e. after the lapse of one year from the date of their appointment as temporary workmen. My attention was drawn towards an authority reported in Food Corporation of India Vs. Shayamal K. Chatterji, AIR 2000 SC 3554, wherein it was held that casual workers doing same jobs which are done by permanent employees are entitled to wages at par with such employees. Learned counsel for the petitioner cited another authority reported in Surya Narain Yadav Vs. Bihar State Electricity Board, AIR 1985 SC 1941 wherein it was held that regularization of trainee engineers who were on pay rolls for a long time and where the management treated them as a specific class was equitable and mandamus was issued directing the Board to regularize these trainee engineers.

15. It was also argued that the petitioners are neither contract employees or casual labourers but temporary workmen. The so-called trainee workmen were bound to be regularized after the lapse of one year from the date of their appointment as trainees

as per Secretary, State of Karnataka Vs. Uma Devi and ors, AIR 2006 SC 1806, para 53 makes it abundantly clear that in case of workmen who have worked for ten years or more are to be regularized as one time measure. It was pointed out that these trainee workmen are on the pay rolls of the respondents for more than 30 years when they were taken as contract workmen. They are working for their for last more than ten years. It was also argued that rather than addressing them as temporary workmen by way of nomenclature they were designated as trainees. It was further argued that the work trainee is not to be understood as it appears in ordinary parlance as defined under the Apprenticeship Act, nor it was so ever understood by the management itself. The above said workmen who were admittedly doing the same work as permanent workmen except for their wages were provided the same facilities and benefits like permanent workmen i.e. as PF, ESI, earned leave, bonus, gift, canteen facilities etc. It was pointed out that the Supreme Court has deprecated giving same nomenclature to the temporary workmen in the case of Mineral Exploration Corporation Employees Union Vs. Mineral Exploration Corporation Ltd., 2006 (6) SCC 310.

16. It was brought to the notice of this Court that the petitioners had sought specific directions / permission from the company court to further prosecute the present writ petitions. Mr. V.K. Shali the counsel for the respondents himself appeared before the Company Judge and gave his no objection on the applications moved by the petitioners. The respondents are now represented through Official Liquidator being represented by Mr. V.K. Shali himself. He further argued that under the Companies Act at the time of winding up, the wages of the workers have to be taken into account for discharge of liabilities of the company to be wound up which can be realised through sales of assets including movable and immovable properties of the company. The respondent company has several immovable properties spread all over India. The issue which remains is the payment of the arrears of the trainee workmen by considering them to be at par with the permanent workmen and to direct the implementation of VRS and VSS already floated by the respondents. According to the petitioner the entire controversy hinges on the mandatory benefits in terms of arrears of wages and compensation under VRS and VSS to which these workmen are entitled to. In case this court holds that all these trainee workmen are entitled to arrears

of wages and compensation under VSS or VRS on revised wages, it is for the Official Liquidator to consider the mandatory claims of the workmen along with other secured creditors of the company and to discharge the same out of the available assets of the company. The respondents are now thus not even to incur any liability for the payment of these wages out of their own pockets.

17. All these questions were answered by the Apex Court in a recent authority, which I was able to locate and which is reported in *Indian Drugs & Pharmaceuticals Ltd. Vs. Workmen, Indian Drugs & Pharmaceuticals Ltd.*, (2007) 1 SCC 408. The facts of the case are given in para no. 2, which is reproduced as follows :

“2. This appeal has been filed against the impugned judgment and order dated 30.09.2005 passed by the Uttaranchal High Court in WP No. 3360 of 2001. By that judgment the High Court has modified the award of the Labour Court, U.P., Dehradun, to the extent that the workmen, in whose favour the award had been made, were allowed to be continued in the service of the appellant employer till their superannuation, and if their services were not required they should not be terminated except in accordance with industrial law. The High Court further directed that the workmen in question should be paid wages like the regular employees performing the work and duties in the appellant Company.”

While relying upon *Secretary, State of Karnataka and Ors.*

Vs. Uma Devi and Ors.(Supra) and various other authorities the Apex Court was pleased to hold :

“In *Rajendra v. State of Rajasthan*, (1999) 2 SCC 317 this Court following its own decision in *Delhi Development Horticulture Employees Union v. Delhi Administration*, Delhi, (1992) 4 SCC 99 held that the right to livelihood was found not feasible to be incorporated as a fundamental right in the Constitution and therefore employment was also not guaranteed under the Constitutional scheme. In *Sandeep Kumar v. State of U.P.*, 1993 Supp (1) SCC 525 this Court observed that where there was no work in the project the employees cannot be regularized. In *State of Himachal Pradesh v. Ashwani Kumar*, (1996) 1 SCC 773 this Court held that where a project has to be closed down for non-availability of funds a direction to regularize the displaced employees of the project could not be given because such direction would amount to creating posts and continuing them in spite of non-availability of work. The same view was taken in *State of U.P. v. U.P. Madhyamik Shiksha Parishad Shramik Sangh*, (1996) 7 SCC 34. It follows from these decisions that there is no legal right in temporary employees (whether called casual, ad hoc, or daily rated workers) to get absorption, or to be continued in service or get regular pay.

In the present case, the appellant is a sick company which has been running on huge losses for many years, and is practically closed down. There are no vacancies on which the respondents could have been appointed. While we may have sympathy with them, we cannot ignore the hard economic realities, nor the settled legal principles. The appeal is allowed.”

18. Moreover the case of the respondents draws further support from a recent authority in case reference C.S. Azad Krishi Evam Prodyogiki Vishwavidyalaya Vs. United Trades Congress and Anr. decided on 13.12.2007 by the Apex Court, it was held :

“A feeble attempt, however, was made by the learned

counsel appearing on behalf of respondent no. 2 to state that he had been appointed against a permanent vacancy. In his written statement, he did not raise any such contention. It does not also appear from the records that any offer of appointment was given to him. It is inconceivable that an employee appointed on a regular basis would not be given an offer of appointment or shall not be placed on a scale of pay. We, therefore, have no hesitation in proceeding on the premise that respondent no. 2 was appointed on daily wages. The Industrial Court in passing the impugned award proceeded on the premise that respondent no. 2 had been working for more than 240 days continuously from the date of his engagement. It is now trite that the same by itself does not confer any right upon a workman to be regularized in service. Working for more than 240 days in a year was relevant only for the purpose of application of Section 6N of the UP Industrial Disputes Act, 1947 providing for conditions precedent to retrench the workmen. It does not speak of acquisition of a right by the workman to be regularized in service."

19. In the light of these discussion it is found that the petitioner are neither entitled to be regularized nor they are entitled to seek salary provided to the regular employees.

20. The respondents have also raised two other objections. The first pertains to the availability of the alternative / efficacious remedy of Labour Court Industrial Tribunal and secondly pertains to the non-maintainability of the writ petitions filed by the trade union and not by the workers themselves. In view of my findings

above, these objections pale into insignificance. These hardly require any adjudication from the court. In the result I find that the petitions filed by the petitioners are meritless and the same are therefore dismissed. However, there shall be no order as to cost.

February 1, 2008
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J.M. MALIK, J.