

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

+ **W.P.(C) 4516/2002**

% Judgment reserved on 27.04.2015
Judgement pronounced on: 19.05.2015

JAWAHAR LAL NEHRU UNIVERSITY Petitioner
Through: Ms.Sagari Dhanda, Advocate

versus

DASHRATH & ORS. Respondents
Through: Mr.S.S.Dahiya and
Mr.L.H.Dahiya, Advocates

CORAM:
HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. Vide the present writ petition, the petitioner/Management has challenged the award dated 10.08.2001, whereby the petitioner was directed to absorb the workmen named in Annexure 'A' from serial No. 1 to 20 in Group 'D' post and serial No. 21 in Group 'C' post within 60 days of the publication of award and create extraordinary post carrying the pay scale of Group 'D' and Group 'C' post. The petitioner was further directed to grant workmen at Serial No. 1 to 20 wages equal to Group 'D' employees at the minimum of the scale and the workman at Serial No. 21, the wages equal to Group 'C' employee at the minimum of scale with usual allowances per month till the date of their absorption on the regular post.

2. The admitted facts of this case are that the workmen named in Annexure 'A' were engaged on muster roll/daily wages basis on their respective posts on the respective date of their employment as shown against their names in the said Annexure. They were paid minimum wages. Those workmen raised an industrial dispute and the following Reference was made to the Industrial Tribunal for adjudication:-

“Whether workmen whose names appear in Annexure 'A' are entitled to regularization from their respective initial date of appointment and if so, to what relief are they entitled and what directions are necessary in this respect?”

3. The award has been challenged by the petitioner on the ground that the learned Industrial Tribunal has travelled beyond the Reference and thus the Award is bad in law. It is contended that the issue before the learned Industrial Tribunal was of regularization of the workman and there was no Reference related to the entitlement of the workers for the wages of Group 'C' and 'D' employees on the ground of equal pay for equal work. It is further contended that the learned Industrial Tribunal has itself reached to the conclusion on the basis of evidence that there were no regular or permanent post of labourers, malis and supervisors with the Management,

but, despite that, passed the order for the absorption of the workers against non-existing post. It is further contended that the learned tribunal has exceeded its jurisdiction by ordering creation of jobs for absorption of workers. It is further argued that no evidences were led by any of the parties to prove or disapprove the nature of work of the regular post and of actual work done by workers and thus there is nothing on record to show that respondents were performing the same jobs. On these facts, it is submitted that the award of the learned Tribunal is without jurisdiction and against established principles of law and hence is liable to be set aside. Reliance has been placed on Secretary, State of Karnataka vs. Uma Devi and Ors. AIR 2006 SC 1806, State of U.P. vs. Neeraj Awasthi and Ors. (2006) 1 SCC 667, M.P. Housing Board and Anr. vs. Manoj Shrivastava JT 2006 (3) SC 73, State of Maharashtra and Anr. vs. R.S. Bhonde and Ors. 2005 SCC (L&S) 907, State of Karnataka vs. Ors. vs. KGSD Canteen Employees Welfare Association and Ors. JT 2006(1) SC 84, Sulochan Meshram vs. Jawahar Lal Nehru University in W.P. (C) No. 4329/1997.

4. It is also argued that in writ petition No. 679/1997, following the directions of the Division Bench in the case of Mrs Sulochana Meshram and Others vs. Jawaharlal in LPA No. 380/2000, the learned Single Judge

has observed as under:-

“It, however, transpires from the records that in order to accommodate the working employees in the University, the University has framed a Scheme known, as ‘Scheme for regularisation of the daily wagers in various scheme.’

In that view of the matter, the University should try to fill up those posts by daily wagers who are already working with the University in terms of the provisions of the aforesaid Scheme. It is, however, made clear that while doing so, the said posts would be filled up strictly as per their seniority position and subject to reservation rules and also their qualifying the prescribed test.”

Subsequent to the award, a regularization policy was formulated by the petitioner which was recognized by the Bench in the W.P.(C) No.679/1997 and following that all these workmen were regularized from the respective dates against their names.

5. It is contended on behalf of the respondents that the workmen were entitled for the regularization under the various schemes and the UGC guidelines issued from time to time and that the learned Industrial Tribunal has rightly ordered for the regularization of the workers. It is further

contended that in view of the decision of Supreme Court dated 17.01.1986 in writ petition titled as **Shri Surinder Singh and Others vs. Union of India**, whereby the guidelines in the matter of recruitment of casual labourers on daily wages has been laid down, it is clear that the recruitment of daily wagers for the work of regular nature was prohibited and if such a work is entrusted to the casual labourers, they were required to be paid at the rate of 1/30 of the pay at the minimum of the relevant pay scale plus dearness allowance for the work of eight hours a day, including other benefits. It is further submitted that the learned Industrial Tribunal has rightly granted the salary to the workman at serial No.1 to 20, wages equal to Group 'D' employees at the minimum of the scale and the workman at serial No.21, wages equal to Group 'C' employees at the minimum of the scale with usual allowances per month, from the date of their appointment till their regularization on the principle of equal pay for equal work as per the settled proposition of law and hence, there is no illegality in the award. It is further contended that the findings in the case of **Uma Devi and Ors.** (supra) are not applicable to the facts and circumstances of this case.

6. I have heard the arguments and have given due consideration to the rival contentions of the parties and their written submissions.

7. It is apparent from the Terms of Reference, which the Industrial Tribunal had been asked to adjudicate upon, that it relates to the regularization of the workmen named in Annexure 'A' from their respective initial date of appointment. While answering the said Terms of Reference, after relying on the several case laws discussed in different paragraphs and also the letters, policies, directions issued by the Ministries as well as UGC, the Tribunal reached to the conclusion in para 22, which is reduced as under:-

“22. In the light of above position of law, the workman could not be deprived of equal pay for equal work i.e. at par as regular employees. Therefore, this issue is answered in affirmative and it is held that the workmen in Annexure 'A' are entitled to be regularized but not from the date of their initial appointment. Their regularization should have been done as per the rules and schemes as per the guidelines of memorandum Ex.WW1/1.”

8. It is the admitted fact that during the pendency of this writ petition, the petitioner has regularized all the workmen shown in Annexure 'A' from the dates shown in the list submitted by the respondents along with their

written synopsis dated 04.02.2015, which shows that their regularisation was not done from the date of their initial appointments. The learned Tribunal had also held in its award that although the workmen were entitled for the regularization, they were not entitled for the same from the date of their appointment. The workmen have not challenged the finding of the Tribunal refusing regularization from the date of initial appointment. The finding of the Tribunal that “*the workmen are not entitled for regularization from the date of their appointment*” has thus attained finality. By regularising the respondents under the scheme, the petitioner has acknowledged the entitlement of respondents for regularization. Thus, the challenge by petitioner to entitlement of respondents for regularization has become infructuous.

9. The findings of tribunal that workers were entitled for regularization but not from the date of their initial appointment, therefore do not suffer with any illegality and infirmity.

10. The petitioner has also challenged the directions of the Tribunal, to absorb the workers, by creating extraordinary posts of Group ‘C’ and ‘D’ within 60 days of publication of award on the ground that the Tribunal had no jurisdiction to direct petitioner to create extraordinary post of Group ‘C’

and 'D'. It is argued on behalf of respondents that Tribunal had acted fairly and with the object to impart justice.

11. The learned Industrial Tribunal had issued the following directions:-

“23. In view of my findings to the above issue the claim of the workmen succeed and in order to answer the query in the reference, it is held that workmen are entitled to be regularized in the service. The stand of the management is that they do not have permanent posts of Supervisor, Malis or Beldars. Therefore, it is not expected from the management that it can act promptly and it is likely to take a long time to formulate a scheme for regularisation of the daily wage basis employees, if directed for the same and then; by this the relief sought by the workmen shall be delayed for further indefinite period. Therefore, the management is directed to absorb the present workmen of Annexure 'A' from serial No. 1 to 20 in group 'D' post and serial No. 21 in Group 'C' post within 60 days of the publication of award. In case no such posts are available then extraordinary post be created carrying the pay scale of group 'D', Group 'C' post. The management is further directed that since the date of completion of 240 days of continuous service (including Sundays and paid holidays) of the individual workmen at sl. 1 to 20

shall be paid wages equal to group 'D' employees at the minimum of the scale and the workman at sl. No.21 shall be paid wages equal to group 'C' employees at the minimum of the scale with usual allowances p.m., till the date of their absorption on the regular post.”

12. From these directions, first issue that arises for consideration is whether the learned Industrial Tribunal had acted within its jurisdiction, while directing the petitioner to absorb the respondents specially when on the basis of evidences on record, it reached to the conclusion that petitioners did not have permanent post of Malis, Beldar or Supervisor and the directions means the absorption of the respondents against the non-existent post.

Moreover, creation of a post is an executive job and the Courts cannot issue direction to the statutory bodies to create jobs and then absorb its casual works.

13. In the case of **State of U.P. and Others vs. U.P. Madhyamik Shiksha Parishad Shrami Sangh and Another** AIR 1996 SC 708, the Supreme Court has held as under:-

“3. XXX XXX XXX

Perhaps there may be justification for issuing

directions for regularisation of the service according to rules and payment of the salary to the post to which they are fitted. But in view of the fact that no posts are created or existing, we cannot uphold the directions issued by the High Court to pay equal wages or to regularize their services.”

Also, in the case of **Dhirendra Chamoli and Another vs. State of U.P.** (1986) 1 SCC 637, the Supreme Court has held that in the absence of sanctioned post, a casual worker cannot be regularized.

The Tribunal has apparently exceeded its jurisdiction. Therefore, the directions of the learned Industrial Tribunal for creation of extraordinary post carrying pay scale of Group ‘D’ and Group ‘C’ and absorption of workers within 60 days of the award is an error apparent on the face of the record.

The petitioner has also challenged the direction of the learned Tribunal, whereby it has been directed to pay the salary of the scale of Group ‘D’ and Group ‘C’ employees to respondents. It is argued that the learned Industrial Tribunal has travelled beyond the Terms of Reference and the grant of salary to respondents of Group ‘D’ & ‘C’ was not an issue which was incidental to the terms of Reference since the Reference had

related to the entitlement of respondents for the regularization. Also, directions are against the proved facts on record which clearly shows that there were no sanctioned post of Group 'C' and Group 'D' employees in the establishment of the petitioner. Since there was no permanent regular post, the job which the workers were doing were not against any sanctioned or permanent post of beldars, malis and supervisors, hence, they are not entitled for the salary of the regular post. Reliance is also placed on the findings in the case of **Uma Devi and Ors.** (supra).

14. It is argued on behalf of the workers-respondents that **Uma Devi's** case (supra) is not applicable on the facts and circumstances of this case.

15. I have given thoughtful consideration to the rival contentions. The terms of Reference show that it relates to the entitlement of the workers for regularization from their respective initial date of appointments. It does not relate to the entitlement of the workers to the pay scale of post of beldars, malis and supervisors. Also the questions relating to the payment of salary in the pay scale of permanent post of labourers, malis and supervisors on the principle of equal pay for equal work was not a matter incidental to the Terms of Reference. Even otherwise admittedly, there were no regular sanctioned post of malis, supervisors and beldars and so no person could be

said to be manning those posts, hence there was no occasion for the petitioner for adopting unfair labour practice by discriminating the respondents (who were daily wage employees) with regular employees. Also law in this regard is settled. In the case of **Uma Devi and Ors.** (supra), the Five-Judge Bench of the Supreme Court has clearly held that the persons who are working on daily wages form a class in itself and they cannot claim to be discriminated as against those who have been regularly recruited on the basis of relevant rules. In para 39 and 41, the Supreme Court has observed as under:-

“39. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent

in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

41. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution of India, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete

for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality.”

16. In view of the above, it is apparent that the directions issued by the Industrial Tribunal in its award dated 10.08.2001 cannot be sustained. The award is hereby set aside with no order as to costs.

**DEEPA SHARMA
(JUDGE)**

MAY 19, 2015

BG