

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.670 of 2002

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MAHENDRA KUMAR SON OF GANESH PRASAD, RESIDENT OF
MOHALLA MANGAR BIGHA, P.S. NAWADAH, DISTRICT NAWADAH.

... .. Petitioner/s

Versus

1.THE CHAIRMAN-CUM-M.D. HEAD OFFICE NATIONAL
INSURANCE COMPANY LTD. CALCUTTA.
2.THE ADMINISTRATIVE OFFICE(O.B.C. CELL) NATIONAL
INSURANCE COMPANY LTD. CALCUTTA.
3.THE REGIONAL MANAGER, PATNA REGIONAL OFFICE,NATIONAL
INSURANCE COMPANY LTD, PATNA.
4.THE DIVISIONAL MANAGER, NATIONAL INSURANCE CO.
RANCHI, PATNA ROAD, HAZARIBAGH.
5.THE BRANCH MANAGER NATIONAL INSURANCE COMPANY LTD.
RAJENDRA NAGAR NAWADAH, BIHAR.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 6019 of 2004

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MAHENDRA KUMAR SON OF GANESH PRASAD, RESIDENT OF
MOHALLA MANGAR BIGHA, P.S. NAWADAH, DISTRICT NAWADAH.

... .. Petitioner/s

Versus

1.THE CHAIRMAN-CUM-M.D. HEAD OFFICE NATIONAL
INSURANCE COMPANY LTD. CALCUTTA.
2.THE REGIONAL MANAGER, PATNA REGIONAL OFFICE,
NATIONAL INSURANCE COMPANAY PATNA.
3.THE DIVISIONAL MANAGER, NATIONAL INSURANCE CO.
RANCHI, PATNA ROAD, HAZARIBAGH.
4.THE BRANCH MANAGER NATIONAL INSURANCE COMPANY LTD.
RAJENDRA NAGAR NAWADAH, BIHAR.
5.NATIONAL INSURANCE COMPANY THROUGH THE MANAGING
DIRECTOR, HEAD OFFICE.

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 670 of 2002)

For the Petitioner/s : Mr. SUBODH PRASAD

For the Respondent/s : Mr. RAM CHANDRA LAL DAS

(In Civil Writ Jurisdiction Case No. 6019 of 2004)

For the Petitioner/s : Mr. NARESH PRASAD

For the Respondent/s : Mr. RAM CHANDRA LAL DAS

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT



Date : 22-03-2018

Heard learned counsel for the parties.

2. These petitions under Article 226 of the Constitution of India has been filed by the petitioner for quashing the letter dated 08.06.2001 issued by Regional Manager National Insurance Company Ltd., Patna, by which he has been denied regularization on the post of Sub-staff as well as equal pay for equal work which was performed by him as daily wager. It has been contended on behalf of the petitioner that he was working as daily wager in the branch office of National Insurance Company Limited, Nawada branch on Class-IV post since 15.04.1991.

3. One post of Sub-staff became vacant on promotion of one Kapildeo Prasad who was working as Sub-staff in the branch upon his promotion to Class-III post. The petitioner filed an application dated 12.01.1996 (Annexure-1) to the branch Manager for his regularization on the post of Sub-staff and same was forwarded by the Branch Manager to the Divisional Manager for favourable consideration and thereafter Divisional Office demanded by letter dated 25.04.1996 (Annexure-2) information and details of petitioner from the Branch Manager at Nawada and same was send by the branch office, Nawada in



the prescribed format on 06.05.1996 along with payment voucher made to petitioner of last five years. Annexure-3 is proforma prepared by Branch Manager, Nawada regarding working days of petitioner as daily wager since 15.04.1991 which shows petitioner has worked more than 240 days in the year 1992-244 days, 1993-246 days, 1994-243 days. Annexure-4 is letter dated 05.08.1996 written by Branch Manager of Nawada to Divisional Office, Hazaribagh, expressing difficulty faced by the branch after promotion of said Sub-staff on Class-III post and in absence of Sub-staff branch was facing difficulty in managing day to day affairs and somehow it was being managed with the help of daily wager (petitioner) and other daily wager (Sweeper) and as such requested to provide permanent Sub-staff and Sweeper so that branch could properly function.

4. Annexure-8 is reply dated 02.08.1999 send by the branch manager in a prescribed format pursuant to information sought by the Divisional Office, Hazaribagh vide its letter dated 29.07.1999 with respect to petitioner in which it has been categorically stated that petitioner is working against the post of Sub-staff on daily basis. The letter is being reproduced for better appreciation of issue involved in this case.



Casual engagement in the services of Sub-staff

1. Name of the casual employee :Mr. Mahendra Rai
2. Whether engaged for rendering services of Sub-staff :Yes
3. Period of temporary engagement & whether continuing now. :15.04.1991 till date Yes
4. Whether industrial Dispute raised before ALC for regularisation, if so, details. :No.
5. Circumstances under which such casual engagement was resorted to :Due to shortage of Sub-staff.
6. Office(s) where engages :Nawada

Asst. Br. Manager.

5. Petitioner represented before the authorities that he should be paid regular pay scale of Sub-staff Class-IV employee as he was working for more than 240 days on the said post and is entitled for salary of Class-IV employee in its minimum pay scale and also to regularize his services on the vacant post of Sub-staff against which he is working on daily basis. However, no decision was taken on the representation of the petitioner and another daily wager Garib Das, who was working from 1994 was regularized as part time Sweeper in Nawada branch as contained in Annexure-9 dated 01.03.2000 and as such petitioner was constrained to file CWJC No. 3498 of 2001 which was disposed of on 18.04.2001 with a direction to the respondent authorities to consider the case of the petitioner for



his regularization on the post of Sub-staff but the same was rejected by impugned order dated 08.06.2001 as no vacant sanctioned post is available in the Branch and he was engaged on purely contractual basis and was not appointed as per recruitment Rules. However, from their own showing the post of Sub-staff became vacant on promotion of one Sub-staff on Class-III post and petitioner was working on daily basis against said post as per Annexure-8.

6. A counter affidavit has been filed on behalf of the respondent-National Insurance Company Ltd. denying the claim of petitioner on the ground that he was neither discharging his duty as regular Sub-staff nor he was in regular employment or on the pay-roll of the respondent-company, as such parity of remuneration against the regular employee does not arise.

7. It has further been contended that there are recruitment rules and procedure for appointment against any vacancy and the same has to be followed as per the procedure laid down and petitioner was not appointed by any recruitment procedure. The petitioner has never discharged his duty against sanctioned vacant post rather he was working as Water Boy on casual basis on fixed remuneration and the same was subject to the work performed by the petitioner for working days only.



8. They have further stated that as per routine of the company information with respect to status of daily wage worker is required to be furnished to the management for audit purpose as it involves the expenditure from the company fund and it is necessary to keep the management aware of the persons whose services are being utilized as per exigency and as such persons who are in active consideration for the management to give them priority in case of any appointment.

9. They have further denied the claim of the petitioner on the ground that he is not regular staff and discharging his duty which is of permanent nature and his work is not identical to the work of other Sub-staff who are discharging their duty of regular nature.

10. They have further contended that the issue raised by the petitioner can be better appreciated and adjudged under the provisions of Industrial Disputes Act and this petition is not the remedy and as such no relief can be granted to the petitioner under the writ jurisdiction.

11. The issue raised by respondents are well founded but after 15 years of filing of the writ petition and the same being admitted, petitioner cannot be relegated to Industrial/Labour Tribunal after 15 years when the pleadings have been completed



and the matter remained pending in the High Court. There is no bar that writ court cannot decide such disputes, as such this Court is not inclined to relegate the petitioner to Industrial/Labour Court, at this stage and it thinks proper to decide the case on merit on admitted facts. Since, the respondents have raised objection that appropriate forum for such dispute is Industrial/Labour Tribunal, as such it is an admitted position that respondent-company is an industry and petitioner workmen, within the meaning of Industrial Disputes Act. Moreover, petitioner had earlier filed writ petition before this Hon'ble Court which was disposed of by this Court with a direction to respondent-authorities to consider the case of petitioner for regularization and same being rejected by respondents, the present writ petition is maintainable on that score also.

12. After the matter being kept pending for 15 years, same cannot be dismissed on alternative remedy being available, if it appears to the High Court that the matter can be decided by writ court. It has been held by the Apex Court that even if alternative remedy is available, it cannot be said that a writ petition is not maintainable. In a similar circumstance the order of refusal by High Court to relegate petitioner before



Industrial Tribunal after much delay has been approved by Apex Court in the case of *Roop Singh Negi v. Punjab National Bank, since reported (2009) 2 SCC 570*, which reads as follows:-

“ The writ jurisdiction can be exercised by this Court only in exceptional circumstances which have not been mentioned by the petitioner in the petition. However, once the petition was admitted for hearing in exercise of the writ jurisdiction after a lapse of so many years since the writ petition was admitted in the year 2001, it may not be appropriate for this Court to pass an order now that the petitioner should make out a case for reference to the Industrial Tribunal and therefore the petition filed by the petitioner is being considered.”

13. It is an admitted fact by both the parties that the petitioner was engaged on daily wages on 15.04.1991 and he filed a representation (Annexure-1) for his regularization on the vacant post of Sub-staff as he was working on daily wages for last five years. The representation of petitioner was forwarded by the Branch Office to the Divisional Office and Divisional Office asked details of daily wagger to be furnished by the Branch Office to the Divisional Office and pursuant to the said letter Assistant Branch Manager on 06.05.1996 sent the details of petitioner in the prescribed proforma (Annexure-2) for appropriate action at the Divisional Office level and as demanded payment vouchers of petitioner for the relevant years were also sent.

14. The details of working days of petitioner on daily basis has been enclosed year wise in which he has worked for



240 days in the year 1992-93-94 and 233 days in year 1995, which is also an admitted fact. The Assistant Branch Manager had also recommended to regularize petitioner on the vacant post of Sub-staff by his letter dated 05.08.1996 (Annexure-4) who was working as daily wager against the vacant post of Sub-staff and due to shortage of staff, branch was facing difficulty in its day to day affairs.

15. First prayer of the petitioner was that he ought to have been paid minimum pay scale of Class-IV employee working in the department after completion of 240 days in one year. However, same was denied to the petitioner illegally as the issue has been decided by the Apex Court in the case of ***State of U.P. v. J.P. Chaurasia***, since reported in (1989) 1 SCC 121, which reads as follows:-

“26. In *Dhirendra Chamoli v. State of U.P.*⁴, this Court found fault with the Central Government for not giving the casual workers engaged in Nehru Yuvak Kendra the same salary and conditions of service as enjoyed by Class IV employees regularly appointed against sanctioned posts. It was observed: (SCC pp. 638-39, para 2)

It must be remembered that in this country where there is so much unemployment, the choice for the majority of people is to starve or to take employment on whatever exploitative terms are offered by the employer. The fact that these employees accepted employment with full knowledge that they will be paid only daily wages and they will not get the same salary and conditions of service as other Class IV employees, cannot provide an escape to the Central Government to avoid the mandate of equality enshrined in Article 14 of the Constitution. This article declares that there shall be equality before law and equal protection of the law and implicit in it is the further principle that there must be equal pay for work of equal value. These employees



who are in the service of the different Nehru Yuvak Kendras in the country and who are admittedly performing the same duties as Class IV employees, must therefore get the same salary and conditions of service as Class IV employees. It makes no difference whether they are appointed in sanctioned posts or not. So long as they are performing the same duties, they must receive the same salary and conditions of service as Class IV employees.

27. In *Surinder Singh v. Engineer-in-Chief, CPWD*⁵, the case of poor daily wage workers employed for several years by the Central Public Works Department (CPWD) came up for consideration before this Court. They demanded parity in their wages, salary and allowances with those of regular and permanent employees of the department on the basis of performing similar work. This Court while granting relief to the workmen observed: (SCC p. 642, para 1)

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 come from the mouths of the State and State Undertakings.

28. The right to have equal pay for equal work was also accepted by this Court in *R.D. Gupta v. Lt. Governor of Delhi*⁶; *Bhagwan Dass v. State of Haryana*⁷; *National Museum Non-Gazetted Employees Association v. Union of India*⁸; *Jaipal v. State of Haryana*⁹ and *Y.K. Mehta v. Union of India*¹⁰.

29. Article 39(d) of the Constitution proclaims “equal pay for equal work”. This article and other like provisions in the Directive Principles are “conscience of our Constitution”. They are rooted in social justice. They were intended to bring about a socio-economic transformation in our society. As observed by Hegde and Mukherjea, JJ. in *Kesavananda Bharati v. State of Kerala*¹¹ (SCC p. 502, para 712):

“(T)he Constitution seeks to fulfil the basic needs of the common man and to change the structure of our society.” In the words of Shelat and Grover, JJ. (SCC p. 458, para 596): “The dominant objective in view was to ameliorate and improve the lot of the common man and to bring about a socio-economic justice.” In matter of employment the Government of socialist State must protect the weaker sections. It must be ensured that there is no exploitation of poor and ignorant. It is the duty of



the State to see that the underprivileged or weaker sections get their dues. Even if they have voluntarily accepted the employment on unequal terms, the State should not deny their basic rights of equal treatment. It is against this background that the principle of “equal pay for equal work” has to be construed in the first place.”

16. In view of the law, laid down by the Apex Court, petitioner is entitled for minimum pay scale from 01.01.1993 after completing 240 days of working in the year 1992 as being granted to regular Class-IV employee, however, same was denied illegally.

17. Industrial Disputes Act is a beneficial legislation engaged with an object to protect rights and exploitation of workers in industrial establishment whether public or private. It prohibits unfair labour practice on the part of the employer in engaging employees as casual or temporary employees for long period without giving them status and privileges of permanent employees and courts can direct employer to accord permanency to the employees affected by such unfair labour practice under Section 30(1)(b) of Industrial Disputes Act.

18. The claim of the petitioner has been denied on the ground that his appointment was not in accordance with recruitment procedure and in view of Uma Devi case petitioner cannot be regularized.

19. The provisions of Industrial Disputes Act were not



under consideration in Uma Devi case, the issue pertaining to unfair labour practice was neither the subject matter for decision nor was decided in Uma Devi case. Uma Devi case does not denude statutory power under Section 30 of the Act to order permanency of the workers who have been victims of unfair labour practice on the part of employer where the post on which they have been working exists.

20. Uma Devi case cannot be held to have overridden the provisions of Industrial Disputes Act in passing appropriate order under Section 30 of the Act. Once unfair labour practice on the part of employer and continued casualization of service of workman is established, which amounts to unfair labour practice as defined in Item 10 in Part-1 of the 5th Schedule of the Act and that social justice demands that his services should be regularized.

21. While denying the claim of petitioner, the respondents in their counter affidavit have taken the shelter of Uma Devi case that since appointment of the petitioner is *de hors* of recruitment rules, his services cannot be regularized.

22. The effect of Uma Devi case on unfair labour practice was considered by the Apex Court in the case of ***Maharashtra SRTC vs Casteribe Rajya Parivahan Karmchari***



Sanghatana since reported in (2009) 8 SCC 556, in which it has been held that Uma Devi case has not overridden the provisions under the Industrial Disputes Act and once the unfair labour practice on the part of the employer is established, the stand of the respondent-company to deny the claim of petitioner is not sustainable, as such order dated 08.06.2001 passed by Regional Manager, Patna, is not sustainable and petitioner is entitled for regularization from 08.06.2001.

23. During pendency of writ petition, respondents have disengaged petitioner and have stopped taking work from him and for which CWJC No. 6019 of 2004 has been filed in which respondents have accepted that they have stopped taking work from petitioner from 09.05.2003.

24. Petitioner is working as daily wager since 1991 for more than 240 days in a year, as such he cannot be disengaged, and any such disengagement will amount to retrenchment. The petitioner having worked for more than 240 days in a year, right has accrued in his favour under Section-25B of the Act and he cannot be retrenched from service without compliance of section 25F of Industrial Disputes Act. The issue of retrenchment was recently considered by the Apex Court in the case of *Ajay Pal Singh vs Haryana Warehousing Corporation*



since reported in **(2015) 6 SCC 321** and in para 19, it has been held as follows:-

“19. Section 25-F of the Industrial Disputes Act, 1947 stipulates conditions precedent to retrenchment of workmen. A workman employed in any industry who has been in continuous service for not less than one year under an employer is entitled to benefit under the said provision if the employer retrenches the workman. Such a workman cannot be retrenched until he/she is given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice apart from compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. It also mandates the employer to serve a notice in the prescribed manner on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette. If any part of the provisions of Section 25-F is violated and the employer thereby, resorts to unfair trade practice with the object to deprive the workman with the privilege as provided under the Act, the employer cannot justify such an action by taking a plea that the initial appointment of the employee was in violation of Articles 14 and 16 of the Constitution of India.”

25. As petitioner has been disengaged by the respondent-company without compliance of Section 25F of Industrial Disputes Act, 1947, as such his retrenchment is illegal and he is entitled for reinstatement.

26. The respondent-National Insurance Company Ltd., is an instrumentality of State and as such is expected to function



as a model employee of a social welfare State but strangely it has indulged into unfair labour practice. Petitioner has been treated very unfairly and unreasonably by respondent-company. Petitioner had approached this Court for his regularization which was rejected and same is impugned in this writ petition and during pendency of writ petition, he has been disengaged from service. It has been alleged that petitioner has been punished and victimized for approaching this Court.

27. In view of the discussions as stated above, the order of denial of regularization of petitioner by order dated 08.06.2001 is set aside and petitioner is entitled for regularization w.e.f. 08.06.2001 and petitioner is entitled for salary of Class-IV employee at the minimum pay scale from 01.01.1993 and also is entitled for reinstatement with full back wages from the date of disengagement i.e. 09.05.2003 till his reinstatement.

28. However, since the petitioner has been disengaged/retrenched from 2003 and more than 15 years have elapsed and petitioner was not a regular or permanent employee of respondent-company and was daily wager, as such instead of granting him reinstatement salary and back wages, a compensation of Rs. 5 Lacs is awarded to him which is to be



paid by the respondent no. 3 to the petitioner within three months from the date of receipt/production of a copy of this order.

29. The writ petition is allowed with a cost of Rs. 20,000/- to be paid to the petitioner by respondent no. 3 within three months from the date of receipt/production of a copy of the order.

(S. Kumar, J)

ranjan/-

AFR/NAFR	AFR
CAV DATE	N.A.
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Transmission Date	N.A.

