

State Of U.P. And Ors. vs Putti Lal on 21 February, 2002

Equivalent citations: 2002(3)AWC2375(SC), 2003(8)SCALE259, (2002)2UPLBEC1595, 2006 (9) SCC 337, AIR ONLINE 2002 SC 151, (2002) 2 UPLBEC 1595, (2003) 8 SCALE 259, (2002) 3 ALL WC 2375

Bench: S.N. Variava, K.G. Balakrishnan

ORDER

G.B. Pattanaik, S.N. Variava and K.G. Balakrishnan, JJ.

1. I. A. for discharge of Advocate is allowed.

2. These appeals and the special leave petitions are directed against one and the same judgment of the Division Bench of Allahabad High Court. The High Court disposed of a batch of appeals by a common judgment. The respondents were daily rated wage earners in the Forest Department having already served the department for several years. They approached the High Court for regularization of their services. The Division Bench of the High Court by judgment dated 10th December, 1997 called upon the Government to frame a scheme as to how the services of these daily rated workers could be regularised. A committee was directed to be constituted consisting of Secretary (Finance), Secretary (Forest) and the Legal Remembrances or their nominees, which committee was called upon to frame the scheme for regularisation of the daily rated employees working in the Forest Department. The High Court also came to hold that these daily rated workers should be paid at the minimum of the pay-scale that is available for a regular worker in the corresponding post in the Government. This Court, after Issuing notice by order dated 13th of May, 1998, directed maintenance of status quo so far as the payments are concerned. Subsequently, on hearing parties after notice, by order dated 3rd of August, 1998 leave was granted and the operation of the impugned judgment was stayed during the pendency of the appeal.

3. On behalf of the employees, an I.A. had been filed claiming that they should at least be allowed their regular wages during the pendency of the appeals, but by order dated 27th September, 1999 that prayer was rejected and it was held that the persons working will be paid only the amount payable to a daily-wager. When these matters had been posted for hearing before the Court on 1st May, 2001, after hearing the parties for a considerable length of time, the Court felt that the impugned direction of the High Court for providing a scheme: for regularisation of all the daily-wage workers/muster roll employees under the Forest Department who have rendered 10 years of service or more, should be regularised by making appropriate scheme. The Court directed that the scheme should be framed within three months from the date of the order. As the State of U. P. was bifurcated to two States and State of Uttaranchal had come into existence, by a subsequent order, the State of Uttaranchal was also impleaded as a party and they had been granted time to file their response. Pursuant to the aforesaid direction of the Court dated 1.5.2001 the State of U. P. has framed a set of rules in exercise of power conferred under the proviso to Article 309 of the

Constitution called "The Uttar Pradesh Regularization of Daily Wages Appointment on Group 'D' Posts Rules, 2001". It appears that a similar rule has been framed for regularisation of Group 'C' daily-wages employees. Both these Statutory Rules would govern the case of all daily-wagers appointed in any department including the Forest Department, which department was before us pursuant to the direction of the Division Bench of Allahabad High Court. Since a statutory rule has been framed indicating the manner in which the daily-wagers can be regularised, question of framing any further scheme by the State of Uttar Pradesh does not arise.

4. Mr. Bahuguna, learned senior counsel appearing for the employees, made a grievance with regard to some of the provisions of the aforesaid rules but we are not inclined to entertain that grievance and issue any direction in this case inasmuch as grievance, if any, emanating from the aforesaid statutory rules would be on a fresh cause of action which could be assailed before an appropriate forum by the aggrieved party. Mr. Bahuguna, however, contended that so far as the entitlement of these daily-wagers until they are regularised in accordance with the statutory rule to get minimum of the pay-scale, should be granted by this Court which is not being given because of the interim order of stay that had been passed by this Court and the dismissal of the LA. filed by the employees. According to him, a judgment of a learned single Judge in respect of the forest employees unequivocally held that the daily-wagers should be paid in the minimum of the pay-scale as is available to a regularly employed worker in the corresponding cadre.

5. In several cases, this Court, applying the principle of equal pay for equal work has held that a daily-wager, if he is discharging the similar duties as those in the regular employment of the Government, should at least be entitled to receive the minimum of the pay-scale though he might not be entitled to any increment or any other allowance that is permissible to his counterpart in the Government. In our opinion, that would be the correct position and we, therefore, direct that these daily-wagers would be entitled to draw at the minimum of the pay-scale being received by their counter-part in the Government and would not be entitled to any other allowances or increment so long as they continue as daily-wager. The question of their regular absorption will obviously be dealt with in accordance with the statutory rule already referred to.

6. So far as the State of Uttaranchal is concerned, a scheme for regularisation of daily workers has been produced before us which prima facie does not appear to be objectionable excepting the provision regarding qualification for regularisation. Be it stated that the qualification essential for being regularised would be the qualification as was relevant on the date a particular employee was taken in as a daily-wager and not the qualification which is being fixed under the scheme. The fact that the employees have been allowed to continue for so many years indicates the existence or the necessity for having such posts. But still, it would not be open for the Court to indicate as to how many posts would be created for the absorption of these daily-wages workers. Needless to mention that the appropriate authority will consider the case of these daily-wagers sympathetically who have discharged the duties for all these years to the satisfaction of their authority concerned. So far as the salary is concerned, as we have stated in the case of State of Uttar Pradesh, a daily-wager in the State of Uttaranchal would be also entitled to the minimum of the pay-scale as is available to his counter-part in the Government until his services are regularised and he is given regular scale of pay.

7. The civil appeals and the special leave petitions stand disposed of accordingly.
8. Delay condoned and applications for intervention and impleadment stand allowed.