

A

UNION OF INDIA & ORS.

v.

ALL INDIA TRADE UNION CONGRESS & ORS.

(Civil Appeal No.3146 of 2019)

B

MARCH 15, 2019

**[ABHAY MANOHAR SAPRE AND
DINESH MAHESHWARI, JJ.]**

C *Service Law – Regularisation of services of the casual paid labourers – Claim for – Respondent Nos.1 & 2-Trade Unions filed writ petition against the appellant-Union of India claiming a relief for regularisation of the casual workers, who were working in a project undertaken by Border Roads Organisation (BRO) for construction of roads – Single Judge of the High Court allowed the writ petition – Division Bench of the High Court affirmed the decision of the Single Judge and issued further a writ of mandamus by directing the appellant to frame a scheme to provide specific facilities to the workers enumerated in the directions – On appeal, held: High Court did not examine the case in the light of the law laid down by the Supreme Court in the case of Union of India v. Vartak Labour Union (2) – High Court failed to see that it was not the function of the courts to frame any scheme but it is sole prerogative of the Government to do it – Appellant has now framed a welfare scheme for all such casual workers – Therefore, impugned order of the High Court set aside.*

F

Allowing the appeal, the Court

G **HELD: 1. Keeping in view the law laid down by this Court in the case of Union of India v. Vartak Labour Union (2) and then examining the facts of the case at hand, this Court finds that the facts of the case at hand and the one which were subject matter in the case of Union of India are identical in all respects except that name of the Trade Union of workers and place of working in both the cases are different, which is hardly of any significance. The High Court should have, therefore, examined the case in**

H

the light of the law laid down by this Court in the case of Union of India rather than to evolve its own separate scheme. The High Court failed to see that it is not the function of the Courts to frame any Scheme but it is the sole prerogative of the Government to do it. [Paras 14, 15 and 16] [450-F-H] A

2. All that the High Court, in exercise of its extraordinary power under Article 226 of the Constitution, can do is to direct the Government to consider for framing an appropriate Scheme having regard to the facts and circumstances of any case which this Court did in the case of Union of India but not beyond it. It is only in an exceptional case where the Court considers it proper to issue appropriate mandatory directions it may do so but not otherwise. [Para 17] [451-A-B] B C

3. It is not in dispute that the appellant-Union of India has now framed a welfare scheme for all such casual workers. The salient features of the welfare scheme and the benefits which are being extended to all such casual workers are set out in Para 14 (i) to (xii) of the petition. [Para 18] [451-B-C] D

Union of India v. Vartak Labour Union (2) (2011) 4
SCC 200 : [2011] 4 SCR 509 – relied on. E

Case Law Reference

[2011] 4 SCR 509 relied on Para 12

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3146 of 2019. F

From the Judgment and Order dated 05.12.2016 of the High Court of Uttarakhand at Nainital in Special Appeal No. 485 of 2015

Ajit K. Sinha, Sr. Adv., Shekhar Vyas, Ms. Rukhmini Bobde, Arvind Kumar Sharma (for Mukesh Kumar Maroria), Advs. for the Appellants. G

Colin Gonsalves, Sr. Adv., Ravindra S. Garia, Ms. Olivia B., Shashank Singh, Advs. for the Respondents.

H

A The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. Leave granted.

2. This appeal is filed against the final judgment and order dated 05.12.2016 passed by the High Court of Uttarakhand at Nainital in S.A. No.485 of 2015 whereby the High Court dismissed the appeal filed by the appellants herein and issued directions to them in the nature of mandamus by framing a scheme itself for its implementation to regularize the services of the Casual Paid Labourers and granted them the benefits similar to those of the regular employees under all the Labour Laws.

3. A few facts need mention hereinbelow for the disposal of this appeal, which involves a short point.

4. The appellants herein are the respondents and respondents herein are the writ petitioners of the writ petition filed in the High Court out of which this appeal arises.

5. All India Trade Union Congress (respondent No.1) is a registered Trade Union, GREF Mazoor Kalyan Sangthan (respondent No.2) is also a Trade Union, which is affiliated to respondent No.1 and respondent No.3 is one of the casual workers in Border Road Organization. Respondent Nos.1 & 2- Trade Unions consist of members who are casual workers working in different organizations. There is an organization called “Border Roads Organization” (for short, “BRO”). This organization functions under the Border Roads Wing, Ministry of Defence and General Reserve Engineering Forces (GREF).

6. Respondents-Trade Unions filed a writ petition in the High Court of Uttarakhand at Nainital against the appellants claiming a relief for regularization of the casual workers, who according to the respondents (writ petitioners) were working for a considerable long period in one project undertaken by the BRO in the State of Uttarakhand for construction of roads for going to pilgrimage of Char Dham Yatra. It was the case of the writ petitioners that these workers though working for number of years for the Union of India and rendering their services, but they were neither being regularized in the Government set up as a Government employee and nor were being paid regular salary/perks/facilities which were being paid to Government employees and nor they were being provided with any protection which was available to any Government employee. In substance and in effect, the respondents

H

(writ petitioners) claimed that all the casual workers, who were working in the project in question should be regularized in Government Service. A

7. The appellant-Union of India opposed the claim of the respondents(writ petitioners). The Single Judge by order dated 11.03.2015 allowed the writ petition and directed the appellant-UOI to regularize the services of the workers. The appellants felt aggrieved and filed intra court appeal before the Division Bench of the High Court. By impugned order, the Division Bench dismissed the appeal with costs of Rs.50,000/- and while affirming the order of the Single Judge modified it and issued further a writ of mandamus by directing the appellant-Union of India to frame a scheme to provide specific facilities to the workers enumerated in the directions. The directions contained in para 24 of the impugned order reads as under: B C

“24. Accordingly, there is no merit in this appeal and the same is dismissed with the costs quantified as Rs. 50,000/- (Rupees fifty thousand only). Judgment rendered by learned Single Judge is affirmed and following mandatory directions are issued to the Union of India: D

A. Union of India is directed to frame a Scheme within a period of three months from today positively to regularize the services of the members of respondent Federations who have worked for more than five years’ continuously in BRO and GREF. The Union of India shall take into consideration the various schemes already framed by the Department of Personnel & Training from time to time while framing fresh scheme. E

B. Union of India is directed to pay the members of respondents Federations the minimum of the pay scale being paid to the corresponding regular Group ‘D’ employee, including D.A., H.R.A. and C.C.A. The members of respondent Federation shall also be entitled to regular increments, as applicable to Group ‘D’ employees. They shall also be entitled to leave on pro-rata basis at the rate of one day for every ten days of work. The female members of the Federations are held entitled to maternity leave at par with regular Group ‘D’ employees. F G

H

- A **C. Union of India is directed to implement all the labour laws i.e. EPF, Gratuity Act, Bonus Act, Workmen Compensation Act qua the members of respondent Federations.**
- B **D. Communications dated 7.4.2011, 9.4.2011 and 18.4.2011, issued by the Union of India, are declared ultra vires the Constitution and are quashed and set aside.**
- C **E. The Union of India is directed to give temporary status to the workmen/casual labourers who have worked for more than 240 days continuously in the block of 12 calendar months.**
- F. The Union of India is directed to provide warm clothes to the casual labourers deployed in the border areas since they have to work in very low temperatures.**
- D **G. The Union of India is directed to provide the members of respondent Federation pre-fabricated houses with a separate bathroom. The rooms should be airy and well-lit. The houses should be provided with sufficient fuel to make them warm during severe winter conditions.**
- E **H. The Union of India is also directed to open Creches in the areas where more than 20 families are deployed.**
- I. The respondents are directed not to retrench the services of the workmen, who have completed more than 240 days without following the due process of law.**
- F **J. The Union of India is directed that all the causal labourers who receive injuries, while discharging the duties in harsh conditions in border areas, should be treated in Military Hospitals free-of-cost. The Union of India is also directed that the casual labourers from the camping site of construction should be transported in buses and not in open trucks.”**
- G

8. It is against this order, the appellant (Union of India) have felt aggrieved and filed the present appeal by way of special leave in this Court.

H

9. So, the short question, which arises for consideration, is whether the High Court (Single Judge and Division Bench) was justified in allowing the respondents' writ petition and was justified in issuing the directions after framing a Scheme itself in the nature of mandamus against the appellant-UI to frame a scheme for providing specific kinds of facilities/benefits to the casual workers working in BRO in the State of Uttarakhand in construction activities.

A
B

10. Heard Mr. Ajit K. Sinha, learned senior counsel for the appellants and Mr. Colin Gonsalves, learned senior counsel for the respondents.

11. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal and while setting aside the impugned order dismiss the writ petition filed by the respondents.

C

12. It may not be necessary to elaborately deal with the issues arising in the case because we are of the view that the issue involved in this appeal is no longer *res integra* and settled by the decision of this Court in Union of India vs. Vartak Labour Union (2) [(2011) 4 SCC 200].

D

13. That was also a case where the Union of workers namely "Vartak Labour Union" had claimed a relief of regularization of the services of the casual workers who were working in BRO for a considerable period in construction activities undertaken by BRO in the State of Assam. The Union of workers, therefore, filed a writ petition against the Union of India in the Gauhati High Court. The High Court allowed the writ petition and directed the Union of India to regularize the services of all such casual workers. The Union of India felt aggrieved and filed special leave to appeal in this Court against the judgment of the Gauhati High Court. This Court allowed the appeal and set aside the order of the Gauhati High Court with the following observations:

E
F

"17. We are of the opinion that the respondent Union's claim for regularisation of its members merely because they have been working for the BRO for a considerable period of time cannot be granted in light of several decisions of this Court, wherein it has been consistently held that casual employment terminates when the same is discontinued, and

G
H

A merely because a temporary or casual worker has been engaged beyond the period of his employment, he would not be entitled to be absorbed in regular service or made permanent, if the original appointment was not in terms of the process envisaged by the relevant rules. [See *State of Karnataka v. Umadevi* (3); *Official Liquidator v. Dayanand*; B *State of Karnataka v. Ganapathi Chaya Nayak*; *Union of India v. Kartick Chandra Mondal*; *Satya Prakash v. State of Bihar and Rameshwar Dayal v. Indian Railway Construction Co. Ltd.*]

C 22. Therefore, in the facts and circumstances of the instant case, where members of the respondent Union have been employed in terms of the Regulations and have been consistently engaged in service for the past thirty to forty years, of course with short breaks, we feel, the Union of India would consider enacting an appropriate regulation/ D scheme for absorption and regularisation of the services of the casual workers engaged by the BRO for execution of its ongoing projects.

E 23. In the final analysis, the appeals are allowed, and the impugned judgments and orders are set aside. However, in the circumstances of the case, the parties are left to bear their own costs.”

F 14. Keeping in view the law laid down by this Court in the case of *Union of India* (*supra*) when we examine the facts of the case at hand, we find that the facts of the case at hand and the one which were subject matter in the case of *Union of India* (*supra*) are identical in all respects except that name of the Trade Union of workers and place of working in both the cases are different, which is hardly of any significance.

G 15. The High Court, in our view, should have, therefore, examined the case in the light of the law laid down by this Court in the case of *Union of India* (*supra*) rather than to evolve its own separate scheme.

16. The High Court failed to see that it is not the function of the Courts to frame any Scheme but it is the sole prerogative of the Government to do it.

H

17. All that the High Court, in exercise of its extraordinary power under Article 226 of the Constitution, can do is to direct the Government to consider for framing an appropriate Scheme having regard to the facts and circumstances of any case which this Court did in the case of **Union of India**(supra) but not beyond it. It is only in an exceptional case where the Court considers it proper to issue appropriate mandatory directions it may do so but not otherwise.

A

B

18. It is not in dispute that the appellant-Union of India has now framed a welfare scheme for all such casual workers. The salient features of the welfare scheme and the benefits which are being extended to all such casual workers are set out in Para 14 (i) to (xii) of the petition. (see page M to R of SLP paper book)

C

19. Learned counsel for the respondents by placing reliance on a scheme(Annexure R-2) contended that it is this scheme which should have been implemented. We find no merit in this submission. This issue, we find, was already considered in the case of **Union of India** (supra) and rejected.

D

20. In the light of the foregoing discussion, we are unable to agree with the reasoning and the conclusion arrived at by the High Court in the impugned order.

21. As a consequence, the appeal succeeds and is accordingly allowed. The impugned order is set aside and as a result thereof, the writ petition filed by the respondents is dismissed.

E