State Of Orissa & Ors. Appellants vs Balaram Sahu & Ors., Etc. Etc. ... on 29 October, 2002

Equivalent citations: AIR 2003 SUPREME COURT 33, 2002 AIR SCW 4421, 2002 LAB. I. C. 3558, 2002 (6) SLT 219, (2002) 8 JT 477 (SC), 2003 (1) SCC 250, 2003 LAB LR 44, (2003) 1 ALLMR 378 (SC), (2003) 1 JCR 49 (SC), 2002 (8) JT 477, 2002 (8) SCALE 178, 2002 (10) SRJ 288, 2003 (1) UPLBEC 239, 2002 (2) UJ (SC) 1535, 2003 SCC (L&S) 65, (2002) 4 LAB LN 1196, (2002) 4 SCT 902, (2002) 3 LABLJ 1115, (2002) 3 CURLR 947, (2002) 95 FACLR 954, (2003) 1 ORISSA LR 200, (2002) 6 SERVLR 542, (2003) 1 UPLBEC 239, (2002) 7 SUPREME 518, (2002) 8 SCALE 178, (2002) 5 ESC 315, (2003) 1 ALL WC 273, (2003) 95 CUT LT 287

Author: D. Raju

Bench: Doraiswamy Raju, H.K. Sema

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           CASE NO.:
Appeal (civil)  7342 of 1993

PETITIONER:
State of Orissa & Ors.

RESPONDENT:
Balaram Sahu & Ors., etc. etc.                                          Re

DATE OF JUDGMENT: 29/10/2002

BENCH:
Doraiswamy Raju & H.K. Sema.

JUDGMENT:
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J U D G M E N T W I T H Civil Appeal No.7343 of 1993, Civil Appeal Nos. 7047-7048 of 2002 (Arising out of S.L.P.[C] Nos.16204-16205 of 1996) and Civil Appeal No.751 of 1995 D. RAJU, J.

Civil Appeal No.7342 of 1993 :

> The respondents in this appeal, who are N.M.R. workers, have filed Writ Petition in the High Court of Orissa for payment of remuneration on the same scale and basis paid to the regularly employed staff, claiming that they are discharging the same duties and functions, invoking the principle of `equal pay for equal work'. They also sought for regularization of their services on the ground that they have been found working for considerably long period of time to justify their regularization. The

appellant-State contested the claim by contending that the duties and responsibilities of the employees in the regular establishment were more onerous than that of the duties of N.M.R. workers, who are employed in various projects on daily basis and that their engagement also depended on the availability of the work in the different projects and consequently, they cannot claim any parity for equal pay. The Division Bench of the High Court by a judgment dated 10.3.1992 upheld the claim for regularization by observing that the said aspect of the matter was not seriously challenged. As for the claim for equal pay, the High Court was of the view that there was no reason to deny them the equal scales of pay and sustained their claim on par with those employed on regular basis with effect from 2.1.1990, namely, the date of filing of the Writ Petition, with a further direction that those who have served continuously for a period of five years by then should be regularized. Aggrieved, the above appeal has been filed.

Civil Appeal No.7343 of 1993:

The respondents in this appeal, who are N.M.R. workers in the Rengali Power Project, also claim for similar relief as in the other appeal, noticed supra. Overruling the objections of the appellants, while directing regularization of the workers, who have completed five years of continuous service as on the date of the order, the High Court also applying the principles laid down in the earlier cases, upheld in this case as well the right to get equal pay though in the matter of actual payment taking into account the negligible difference, a lump sum amount was directed to be made available to take care of the claim of all the respondents. Aggrieved, this appeal has been filed.

Civil Appeal No.751 of 1995:

The respondents in this appeal, who are N.M.R. workers employed in the various projects of the Irrigation Department of the State Government, sought for relief of regularization of their services and equal pay as that of the regularly employed staff. As in the other cases, the claims were sustained necessitating this appeal also by the State.

Civil Appeal Nos. 7047-7048 of 2002 (Arising out of S.L.P.[C] Nos.16204-16205 of 1996):

Delay condoned.

Special leave granted.

The respondents in these appeals are also the N.M.R. workers in the projects of the Irrigation Department and their claims for regularization as well as payment of salary on equal par with their counterparts in the regular establishment. This claim,

applying the ratio of the earlier orders, was also sustained, resulting in the filing of these appeals by the State.

Heard Shri Jana Kalyan Das, Advocate, for the State of Orissa, and Shri G.L. Sanghi, Senior Advocate, for the appellant-Rengali Power Project. Mr. Bharat Sangal, Mr. Ejaz Maqbool, Mrs. Kirti Renu Mishra and Mr. Y. Prabhakar Rao, Advocates, were heard for the respondents.

The learned counsel for the appellants placed strong reliance upon the decision reported in State of Haryana & Ors. Vs. Jasmer Singh & Ors. [(1996)11 SCC 77] in support of their stand, whereas the learned counsel for the respondents sought to place reliance upon the decisions reported in Chief Conservator of Forests & Anr. Vs. Jagannath Maruti Kondhare & Ors. [(1996) 2 SCC 293] and State of Haryana & Ors. Vs. Piara Singh & Ors. [(1992)4 SCC 118] in support of their stand to justify the relief granted by the High Court. Reliance was also placed upon orders in SLP (C) No.4727/93 dated 3.8.93; C.A. Nos. 2541-42/94 dated 18.4.94 and C.A. Nos.2628-29/94 dated 21.4.94. The learned counsel for the respondents also sought to lay emphasis by claiming that what they were asking for is not for any parity of treatment or equal pay in comparison with their counterparts in the different organizations or in different departments but equal pay on par with the regularly employed staff in their own units or establishments and as such there could be no sufficient cause or justification to deny an equal treatment to the respondents. In substance, learned counsel vehemently contended that the fact they were engaged as N.M.R. workmen or as casuals on daily basis has no relevance or significance, as long as they performed the same and identical job and work as that of the regularly employed staff and consequently there was no justification to discriminate or deny equal pay for them. It was also claimed that the decision in Chief Conservator of Forests (supra) of a Bench consisting of three learned Judges of this Court has to be preferred to the one rendered by a Bench of two learned Judges in Jasmer Singh's case (supra).

We have carefully considered the submissions of the learned counsel appearing on either side. The decision in Jasmer Singh (supra) though by a Bench of two learned Judges consisting of A.M.Ahmadi,CJ., and Sujata V. Manohar, J., is directly on point, Sujata V. Manohar, J., speaking for the bench and after a careful analysis of a catena of earlier decisions on the point, held as follows :-

"10. The respondents, therefore, in the present appeals who are employed on daily wages cannot be treated as on a par with persons in regular service of the State of Haryana holding similar posts. Daily- rated workers are not required to possess the qualifications prescribed for regular workers, nor do they have to fulfill the requirement relating to age at the time of recruitment. They are not selected in the manner in which regular employees are selected. In other words, the requirements for selection are not as rigorous. There are also other provisions relating to regular service such as the liability of a member of the service to be transferred, and his being

> subject to the disciplinary jurisdiction of the authorities as prescribed, which the daily-rated workmen are not subjected to. They cannot, therefore, be equated with regular workmen for the purposes for their wages. Nor can they claim the minimum of the regular pay scale of the regularly employed.
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> 11. The High Court was, therefore, not right in directing that the respondents should be paid the same salary and allowances as are being paid to regular employees holding similar posts with effect from the dates when the respondents were employed. If a minimum wage is prescribed for such workers, the respondents would be entitled to it if it is more than what they are being paid."

The decision in Chief Conservator of Forests (supra), on which strong reliance has been placed for the respondents, was rendered by a Bench comprising A.M. Ahmadi, C.J., and B.L. Hansaria and S.C. Sen, JJ. The question as to the scales of pay to be paid to the N.M.R. workers and whether they should also be paid on equal par with the regularly employed staff, by the application of the principle of 'equal pay for equal work' does not appear to have been either in the centre of controversy or consideration in this decision. As could be seen from the reported decision, two questions, which fell for consideration of the Bench, were as to whether the Forest Department of the State Government is an 'Industry' within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 and for the purposes of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, and whether the State Government had indulged in unfair labour practice visualized by Item 6 of Schedule-IV of the Maharashtra Act, as alleged by the workers before the Industrial Court, in keeping such workers continuously for years on casual basis. The Industrial Court, which adjudicated the claims, granted relief to make the workmen permanent with all the benefits of a permanent worker, which would include payment of wages, etc. at the rate meant for a permanent worker. While adverting to the question as to whether the finding relating to the adoption of 'unfair labour practice' within the meaning of the State Act and the relief granted on that basis called for any interference, this court came to the conclusion that permanency was writ large on the face of both types of work, and that permanent status was denied to the workers concerned therein with the object of denying higher rates as would be payable for permanent workers, in violation of the provisions of the State Act. Consequently, this Court declined to interfere. It is in this context that the claim of the State that if the casual employees to the tune of 1.4 lakhs have to be regularized all of a sudden, it would involve a heavy financial commitments, keeping in view the scales of pay, which have to be paid on their becoming permanent; that a passing reference was made with reference to the scales of pay to be paid and that too only as and when they become permanent and not for the period when they were mere casuals. The conspicuous omission either to refer to or deal with and consider any question based on `equal pay for equal work' to workers even as they stood employed as N.M.R. workers or advert to or notice any one of the decisions elaborately considered in the other decision reported in Jasmer Singh (supra) as to the principles to be applied before doing so would inevitably go to show that the questions of the nature exhaustively considered and decided in the latter decision reported in Jasmer Singh (supra) were not at all the subject- matter for consideration or decision in the Chief Conservator of Forests case (supra),. This assumption is well fortified by the conclusions arrived at in Paragraph 29, which read as follows :-

"We wish to say further that if Shri Bhandare's submission is taken to its logical end, the justification for paying even minimum wages could wither away, leaving any employer, not to speak of model employer like the State, to exploit unemployed persons. To be fair to Shri Bhandare it may, however, be stated that the learned counsel did not extend his submissions this far, but we find it difficult to limit the submission of Shri Bhandare to payment of, say fair wages, as distinguished from minimum wages. We have said so, because if a pay scale has been provided for permanent workmen that has been done by the State Government keeping in view its legal obligations and must be one which had been recommended by the State Pay Commission and accepted by the Government. We cannot deny this relief of permanency to the respondents-workmen only because in that case they would be required to be paid wages meant for permanent workers. This right flows automatically from the relief of regularization to which no objection can reasonably be taken, as already pointed out. We would, however, observe that the relief made available to the respondents is not one, which would be available ipso facto to all the casual employees either of the Forest Department or any other Department of the State. Claim of casual employees for permanency or for higher pay shall have to be decided on the merits of their own cases." (Emphasis supplied) The decision reported in Piara Singh (supra) is no authority for the proposition that temporary, ad hoc or daily wages like N.M.Rs. should be treated on par for purposes of pay-scales with the regularly employed permanent staff in the establishment and merely envisaged a serious and sincere effort on the part of the State to regularize such casual labourers or work-charged employees as far as and as early as possible, subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to the availability of the work meaning thereby the post as well as scope for providing employment. In paragraph 42 of the judgment, this Court, while setting aside the directions of the High Court, observed as follows:

"With respect to direction No.8 (equal pay for equal work) we find the judgment singularly devoid of any discussion. The direction given is totally vague. It does not make it clear who will get what pay and on what basis. The said direction is liable to be set aside on this account and is, accordingly, set aside."

Though 'equal pay for equal work' is considered to be a concomitant of Article 14 as much as 'equal pay for unequal work' will also be a negation of that right, equal pay would depend upon not only the nature or the volume of work, but also on the qualitative difference as regards reliability and responsibility as well and though the functions may be the same, but the responsibilities do make a real and substantial difference.

In State of T.N. & Anr. Vs. M.R. Alagappan & Ors. [(1997) 4 SCC 401], this Court observed that substantial similarity in duties and responsibilities and interchangeability of posts may not also necessarily attract the principle of `equal pay for equal work' when there are other distinguishing features like educational qualifications for appointment, mode of recruitment, status, nature of duties, functions, measure of responsibility and over all duties and responsibilities even outside duty

hours. The principles laid down in Jasmer Singh (supra) were also applied and followed in the decision reported in Gujarat Agricultural University Vs. Rathod Labhu Bechar & Ors. [(2001) 3 SCC 574].

On a careful consideration of the materials placed on record, we are of the view that the principles firmly laid down in the well considered decision of Jasmer Singh (supra) squarely applied on all fours to the cases on hand and the respondents-workers would be entitled to only, apart from the regularization ordered for which the appellants have had no serious objections, the payment of minimum wage prescribed for such workers if it is more than what they were being paid and that the High Court was in serious error in directing that the respondents should be paid the same salary and allowances as were being paid to the regular employees holding similar posts. The respondent-workers cannot be held to hold any posts to claim even any comparison with the regular and permanent staff, for any or all purposes including a claim for equal pay and allowances. The fact that no materials were placed before the High Court as to the nature of duties of either categories should have been viewed as a disentitling factor so far as the workers are concerned and dissuaded the High Court from embarking upon an inquiry in the abstract and with no factual basis and not to empower the court to assume and presume equality in the absence of proof to the contra or of any unequal nature of the work performed by them. To claim a relief on the basis of equality, it is for the claimants to substantiate a clear-cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on par with the other group vis--vis an alleged discrimination. In the light of the decision directly on this issue rendered in Jasmer Singh (supra), we are unable to persuade ourselves to countenance the claim for minimum basic salary given in some unreported decisions brought to our notice which appear on the face of it to be certain directions given on the peculiar facts and circumstances of the same without an objective consideration of any principle of law. An order made to merely dispose of the case before court by issuing certain directions on the facts and for the purposes of the said case, cannot have the value or effect of any binding precedent and particularly in the teeth of the decision in Jasmer Singh's case (supra).

For all the reasons stated above, the appeals are allowed and the orders of the High Court are set aside insofar as the pay equal to that of the regular employed staff has been ordered to be given to the N.M.R./daily wager/casual workers, as indicated above, to which they will not be eligible or entitled, till they are regularized and taken as the permanent members of the establishment. For the period prior to such permanent status/regularization, they would be entitled to be paid only at the rate of the minimum wages prescribed or notified, if it is more than what they were being paid as ordered by this Court in Jasmer Singh's case (supra). There will be no order as to costs.