

Yash Pal & Ors vs Union Of India & Ors on 2 January, 2017

Equivalent citations: AIR 2017 SUPREME COURT 680, 2017 LAB. I. C. 895, AIR 2017 SC (CIVIL) 835, 2017 (3) SCC 272, (2017) 1 LAB LN 1, (2017) 154 FACLR 176, (2017) 1 MAD LJ 431, (2017) 1 SCT 672, (2017) 2 SERVLR 634, (2017) 1 SCALE 156, (2017) 1 ESC 100, (2017) 1 SERVLJ 317, (2017) 1 CAL HN 161, 2017 (2) ADJ 44 NOC, 2017 (2) KCCR SN 94 (SC)

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Bench: D Y Chandrachud, T S Thakur

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 616 OF 2013

YASH PAL & ORS

.... PETITIONERS

VERSUS

UNION OF INDIA & ORS

.....RESPONDENTS

WITH

WRIT PETITION (CIVIL) NO. 912 OF 2013

J U D G M E N T

Dr D Y CHANDRACHUD, J

The petitioners – twenty nine of men – have been engaged as porters in the Indian Army as casual labouror daily wage employees in the border areas of Rajouri, Jammu and Poonch. Annexure P-1 to the writ petition, which has been instituted under Article 32 of the Constitution of India, contains photocopies of identity cards issued by the army authorities. The grievance is that the petitioners have not been treated as regular employees and have been denied the benefit of minimum pay-scales despite long years of service in arduous conditions prevalent in a difficult terrain. According to the petitioners, many of them have worked for long

years. Details have been furnished of the period over which they have been engaged in the writ proceedings. The relief which they seek is in the following terms :

“(a) ..an appropriate writ in the nature of mandamus or any other writ, direction or order commanding respondents to treat petitioners as regular civilian employees in the Indian Army and extend them all benefits which are being given to the regularly appointed / recruited porters discharging..identical work by treating already rendered services by the petitioners as .. by regularly appointed/recruited porters.”

2 Similarly situated porters engaged by the Indian Army as casual labour instituted a proceeding before the Armed Forces Tribunal at its Principal Bench in New Delhi.[1] By a judgment dated 11 May 2010, the Tribunal held that since the porters are not subject to statutory provisions which govern the Army, Navy and Air Force, their grievance did not fulfil the definition of a ‘service matter’ under Section 3(o) of the Armed Forces Tribunal Act, 2007. Hence by the judgment of the Tribunal, the application was dismissed.

3 Special Leave Petitions were moved before this Court which eventually resulted in a judgment dated 14 May 2013 in Isher Singh v. Union of India[2]. Leaving open the issue of jurisdiction, a Bench of two learned Judges of this Court held that the appellants were working for between fifteen and twenty years. Hence, in the view of the Court, the observations contained in paragraph 53 of the decision of a Constitution Bench of this Court in Secretary, State of Karnataka v. Uma Devi[3] “would come in their aid”. For convenience of reference the observations in Uma Devi have been extracted below :

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in State of Mysore vs. S.V. Narayanappa (1967) 1 SCR 128, R.N.Nanjundappa vs. T. Thimmiah (1972) 1 SCC 409 and B.N.Nagarajan vs. State of Karnataka (1979) 4 SCC 507, and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the

constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

The appeals were disposed of by directing the Union government to consider the case of the appellants considering their past service record, within a period of four months.

4 Contempt petitions were filed before this Court with a grievance that the judgment had not been complied with.[4] By an order dated 23 September 2015 this Court took on the record a decision taken by the Union Ministry of Defence in the following terms :

"Hon'ble Supreme Court, during the course of hearing of above Contempt Petitions on the above mentioned case, has observed that some benefits/ex-gratia should be paid to those porters who worked for a specified number of years say 10 or 12.

2. The issue of giving some additional benefits to these petitioners has been considered in the Ministry in deference to the above observation of the Hon'ble Supreme Court.

3. In recognition of the services rendered by these petitioners for Indian Army in operationally active areas having life threatening conditions, it is proposed that these petitioners engaged at the border posts of Army along the LOC for a minimum period of 10 years, be paid an honorarium of Rs.50,000/- (Rs. Fifty thousand only). The payment of honorarium is being granted as a special dispensation and as a onetime measure. The above decision should not be treated as a precedent."

While dealing with the question of regularization, the court noted the submission of the Union government that the employment of porters is "absolutely seasonal" and that when the earlier civil appeals were disposed of, there was no direction to regularize the services of the porters. After recording this submission, this Court held thus :

"In our considered opinion, there cannot be a direction for regularization."

However, the Court (having regard to the hazardous conditions in which the porters have to work, facing injury and disability and in some cases death) suggested to the Union Ministry of Defence to frame a scheme which would govern porters who suffer injury or disability. The Court directed that the scheme shall also contain provisions for the payment of compensation to the families of civilians who meet with death while working as porters. This Court noted that a roster is maintained when civilians are engaged as porters. The contempt petitions were disposed of with the following observations :

“Before parting with this application for contempt, we may note that if the authorities feel appropriate, apart from what we have stated hereinabove, they can frame a better scheme so that these seasonal porters feel secured. The competent authorities shall discuss with the Chief of Army Staff or the officers deputed by him and work out the modes so that there is real enthusiasm to take these kinds of risky jobs.

Professor Bhim Singh also submitted with agony that unless economic security is provided to this category of porters, who because of the basic livelihood take up such jobs, may not feel that they are not being looked after. We hope and trust, the authorities who engage them shall understand and appreciate their agony, anguish and the need and proceed as suggested by us”.

5 The issue as to whether the porters are entitled to regularization has been dealt with first in the judgment dated 14 May 2013 and subsequently in the order disposing of the contempt petitions on 23 September 2015. The Bench hearing the civil appeals had left it open to the Union government to consider the case of the porters having regard to their past service record in the light of para 53 of the decision of the Constitution Bench in Uma Devi. In the contempt proceedings the plea for regularization was not accepted and the Court observed that a direction for regularization could not be granted. However, it was left open to the Union government to frame a better scheme so that the porters feel secure. We may also note here that the plea for regularization was not declined in the original judgment of 14 May 2013. In fact, this Court had adverted to the observations in para 53 of the decision in Uma Devi.

6 In response to the present proceedings, a counter affidavit has been filed on behalf of the respondents stating that (i) of the petitioners who have moved this Court, only the first and second petitioners have been working since 1998 while the others have been recruited after 2000; and (ii) petitioners eleven to sixteen have been engaged since 2010. It has been stated that with the acceptance of the recommendations of the Sixth Pay Commission, Group D posts were upgraded to Group C posts as a result of which the former stand abolished. The implications of this have been set out in a memorandum of the Union government in the Ministry of Personnel (Department of Personnel and Training) dated 30 April 2010, followed by a clarificatory memorandum. In the present case, it has been submitted that casual labour is engaged when required on “Nerrik Rates” as approved by the station headquarters.

7 Relying upon the above mentioned contentions in the counter affidavits, Mr P.S.Patwalia, learned Additional Solicitor General and Mr R Balasubramanian, learned counsel have submitted that they are no sanctioned posts against which the petitioners can be regularized. Direct recruitment is to Group C posts and for posts of multi-tasking staff, minimum qualifications and age criteria have to be fulfilled.

8 During the course of the hearing of these proceedings, an order was

passed on 29 July 2016 allowing the Additional Solicitor General to take instructions on the willingness of the Union government to formulate a suitable policy or scheme for providing better working conditions "and related matters" for a large number of porters working with the Indian Army. A draft was filed before this Court of a proposed scheme and the court was apprised that given sufficient time, the Union government would formulate a proper scheme. The proceedings have thereafter been stood over on 22 August 2016, 14 September 2016 and 30 September 2016. On 30 September 2016, the Court was informed that the Union government "is seriously considering the steps that will ameliorate the conditions of porters serving with the Army".

9 In the meantime, an affidavit has been filed stating that a scheme has been finalized by the Ministry of Defence in consultation with the Indian Army for the engagement of "seasonal civilian labour in high risk/highly active field areas" in pursuance of the observations contained in the order of this Court. The scheme has been produced as Annexure R-1A to the affidavit. We may note at this stage, that the court has been informed by the learned Additional Solicitor General that the scheme which has been placed on the record is now awaiting approval of the competent authority. The learned ASG and Mr R Balasubramanian have taken pains to pursue the matter at all levels of the government and have assured the Court that the plea for dignified conditions for these porters is engaging active attention.

10 The Indian Army engages twelve thousand porters. The nature of the work which is rendered by the porters engaged as casual labour by the Army is not in dispute. They are engaged, as the affidavit of the Union government indicates, in "high risk/highly active field areas". The decision which was taken earlier (and referred to in the order dated 23 September 2015) referred to the work being rendered by the porters in "operationally active areas having life threatening conditions." These porters are civilians who possess an innate knowledge of the terrain and its hazards. The proposed scheme indicates in a fair measure the nature of the work which the porters perform, in the following terms :

"Hiring of Seasonal Porters Concert with Ministry of Defence policy letter, "Seasonal Porters and Animals will be hired for bona fide duties, to enhance the operational efficiency of troops. They will be utilized for carriage of stores, stocking of posts, collection of water for troops, carriage and replenishment of ammunition, beating of tracks, snow clearance, conveyance of private mail and evacuation of serious casualties". (emphasis supplied)

By all accounts, there is no element of doubt that the porters provide valuable support to the Indian Army and are an integral, if not indispensable, requirement of operations in border areas. They are engaged for the carriage of stores, stocking of posts, collection of water, replenishment of ammunition, clearance of tracks and evacuation of casualties. In high altitudes of the north and north-east, the porters trudge along with their mules, ponies and donkeys in terrain inaccessible

to any other form of transport. They belong to the poorest strata of society. Many of the porters may not possess educational qualifications. However, the value addition which they provide to the Indian Army in terms of their knowledge of conditions makes them a sure footed ally in hostile conditions. To look at their work from a metro centric lens is to miss the wood for the trees. They work, albeit as casual labour, for long years with little regard of safety. Faced with disability, injury and many times death, their families have virtually no social security. Such a situation cannot be contemplated having regard to the mandate in Articles 14 and 16 of the Constitution.

11 This Court consistent with the position in law and the background of this case in regard to regularization may not be in a position to issue a mandamus to the Union government to regularise but surely that does not prevent the government from taking a robust view of reality in consultation with the Armed Forces whom the porters serve with diligence and loyalty. The scheme which has been proposed undoubtedly marks a welcome improvement over the present conditions of porters and we appreciate the steps which have been pursued by Mr P. S. Patwalia, learned Additional Solicitor General, Mr R Balasubramanian, learned Counsel assisting him and by the concerned officials of the Ministry of Defence and the Indian Army to ensure a just resolution. The scheme as proposed contains provisions for (i) maintenance of records of hiring; (ii) paid weekly and national holidays; (iii) hours of work and a six day week; (iv) medical facilities in emergent circumstances; (v) compensation in the event of death or permanent disability; (vi) canteen services; (vii) insurance cover; and (viii) a onetime financial grant on severance.

12 In State of Punjab v. Jagjit Singh[5], this Court has recently revisited the entire body of law on the subject. The Court observed that the principle of equal pay for equal work has been extended to temporary employees (differently described as work – charge, daily wage, casual, ad-hoc, contractual and the like). The principles have been succinctly summarised thus :

“79. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.”

13 There are three areas where we propose to issue directions to the

Union government, and accordingly do so in the following terms. Firstly, the scheme as proposed provides for the payment of minimum wages at the prevailing 'Nerrik Rates'. This aspect requires a fresh look so that the porters are paid wages at par at the lowest pay-scale applicable to multi-tasking staff. Further, if there are provisions enabling additional payments to be made (either by way of allowances or otherwise) for work in high altitude areas or in high risk/active field areas, such payments shall be allowed under the scheme. Secondly, the scheme must provide for regular medical facilities including in the case of injury or disability. Thirdly, the amount of compensation in the case of death or permanent disability should also be looked at afresh and suitably enhanced. The present scheme provides for an interim relief of rupees twenty thousand to be sanctioned at the discretion of the local formation commander. A maximum payment of Rupees two lakhs as applicable under the Workmen's Compensation Act, 1923 is contemplated. The provision for compensation shall be enhanced to provide for dignified payments in the event of death or disability. Fourthly, a onetime severance grant of rupees fifty thousand is provided in the proposed scheme subject to a minimum service of ten years. This measly payment on severance does not fulfil the mandate of fairness, on the part of the State. We direct that the terminal benefits should be enhanced so as to provide for compensation not less than at a rate computed at fifteen days' salary for every completed year of service. The Union government shall bear in mind these directions in the course of the finalization of the scheme which shall be done within the next three months.

14 During the course of the hearing, the learned Additional Solicitor General indicated that the formulation of a proposal for regularization is under consideration. It has also been stated during the course of the submissions that the proposal may envisage regularizing army porters who have rendered service for a stipulated period upto five per cent of the sanctioned strength of multi-tasking staff. Since the pool of porters is large, the number of persons who may benefit from such a proposal every year may be minimal. This is an aspect which should be duly borne in mind while enhancing the proportion of the sanctioned strength for regularization; in order that the benefit of security of tenure is made available to a reasonable proportion of persons who complete a stipulated minimum tenure of service. The competent authority will consider this aspect while taking a decision in the matter.

15 The writ petitions are accordingly disposed of in the above terms.

.....CJI
[T S THAKUR]

.....J
[Dr D Y CHANDRACHUD]

New Delhi
January 02, 2017.

[2] O. A. Nos. 302 & 204 of 2010 [4] Civil Appeal Nos. 6248-6249 of 2010 [6] (2006) 4 SCC 1 [8]
Contempt Petition(Civil) Nos.2-3 of 2014 in Civil Appeal Nos.6248-6249 of 2010 [10] (2016) SCC
OnLINE SC 1200