The Dharwad Distt. P.W.D. Literate ... vs State Of Karnataka & Ors. Etc on 23 February, 1990

Equivalent citations: 1990 AIR 883, 1990 SCR (1) 544, AIR 1990 SUPREME COURT 883, 1990 (2) SCC 396, 1990 LAB. I. C. 625, (1990) 1 CURLR 534, (1991) 2 LABLJ 318, (1990) 2 PAT LJR 46, (1990) IJR 158 (SC), (1990) 77 FJR 291, (1990) 1 LAB LN 1011, (1990) 1 JT 343 (SC), (1990) 2 SERVLR 43, (1990) 60 FACLR 576, 1990 SCC (L&S) 274

Author: Misra Rangnath

Bench: Misra Rangnath, M.M. Punchhi, S.C. Agrawal

PETITIONER:
THE DHARWAD DISTT. P.W.D. LITERATE DAILY WAGES EMPLOYEES

Vs.

RESPONDENT:
STATE OF KARNATAKA & ORS. ETC.

DATE OF JUDGMENT23/02/1990

BENCH:
MISRA RANGNATH
BENCH:
MISRA RANGNATH
PUNCHHI, M.M.
AGRAWAL, S.C. (J)

CITATION:
1990 AIR 883 1990 SCR (1) 544
1990 SCC (2) 396 JT 1990 (1) 343
1990 SCALE (1)288
CITATOR INFO :
R 1992 SC 713 (1)
RF 1992 SC2130 (10)

ACT:
Karnataka State--Daily rated and monthly rated employees-Treatment as regular government servants--Directions by Court.

HEADNOTE:
These are Writ Petitions under Article 32 of the Consti-

tution of India and a Special Leave Petition against the Judgment of the Karnataka High Court filed by two trade unions and a Society formed by law students of the University College and two individuals asking for quashing the Karnataka Government's Notification dated 12th March, 1982 and for directions to confirm the daily rated and monthly rated employees as regular government servants and for payment of normal salary and service benefits as applicable to the appropriate categories of the government servants.

Nearly 50,000 such persons are employed in different Government establishments though many of them have put in 15 to 20 years of continuous service. They have not been regularised in their service and are not being paid equal pay for equal work as has been mandated by this Court by way of implementation of the Directive Principles of State Policy.

Pursuant to the directions of this Court, the State of Karnataka filed a draft Scheme. The Court considering both the aspects of 'equal pay for equal work' and continuing casual employment for too long re-affirmed the view that the principle of 'equal pay for equal work' is not an abstract doctrine instead it is vital and vigorous doctrine accepted throughout the world. While accepting the petitions, the Court,

HELD: That 'equal pay for equal work' and providing security for service by regularising casual employment within a reasonable period have been unanimously accepted by this Court as a constitutional goal of our socialist polity. While giving directions to the State for giving final shape to the Scheme, the Court further held that under the
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scheme of the Constitution the purse remains in the hands of the Executive. The Legislature of the State controls the consolidated Fund out of which the expenditure to be incurred, in giving effect to the scheme will have to be met. [553F; 559H; 560A]

The flow into the Consolidated Fund depends upon the policy of taxation depending perhaps on the capacity of the payer. Therefore unduly burdening the State for implementing the constitutional obligation would create problems which the State may not be able to stand. Directions have therefore been made with judicious restraint with the hope and trust that both parties would appreciate and understand the situation. The instrumentality of the State must realise that it is charged with a big trust. [560B-C]

The casual/daily rated employees appointed on or before 1.7.1984 shall be treated as monthly rated establishment employees at the fixed pay of Rs.780 p.m. without any allowances with effect from 1.1. 1990. [558H]

The scheme which has been finalised is not the ideal one. It is the obligation of the Court to individualise justice to suit a given situation in a set of facts that are placed before it. [559H]

Randhir Singh v. Union of India & Ors., [1982] 1 SCC

618; Dhirendra Chamoli & Anr. v. State of U.P., [1986] 1 SCC 637; Surinder Singh & Ant. v. Engineer-in-Chief, C.P.W.D. & Ors., [1986] 1 SCC 639; Kishori Mohanlal Bakshi v. Union of India, AIR 1962 SC 1139; D.S. Nakara v. Union of India, [1983] 2 SCR 165; R.C. Gupta & Ors. v. Lt. Governor, Delhi Admn. & Ors., [1987] 4 SCC 505; Bhagwan Dass & Ors. v. State of Haryana & Ors., [1987] 1 SCC 634; Jaipal & Ors. v. State of Haryana & Ors., [1988] 3 SCC 354; Daily Rated Casual Labour employed under P & T Department Contingent Paid Staff Welfare Association v. Union of India & Ors., [1987] Suppl. SCC 658; State of U. P. & Ors. v. J.P. Chaurasia & Ors., [1989] 1 SCC 121; Kesavananda Bharati v. State of Kerala, [1973] 4 SCC 225 and Bhagwan Sahai Carpenter & Ors. v. Union of India & Anr., [1989] 1 JT. 545, referred to.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition Nos. 8307-11 of 1983 etc. (Under Article 32 of the Constitution of India) WITH Special Leave Petition No. 6823 of 1988.

From the Judgment and Order dated 22.1.1988 of the Karnataka High Court in Application No. 3392 of 1987 N.S. Hegde, Additional Solicitor General, R.K. Garg, M.C. Bhandare, Mrs. Indra Jaisingh, P.S. Poti (NP), Govind Mukhoty, TS. Krishnamurthy Iyer (NP), Miss Rani Jethmalani, R.M. Tiwari, L.P. Gour, Mohan Katarki, D.K. Garg, V. Laxmi Narayan, P.R. Ramasheesh, M. Veerappa (NP), S. Ravindra Bhatt and C.S. Vaidyanathan for the appearing parties. The Judgment of the Court was delivered by RANGANATH MISRA, J. These are five writ petitions under Article 32 of the Constitution by two trade unions, a socie- ty formed by Law students of the University College and two individuals asking for quashing of the Karnataka Govern- ment's Notification of 12th March, 1982, and for directions to confirm the daily rated and monthly rated employees as regular government servants and for payment of normal salary at the rates prescribed for the appropriate categories of the Government servants and other service benefits. It has been pleaded that about 50,000 such workers are employed in the different Government establishments and though many of them have put in 15 to 20 years of continuous service--which is proof of the fact that there is permanent need for the jobs they perform--they have not been regularised in their service and are not being paid equal pay for equal work as has been mandated by this Court by way of implementation of the Directive Principles of State Policy. A two Judge Bench of this Court dealing with these writ petitions on 14th July, 1988, directed:

> "We have heard learned counsel for both the parties, only on one of the questions involved in this case viz. whether the monthly rated Gangmen who are referred to in Paragraph 1 of the Government's order No. PWD 100 PWC 83, Bangalore dated 12th January, 1984 and the monthly rated Sowdies etc. re- ferred to in the Government's order No, PWD 120 PWC 84 dated 4th December, 1984 should be paid the same salary as the salary paid to Gangmen and Sowdies respectively who are employed regularly by the State Government. As we are of the view that the principle

> enunciated by this Court in Para- graph 3 of the judgment of this Court in Daily Rated Casual Labour Employed under P & T Department through Bhartiya Dak Tar Mazdoor Manch v. Union of India & Ors., [1988] 1 SCC 122 is applicable to this case also, we direct the Government of Karnataka to pay salary to such workmen at the rates equivalent to the mini- mum pay in the pay-scales of the regularly employed Gangmen or Sowdies, as the case may be, but without any increment with effect from 1.7. 1988. The question whether they are entitled to any arrears for the period between the date on which their services were regularised under the State Government's Orders and 1.7. 1988 will be considered along with the other questions involved in this case at the final hearing. This case shall stand adjourned by three months. In the meanwhile we permit the State Government to frame a more rational scheme for absorbing as many casual workers and monthly rated Gangmen and Sowdies as possible in regular cadres. The case need not be treated as part-heard."

Pursuant to the aforesaid directions, the State of Karnataka has filed a draft scheme, copies of which have been served on the parties, their response to the draft scheme has been received and the matter has been heard at length.

A three-Judge Bench in Randhir Singh v. Union of India & Ors., [1982] 1 SCC 618 observed:

> "It is true that the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a funda- mental right. But it certainly is a constitutional goal. Article 39(d) of the Constitution proclaims 'equal pay for equal work for both men and women' as a Directive Principle of State Policy. 'Equal pay for equal work for both men and women' means equal pay for equal work for everyone and as between the sexes. Directive Principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean some- thing to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay. Whether the special procedure prescribed by a statute for trying alleged robber-barons and smuggler kings or for dealing with tax evaders is discriminatory; whether a particular governmental policy in the matter of grant of licences or permits confers unfettered discretion on the Executive, whether the take- over of the empires of industrial tycoons is arbitrary and unconstitutional and other questions of like nature, leave the millions to people of this country untouched. Questions concerning wages and the like, mundane they may be, are yet matters of vital concern to them and it is there, if at all that the equality clauses of the Constitution have any significance to them ..... Construing Articles 14 and 16 of the Constitution in the light of the Preamble and Article 39(d), we are of the

> view that the principle 'equal pay for equal work' is deducible from those Articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer."

That was the case of Delhi Police drivers. In the case of Dhirendra Charnoli & Anr. v. State of U.P., [1986] 1 SCC 637, the claim for equal pay for equal work arose for con- sideration on the complaint of persons who were engaged by the Nehru Yuvak Kendra as casual workers on daily wage basis. While dealing with the problem a two-Judge Bench took note of the fact that casual employment was being continued for too long a period and directed:

> "the Central Government to accord to these persons who are employed by the Nehru Yuvak Kendras and who are concededly performing the same duties as Class IV employees, the same salary and conditions of service as are being .received by Class IV employees, except regularisation which cannot be done since there are no sanctioned posts. But we hope and trust that posts will be sanctioned by the Central Govern- ment in the different Nehru Yuvak Kendras, so that these persons can be regularised. It is not at all desirable that any management and particularly the Central Government should continue to employ persons on casual basis in organisations which have been in existence for over 12 years."

Both these aspects, namely, 'equal pay for equal work' and continuing casual employment for too long came for consideration of another two-Judges Bench of this Court in Surinder Singh & Anr. v. Engineer-in-Chief, C.P.W.D. & Ors., [1986] 1 SCC 639. Chinnappa Reddy, J. speaking for the Court began his judgment by saying:

> "In these two writ petitions, the petitioners who are em- ployed by the Central Public Works Department on a daily wage basis and who have been so working for several years, demand that they should be paid the same wages as permanent employees employed to do identical work. They state that even if it is not possible to employ them on regular and permanent basis for want of a suitable number of posts, there is no reason whatsoever why they should be denied 'equal pay for equal work'.
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> Continuing to deal with the matter the learned Judge pointed out:
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> "One would have thought that the judgment in the Nehru Yuvak Kendras case concluded further argument on the question. However, Shri V.C. Mahajan, learned counsel for the Central Government reiterated the same argument and also contended that the doctrine of 'equal pay for equal work' was a mere abstract doctrine and that it was not capable of being enforced in a court of law. He referred us to the observa- tions of this Court in Kishori Mohanlal Bakshi v. Union of India, AIR 1962 SC 1139. We are not a little surprised that such an argument should be advanced on behalf of the Central Government 36 years after the passing of the Constitution and 11 years after the Fortysecond Amendment proclaiming India as a

> socialist republic. The Central Government like all organs of the State is committed to the Directive Prin- ciples of State Policy and Article 39 enshrines the princi- ple of equal pay for equal work. In Randhir Singh v. Union of India, supra, this Court has occasion to explain the observations in Kishori Mohanlal Bakshi v. Union of India, and to point out how the principle of equal pay for equal work is not an abstract doctrine and how it is a vital and vigorous doctrine accepted throughout the world, particularly by all socialist countries. For the benefit of those who do not seem to be aware of it, we may point out that the decision in Randhir Singh, case has been followed in any number of cases by this Court and has been affirmed by a Constitution Bench of this Court in D.S. Nakara v. Union of India, [1983] 2 SCR 165. 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 the State Undertakings ..... "

A little later came the case of R.D. Gupta & Ors. v. Lt. Governor, Delhi Admn. & Ors., [1987] 4 SCC 505 raising the problem of inequality of pay in a situation where equal work was being rendered. In paragraph 18 of the judgment the ratio of the decision already referred to was reaffirmed. In the case of Bhagwan Dass & Ors. v. State of Haryana & Ors., [1987] 4 SCC 634, the same principles were reiterated in the case of Teachers and Supervisors in the education service. Another Division Bench in Jaipal & Ors. v. State of Haryana & Ors., [1988] 3 SCC 354 was dealing with the disparity in the conditions of service of Instructors under the Adult and Non-formal Education Scheme and regular employees of the State of Haryana. This court stated:

> "There is no doubt that instructors and squad teachers are employees of the same employer doing work of similar nature in the same department; therefore, the appointment on a temporary basis or on regular basis does not affect the doctrine of equal pay for equal work. Article 39(d) con- tained in Part IV of the Constitution ordains the State to direct its policy towards securing equal pay for equal work for both men and women. Though Article 39 is included in the chapter on Directive Principles of State Policy, but it is fundamental in nature. The purpose of the Article is to fix certain social and economic goals for avoiding any discrimi- nation amongst the people doing similar work in matters relating to pay. The doctrine of equal pay for equal work has been implemented by this Court in Randhir Singh v. Union of India, Dhirendra Chamoli v. State of U.P. and Surinder Singh v. Engineer-in-Chief, CPWD. In view of these authorities it is too late in the day to disregard the doctrine of equal pay for equal work on the ground of the employment being temporary and the other being permanent in nature. A temporary or casual employee performing the same duties and functions is entitled to the same pay as paid to a permanent employee."

In the case of Daily Rated Casual Labour employed under P & T Department v. Union of India & Ors., [1988] 1 SCC 122, the twin aspects for consideration before us had arisen for determination. This Court then indicated:

"It may be true that the petitioners have not been regularly recruited but many of them have been working continuously for more than a year in the department and some of them have been engaged as casual labourers for nearly ten years. They are rendering the same kind of service which is being ren- dered by the regular employees doing the same type of work. Clause (2) of Article 38 of the Constitution of India which contains one of the Directive Principles of State Policy provides that 'the State shall, in particular, strive to minimise the inequalities in income and endeavour to elimi- nate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations'. Even though the above directive principle may not be enforceable as such by virtue of Article 37 of the Constitution of India, it may be relied upon by the peti- tioners to show that in the instant case they have been subjected to hostile discrimination. It is urged that the State cannot deny at least the minimum pay in the pay scales of regularly employed workmen even though the government may not be compelled to extend all the benefits enjoyed by regularly recruited employees. We are of the view that such denial amounts to exploitation of labour. The government cannot take advantage of its dominant position, and compel any worker to work even as a casual labourer on starvation wages. It may be that the casual labourer has agreed to work on such low wages. That he has done because he has no other choice. It is poverty that has driven him to that state. The government should be a model employer. We are of the view that on the facts and in the circumstances of this case the classification of employees into regularly recruited employees and casual employees for the purpose of paying less than the minimum pay payable to employees in the corresponding regular cadres particularly in the lowest rungs of the department where the pay scales are the lowest is not tenable ..... India is a socialist republic. It implies the existence of certain important obligations which the State has to discharge. The right to work, the right to free choice of employment, the right to just and favourable conditions of work, the right to protection against unem- ployment. the right of everyone who works to just and fa- vourable remuneration ensuring a decent living for himself and his family, the right of everyone without discrimination of any kind to equal pay for equal work, the right to rest, leisure, reasonable limitation on working hours and periodic holidays with pay, the right to form trade unions and the right to join trade unions of one's choice and the right to security of work are some of the rights which have to be ensured by appropriate legislative and executive measures. It is true that all these rights cannot be extended simulta- neously. But they do indicate the socialist goal. The degree of achievement in this direction depends upon the economic resources, willingness of the people to produce and more than all the existence of industrial peace throughout the country. Of those rights the question of security of work is of utmost importance. If a person does not have the feeling that he belongs to an organisation engaged in production he will not put forward his best effort to produce more. That sense of belonging arises only when he feels that he will not be turned out of employment the next day at the whim of the management. It is for this reason it is being repeatedly observed by those who are in charge of economic affairs of the countries in different

> parts of the world that as far as possible security of work should be assured to the employees so that they may contribute to the maximisation of produc- tion. It is again for this reason that managements and the governmental agencies in particular should not allow workers to remain as casual labourers or temporary employees for an unreasonably long period of time ..... ' ' Keeping these principles in view this Court in the case of H.P. Income Tax Department Contingent Paid Staff Welfare Association v. Union of India & Ors., [1987] Suppl. SCC 658 indicated with emphasis:
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> "We accordingly allow this writ petition and direct the respondents to pay wages to the workmen who are employed as the contingent paidstaff of the Income Tax Department throughout India, doing the work of Class IV employees at the rates equivalent to the minimum pay in the pay scale of the regularly employed workers in the corresponding cadres ..... "

Then came the case of State of U.P. & Ors. v. J.P. Chau- rasia & Ors., [1989] 1 SCC 121 where a Division Bench of this Court reiterated:

> "Equal pay for equal work for both men and women has been accepted as a constitutional goal capable of being achieved through constitutional remedies."

On this occasion the authority of the larger Bench in Kesa- vananda Bharati v. State of Kerala, [1973] 4 SCC 225 where the Court said 'the dominant objective in view was to amel- iorate and improve the lot of the common man and to bring about a socio-economic justice' was called in aid for the conclusion of the Court.

Reference may also be made to another Division Bench judgment of this Court in the case of Bhagwan Sahai Carpen- ter & Ors. v. Union of India & Anr., [1989] 1 JT 545 where the ratio of the decisions referred to above was given effect to.

We have referred to several precedents--all rendered within the current decade--to emphasise upon the feature that equal pay for equal work and providing security for service by regularising casual employment within a reasona- ble period have been unanimously accepted by this Court as a constitutional goal to our socialistic polity. Article 141 of the Constitution provides how the decisions of this Court are to be treated and we do not think there is any need to remind the instrumentalities of the State--be it of the Centre or the State, or the public sector--that the Consti- tution-makers wanted them to be bound by what this Court said by way of interpreting the law.

The question that arises in these matters is indeed not one that has been left wholly to the realm of interpretation and to be described as Judge-made law. Parliament has stepped in as early as 1976 by enacting the Equal Remuneration Act (25 of 1976) to take over a part of the question which arises here. That Act is a legislation providing equality to pay for equal work between men and women which certainly is a part of the principle which we are considering.

President Roosevelt, the American Chief Executive, in one of his annual reports about the state of the Nation to the Congress once pointed out:

> "The chief law-makers in our country may be, and often are, the Judges because they are the final seat of authority. Every time they interpret contract, property vested rights, due process of law, liberty, they necessarily enact into law part of a system of social philosophy; and as such interpre- tation is fundamental, they give direction to all law mak- ing. The decisions of the Courts on economic and social questions depend upon their economic and social philosophy; and for the peaceful progress of our people during the twentieth century, we shall owe most of those Judges to hold to a twentieth century economic and social philosophy and not to a long overgrown philosophy which was itself a product of primitive economic conditions."

We would like to point out that the philosophy of this Court as evolved in the cases we have referred to above is not that of the Court but is ingrained in the Constitution as one of the basic aspects and if there was any doubt on this there is no room for that after the Preamble has been amended and the Forty-Second Amendment has declared the Republic to be a socialistic one. The judgments, therefore, do nothing more than highlight one aspect of the constitu- tional philosophy and make an attempt to give the philosophy a reality of flesh and blood.

Jawaharlal Nehru, the first Prime Minister of this Republic while dreaming of elevating the lot of the common man of this country once stated:

> "Our final aim can only be a classless society with equal economic justice and opportunity to all, a society organised on a planned basis for the raising of mankind to higher material and cultural level. Everything that comes in the way will have to be removed gently if possible; forcibly if necessary, and there seems to be little doubt that coercion wilt often be necessary."

These were his prophetic words about three decades back. More than a quarter of century has run out since he left us but there has yet been no percolation in adequate dose of the benefits the constitutional philosophy stands for to the lower strata of society. Tolstoy wrote:

> "The abolition of slavery has gone on for a long time. Rome abolished slavery. America abolished it and we did but only the words were abolished, not the thing."

Perhaps what Tolstoy wrote about abolition of slavery in a large sense applies to what we have done to the constitutional etches. It has still remained on paper and is contained in the book. The benefits have not yet reached the common man. What Swami Vivekananda wrote in a different context may perhaps help a quicker implementation of the goal to bring about the overdue changes for transforming India in a positive way and in fulfilling the dreams of the Constitution fathers. These were the words of the Swami:

> "It is imperative that all this various yogas should be carried out in practice. Mere theories about them wilt not do any good. First we have to hear about them; then we have to think about them. We have to reason the thoughts out, impress them on our minds and meditate on them; realise them, until at last they become our whole life. No longer will religion remain a bundle of ideas or theories or an intellectual assent; it will enter into our very self. By means of intellectual assent, we may today subscribe to many foolish things, and change our minds altogether tomorrow. But true religion never changes. Religion is realisation; not talk, nor doctrine, nor theories, however beautiful they may be. It is being and becoming, not hearing or acknowledg- ing. It is the whole soul's becoming changed into what it believes. That is religion."

The relevant constitutional philosophy should be the substitute for religion and it must be allowed to become a part of every man in this country; then only would the Constitution reach every one and he or she would be nearer the goals set by it. That perhaps can happen in every field.

The precedents referred to above have, therefore, obliged the State of Karnataka, respondent before us, to regularise the services of the casual employees who are in these cases called daily rated and monthly rated employees and the State of Karnataka is obliged to make them the same payment as regular employees are getting. Mr. Hegde appear- ing for the State has, however, pointed out that while on principle it is difficult to play a different tune, in reality and as a matter of state-craft, implementation thereof forthwith is an economic impossibility. He has, therefore, placed the scheme drawn up by the State for our consideration and has pleaded for balancing the philosophy and the economic constraints of the State for the purpose of resolution of the dispute.

We have already pointed out that there are about 50,000 employees covered by the classifications who await regulari- sation. On 3rd of April, 1986, the question of regularisa- tion of services of persons working on daily wages in the local bodies under the administrative control of the Urban Wing of the Housing and Urban Development Department came for consideration on the basis of the report of the Commit- tee set up on 26.11. 1985. In the meantime, this Court's order dated 17th of January, 1986 in a group of writ peti- tions laying down the principle of equal pay for equal work had been pronounced. Keeping that in view the State Govern- ment on 3.4.1986 made the following order:

> "Having regard to the recommendations of the Com- mittee and after duly taking into account the observation made by the Supreme Court in the case referred to above, Government of Karnataka hereby direct that all the employees working on daily wage basis or NMR basis in the local bodies which come under the administrative control of Urban Wing of Housing and Urban Development Department, be granted the same pay and allowances as are allowed to regular employees of the respective cadres with effect from 1.1.1986, subject to the following conditions:
>
> 1. No financial assistance shall be available from Government.

2. The additional resources on this account should be raised by the local bodies concerned; and

3. The local bodies should freeze the recruitment for the next 4 to 5 years or alternatively study the work-

load and prune the expenditure accordingly. On 2nd of July, 1986, a set of rules known as the Karna- taka State Civil Services (Special Recruitment of the Candi- date) Rules, 1986 came into force. We have been told that ambit of the present dispute before us is in no manner affected by the said decision of the Government nor the Rules that have been referred to above. We do not propose to examine the correctness of this statement while dealing with the scheme of the State Government.

The scheme furnished by the State contemplates that all casual/ daily rated employees appointed on or before 2.7. 1974 shall be treated as monthly rated establishment employ- ees on a fixed pay of Rs.780 per month without any allowance from 1.1. 1990. They would be eligible for an annual increment at the rate of Rs. 10 till their services are regula- rised. On regularisation they shall be adjusted at the basic payscale applicable to the lowest Group D cadre but would be entitled to all other benefits available to regular employ- ees of their class. From amongst the casual and daily rated employees who have completed ten years of service as on 31.12.1989, 18,600 would be immediately regularised on seniority-cum-suitability basis with effect from 1.1. 1990. The State Government shall also regularise the serv- ices of the remaining casual or daily rated workers who have already completed ten years of service as on 31.12.1989 but could not be included in the limit of 18,600 in a phased manner on the basis of seniority-cumsuitability on or before 31st of December, 1990. The remaining casual or daily rated employees will be absorbed and/or regularised in a phased manner on seniority-cum-suitability basis on or before 31st of December, 1997.

This revised scheme filed by Mr. Hegde for the State has, however, not been accepted by Mr. Bhandare and other counsel appearing on the side of the petitioners in these petitions though on certain aspects there is unanimity. Mr. Bhandare in his note by way of response to the scheme of Mr. Hegde has emphasised upon the need of regularising all the employees who have completed ten years of service with effect from 1.1. 1990. He has further claimed that all the casual and daily rated workmen who have completed five years of service as on 31.12. 1989 should be put on monthly rated pay and the balance of casual or daily rated workmen who are not covered by the above two classes should be continued in that capacity and put on the monthly rated establishments as and when they complete five years of service and be regularised on completion of ten years of service from the initial employment as daily rated workmen. It has been contended that a lot of these casual and daily rated workmen have been retrenched in violation of this Court's interim order dated 25.7.1983 and there should be a direction for their reinstatement with the benefit of no break in service. It has been further maintained that some of these employees belong to higher classifications like Groups B and C and, therefore, they should be given the benefit of the corresponding scales of pay on regularisa- tion.

One of the further claims in the written note of Mr. Bhandare is that when the daily rated workmen are absorbed into monthly rated employment, they should be entitled to the minimum basic wage in

the corresponding scale of the group of the permanent employees. The response points out that the casual and daily rated workmen to be covered by the scheme should include casual employees and NMR employees, progressive farmers, gram sahai and anganwadi workers. There is claim for weightage for past service, namely, for every unit of five years exceeding ten years of service on the date of regularisation, an additional increment should be admissible and added to the basic salary and the advantages of the scheme extended to all the employees under the State prior to formation of the Zila Parishads in the Karnataka State and transfer of some of them to the Zila Parishads and Mandal Panchayats. Finally, it has been contended that no one who is in employment on casual or daily rated basis on the date of our judgment should be retrenched. We can well realise the anxiety of the petitioners who have waited too long to share the equal benefits mandated by Part IV of the Constitution in respect of their employment. At the same time, we cannot overlook the contraints arising out of or connected with availability of State resources. Keeping both in view and reposing our trust in the relevant instrumentalities of the State that may be connected with the implementation of the scheme to act with a sense of fairness, anxiety to meet the demands of the human require- ments and also anxious to fulfil the constitutional obliga- tions of the State, the directions which we give below will give a final shape to the scheme thus:

> 1. The casual/daily rated' employees appointed on or before 1.7.1984 shall be treated as monthly rated establishment employees at the fixed pay of Rs.780 per month without any allowances with effect from 1.1. 1990. They would be enti-

tled to an annual increment of Rs. 15 till their services are regu- larised. On regularisation they shall be put in the minimum of the time scale of pay applicable to the lowest Group D cadre under the Government but would be entitled to all other benefits available to regular government servants of the corresponding grade.

Those belonging to the B or C Groups upon regularisa- tion shall similarly be placed at the minimum of the time scale of pay applicable to their respective groups under government service, and shall be entitled to all other benefits available to regular government servants of these grades.

2. From amongst the casual and daily rated employees who have completed ten years of service by 31.12.1989, 18,600 shall immediately be regularised with effect from 1.1. 1990 on the basis of seniority-cum-suitability.

There shall be no examination but physical infirmity shall mainly be the test of suitability.

3. The remaining monthly rated employees covered by the paragraph 1 who have completed ten years of service as on 3 ist December, 1989, shall be regularised before 31st Decem- ber, 1990, in a phased manner on the basis of seniority-cum-suitability, suitability being understood in the same way as above.

4. The balance of casual or daily rated employees who become entitled to absorption on the basis of completing ten years of service shall be absorbed/regularised in a phased manner on the same principle as above on or before December 31, 1997.

5. At the point of regularisation, credit shall be given for every unit of five years of service in excess of ten years and one additional increment in the time scale of pay shall be allowed by way of weightage.

There was a direction that the claims on other heads would be considered at the time of .final disposal. We have come to the conclusion that apart from these reliefs no other would be admissible.

We are alive to the position that the scheme which we have finalised is 'not the ideal one but as we have already stated, it is the obligation of the Court to individualise justice to suit a given situation in a set of facts that are placed before it. Under the scheme of the Constitution the purse remains in the hands of the Executive. The Legislature of the State controls the Consolidated Fund out of which the expenditure to be in- curred in giving effect to the scheme will have to be met. The flow into the Consolidated Fund depends upon the policy of taxation depending perhaps on the capacity of the payer. Therefore, unduly burdening the State for implementing the constitutional obligation forthwith would create problems which the State may not be able to stand. We have, there- fore, made our directions with judicious. restraint with the hope and trust that both parties would appreciate and under- stand the situation. The instrumentality of the State must realise that it is charged with a big trust. The money that flows into the Consolidated Fund and constitutes the re- sources of the State comes from the people and the welfare expenditure that is meted out goes from the same Fund back to the people. May be that in every situation the same tax- payer is not the beneficiary. That is an incident of taxa- tion and a necessary concomitant of living within a welfare society.

Since this is not an adversarial litigation, we make no order as to costs.

R.N.J. Petitions allowed.