Supreme Court of India
Bhagwati Prasad And Ors vs Delhi State Mineral Development ... on 15 December, 1989
Equivalent citations: 1990 AIR 371, 1989 SCR Supl. (2) 513
Author: K Ramaswamy
Bench: Ramaswamy, K.

PETITIONER:
BHAGWATI PRASAD AND ORS.

Vs.

RESPONDENT:
DELHI STATE MINERAL DEVELOPMENT CORPORATION

DATE OF JUDGMENT15/12/1989

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
MISRA RANGNATH
SAWANT, P.B.

CITATION:
1990 AIR 371 1989 SCR Supl. (2) 513
1990 SCC (1) 361 JT 1989 (4) 541
1989 SCALE (2)1337

ACT:
Constitution of India, 1950: Articles 39(d), 14 & 16: Daily rated workers of Delhi Mineral Development Corporation performing duties of Group 'D' posts--Whether entitled to equal pay for equal work--Whether entitled to regularisation and promotion.
Civil Services: Daily rated workers discharging duties effectively over a long period--Suitability of for regularisation and confirmation-Requirement of initial minimum qualifications--Whether could be insisted upon.

HEADNOTE:
The petitioners, daily-rated workers of the respondent-Corporation appointed between 1983 and 1986, sought a writ of mandamus to regularise their services in the respective units and payment of wages at par with regularly appointed employees of the respondent performing the same or similar duties.
The Industrial Tribunal, which was directed by the Court to examine the matter, found that all the petitioners/workmen were performing same or similar duties as were performed by the incumbents of Group 'D' posts of the respondent-

Corporation and concluded that on the principle of 'equal pay for equal work' enshrined in Article 39(d) read with Articles 14 and 16 of the Constitution they were entitled to equal pay for equal work in relation to the regular employees. It further held that non-regularisation due to uncertainty of the contract was only a pretence which was not valid in law, and that reversion of some of the petitioners for lack of requisite educational qualification was discriminatory, arbitrary and an abuse of power by the management.

The respondent assailed the findings on merits pointing out various contentions raised in its pleading, objections and the documents filed before the Tribunal. It also contended that it had not consented to dispense with adducing oral evidence, and that despite the direction of the Court to submit a preliminary report the Tribunal was wrong in
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stating that the respondent had agreed that the Tribunal would send the final report.

Allowing the writ petitions, the Court,

Head l. The petitioners are entitled to equal pay at par with the persons appointed on regular basis to the similar post or discharge similar duties in the respondent-Corporation, and are entitled to the scale of pay and allowances revised from time to time for the said posts. [518D]

2. The statement of facts recorded by a Court or Quasi-judicial Tribunal in its proceedings as regards the matters which transpired during the hearing before it would not be permitted to be assailed as incorrect unless steps are taken before the same forum. It may be open to a party to bring such statement to the notice of the Court/Tribunal and to have it deleted or amended, It was not, therefore, open to the respondent in the instant case to say that the proceedings recorded by the Tribunal were incorrect. [517C-D]

3. Practical experience would always aid a person to effectively discharge the duties and is a sure guide to assess his suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into service. [517H;518A]

In the instant case, the petitioners were appointed between the period 1983 and 1986 and eversince, they have been working and had gained sufficient experience in the actual discharge of duties attached to the posts held by them. Once the appointments were made and they were allowed to work for a considerable length of time as such, it would be hard and harsh to deny them confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. Three years' experience ignoring artificial break in service for short period/periods created by the respondent in the circumstances, would be sufficient for confirmation. Since the petitioners satisfy the requirement of three years' service so calculated, 40 of the senior-most of them should be regularised with immediate effect

and the remaining 118 should be regularised in a phased manner before April 1, 1991 and promoted to the next higher post according to the standing orders, [517G:518B-D]
4. Those of the petitioners who were ousted from service pending
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the writ petitions to be reinstated immediately. [518D-E]

JUDGMENT:

CIVIL ORIGINAL JURISDICTION: Writ Petition Nos. 100 and 1078 of 1988.

(Under Article 32 of Constitution of India). R.D. Upadhyaya, H.N. Salve and Rajiv K. Garg for the petitioners.

R.K. Jain, Ashok Grover and S.C. Paul for the Respondent. The Judgment of the Court was delivered by K. RAMASWAMY, J. 1. The two writ petitions raise common questions of fact and law and accordingly they are disposed of by a common judgement.

2. The petitioners in both the writ petitions are daily rated workers working in the respondent-Corporation and they are seeking relief under Art. 32 of the Constitution for a Writ of Mandamus or other directions to regularise their services in the respective units and to pay them equal wages with initial basic pay, D.A. and other admissible allowances at par with regularly appointed employees of the respondent performing the same or similar duties. Admittedly, they have been appointed on daily wages between 1983 and 1986 and they have been working eversince. It is contended by them that despite their continuous service respondent has resorted to unfair labour practice in creating artificial break in service to deprive them of the benefit of continuous serv- ice. As they are not being paid equal wages at par with regular employees, this offends their right to equality of pay under Art. 14 and such action is contrary to the provi- sions of Art. 39.

3. The respondent had raised several disputed questions of fact which needed elaborate investigation. This Court by its order dated January 27, 1989, after heating the counsel on either side, directed the Industrial Tribunal at Delhi to examine the contentions of the petitioners and the stand taken by the respondent, on all issues after providing full opportunity to the parties of hearing including leading of evidence, oral and documentary, and to make a report to the Registry of this Court within six months. Pursuant to the above direction, the Industrial Tribunal afforded reasonable opportunity to both parties. It would appear that both parties agreed that oral evidence need not be adduced (though respondent is now disputing that fact), and both the parties filed documentary evidence. The Tribunal held 12 sittings, heard the counsel, considered the record and submitted its report dated September 15, 1989. The respondent has filed its objections to the report.

4. We have heard learned counsel for the petitioners and Shri R.K. Jain, learned counsel for the respondent. The Tribunal found thus: "After taking into consideration all the facts and circumstances I come to the conclusion that all the petitioners/workmen are performing same or

similar duties as are performed by the incumbents of group 'D' posts of the DSMDC and consequently on the principle of 'equal pay for equal work' enshrined in Art. 39(d) read with Arts. 14 and 16 of the Constitution, all these workmen-petitioners are entitled to equal pay for equal work in relation to the regular employees." On the question of the nature of the work being discharged by the petitioners, it found that some of the workmen are shown to have been working with designations such as Wages Slip, Truck Loading Clerk, Attendance Keeper Clerk, Drill Man, Office Work, Stone Bricks Clerk Fitter Survey Section, Pipe Fitter, Operator, Pump Operator, Creched Check Post Clerk, Permit Clerk etc., which go to suggest that those workmen were performing skilled or semi-skilled jobs or work of clerical nature. 1t, therefore, suggested that the workmen with these designations may also be equated with incumbents of group 'D' posts However, it held that their scale of pay and the entitlement to the wages should be worked out in an inquiry under section 33-C(2) of the Industrial Disputes Act. It also further found that since the petitioners have been appointed way back between 1983 and 1986, they are to be regularised; first 1/3rd of them immediately in the pay scale of Rs. 196232 or the corresponding revised scale with allowances; another onethird of the petitioners-workmen to be regularised by April 1, 1990 and the remaining one-third to be regularised by April 1, 1991. The workmen are entitled to one increment for every two completed years of their service counted from the date of commencement of service under the Management and by ignoring the artificial breaks created by the respondent. It also held that the dismissal of the workmen without following the rule of last come first go is an unfair labour practice, arbitrary and discriminatory. It also held that the justification for not regularising the service of the petitioners, namely, unlikelihood of the extension of the mining lease after its expiry was believed by the subsequent advertisement calling applications for filling up the vacan- cies. Accordingly, it held that non-regularisation due to uncertainly of the contract is only a pretence and is not valid in law. It also held that though some of the persons like S/Shri Chander Pal Pawar, Lok Nath Rai and Dinesh Kumar are eligible to hold the post of Assistant Gr. III and their reversion for lack of requi- site educational qualification is discriminatory, arbitrary and is an abuse of power by the Management. Accordingly, it suggested the framing of a scheme for regularising the services of all the petitioners.

5. Shri R.K. Jain, learned counsel for the respondent, has vehemently assailed the tenability of all the recommen- dations. It is his further contention that the respondent did not agree to dispense with adducing oral evidence and despite the direction of this Court to submit a preliminary report the Tribunal is wrong in stating that the respondent agreed that the Tribunal would send the final report. He disputed the findings on merits pointing out various conten- tions raised by the respondent in its pleading, objections and the documents filed before the Tribunal. It is now settled law that the statement of facts recorded by a Court or Quasi-Judicial Tribunal in its proceedings as 'regards the matters which transpired during the hearing before it would not be permitted to be assailed as incorrect unless steps are taken before the same forum. It may be open to a party to bring such statement to the notice of the Court/Tribunal and to have it deleted or amended. It is not, therefore, open to the parties or the counsel to say that the proceedings recorded by the Tribunal are incorrect. The further contention that the respondent did not agree to dispense with the adduction of oral evidence and that the report should be the preliminary report cannot be counte- nanced. Accordingly, we hold that it is no longer open to the respondent to say that it has not consented to dispense with adducing oral evidence and to the Tribunal submitting its final report instead of a preliminary one as directed by this Court. During the pendency of these writ petitions, 16 workmen

were retrenched. Shri R.K. Jain, learned counsel appearing for the respondent, has agreed that if there.is work and any of these sixteen persons reports for duty, work shall be provided. This Court further directed to pay the petitioners at the rate of Rs.25 per day.

6. The main controversy centres round the question whether some petitioners are possessed of the requisite qualifications to hold the posts so as to entitle them to be confirmed in the respective posts held by them. The indis- putable facts are that the petitioners were appointed be- tween the period 1983 and 1986 and eversince, they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always aid the person to effec- tively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view, three years' experience, ignoring artificial break in serv- ice for short period/periods created by the respondent, in the circumstances, would be sufficient for confirmation. If there is a gap of more than three months between the period of termination and re-appointment that period may be exclud- ed in the computation of the three years period. Since the petitioners before us satisfy the requirement of three years' service as calculated above, we direct that 40 of the senior-most workmen should be regularised with immediate effect and the remaining 118 petitioners should be regula- rised in a phased manner, before April 1, 1991 and promoted to the next higher post according to the standing orders. All the petitioners are entitled to equal pay at par with the persons appointed on regular basis to the similar post or discharge similar duties, and are entitled to the scale of pay and all allowances revised from time to time for the said posts. We further direct that 16 of the petitioners who are ousted from the service pending the writ petition should be reinstated immediately. Suitable promotional avenues should be created and the respondent should consider the eligible candidates for being promoted to such posts. The respondent is directed to deposit a sum of Rs. 10,000 in the Registry of this Court within four weeks to meet the remu- neration of the Industrial Tribunal. The writ petitions are accordingly allowed, but without costs.

P.S.S. Petitions allowed.