

Supreme Court of India

Daily Rated Casual Labour ... vs Union Of India & Others on 27 October, 1987

Equivalent citations: 1987 AIR 2342, 1988 SCR (1) 598

Author: E Venkataramiah

Bench: Venkataramiah, E.S. (J)

PETITIONER:

DAILY RATED CASUAL LABOUR EMPLOYED UNDER P & T DEPARTMENT THR

Vs.

RESPONDENT:

UNION OF INDIA & OTHERS

DATE OF JUDGMENT 27/10/1987

BENCH:

VENKATARAMIAH, E.S. (J)

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VENKATARAMIAH, E.S. (J)

RANGNATHAN, S.

CITATION:

1987 AIR 2342 1988 SCR (1) 598

1988 SCC (1) 122 JT 1987 (4) 164

1987 SCALE (2) 844

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R 1988 SC 517 (3)

R 1988 SC 519 (4)

D 1989 SC 1117 (3)

F 1990 SC 883 (2,8)

F 1991 SC 101 (223,241)

RF 1991 SC 1173 (6)

ACT:

Constitution of India, 1950: Articles 14, 16, 37 and 38(2)-Posts and Telegraphs Department-Daily rated casual labour-Classification on basis of number of days of service for payment of wages-Whether Constitutional, justifiable and tenable whether opposed to International Covenant on Economic, Social and Cultural Rights-Non-regularisation of temporary employees or casual labour-Whether a wise policy Directions issued for preparation of scheme for absorption of casual labourers.

HEADNOTE:

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International Covenant on Economic, Social and Cultural Rights, 1966: Article 7-Casual labour-Justifiable classification for payment of wages-Necessity of-Non-

regularisation of service-Not wise policy-Necessity for absorption as permanent workers.

The petitioners who were working as 'Daily Rated Casual Labour' in the Posts and Telegraphs Department, were categorised as unskilled, semi-skilled and skilled workers. By the orders of the D.G., Post and Telegraphs Department No. 28-II/77-SR/STM dated 15.5.80 and 10-4/83-R dated 26.7.84 they were further classified into (i) those who had not completed 720 days of service; (ii) those who had completed 720 days and not completed 1200 days of service, and (iii) those who had completed more than 1200 days of service, and were granted different rates of wages as laid down therein. Aggrieved by these orders, the petitioners submitted a statement of demands through their federation to the authorities, claiming regularisation, payment of interim relief and bonus, supply of dresses, leave and medical facilities etc.

Not satisfied with the reply received by them, the petitioners filed writ petitions, for the issue of a writ in the nature of mandamus to the Union of India and to direct it to pay them same salary, allowances, and other benefits as were being paid to regular and permanent employees of the Union of India in corresponding cadres and to regularise the

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service of the casual labour who had been in continuous service for more than 6 months. Their principal complaint was that even though many of them had been working for the last ten years as casual labourers, the wages paid to them were very low and far less than the salary and allowances paid to regular employees of the Posts and Telegraphs Department belonging to the equivalent categories and, secondly that no scheme had been prepared by the Union of India to absorb them regularly in its service and they had been denied the benefits of increments, pension, leave facilities etc. etc. which were enjoyed by those who had been recruited regularly.

The petitioners were opposed by the respondents contending that since the petitioners belonged to the category of casual labour and were not being regularly employed, they were not entitled to the same privileges which regular employees were enjoying.

Disposing of the writ petitions,

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HELD: 1.1 The classification of employees in the present case into casual employees and regularly recruited 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. The further classification of casual labourers into three categories, namely, (i) those who have not completed 720 days of service; (ii) those who have completed 720 days of service and not completed 1200 days of service, and (iii) those who

have completed more than 1200 days of service for the purpose of payment of different rates of wages is equally untenable. There is clearly no justification for doing so. Such a classification is violative of Articles 14 and 16 of the Constitution. It is also opposed to the spirit of Article 7 of the International Covenant on Economic, Social and Cultural Rights, 1966 which exhorts all States, parties to the Covenant to ensure fair wages and equal wages for equal work. [608E-H]

1.2 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 benefits enjoyed by regularly recruited employees. Such denial amounts to exploitation of labour. [608D]

1.3 The Government should be a model employer. It cannot take advantage of its dominant position, and compel any worker to work

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even as a casual labourer on starving 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. [608E-F]

1.4 It may be 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 rendered by the regular employees doing the same type of work. [608A-B]

1.5 Even though the Directive Principle contained in Article 38(2) may not be enforceable as such by virtue of Article 37 of the Constitution of India, it may be relied upon to show that they have been subjected to hostile discrimination. [608C]

Dhirendra Chamoli and Another v. State of U.P., [1986] 1 SCC V 637, relied on.

2.1 Non-regularisation of temporary employees or casual labour for a long period is not a wise policy. [610E-F]

2.2 India is a socialist republic. It implies the existence of cer-

tain important obligations which the State has to discharge. Many rights like right to work, equal pay for equal work, security of work, etc. have to be ensured by appropriate legislation and executive measures. [609D-E]

2.3 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 management. Security of work should as far as possible be assured to the employees so that they may contribute to the maximisation of production. 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. [609G-H; 610A]

2.4 The employees belonging to skilled, semi-skilled and unskilled classes can be shifted from one department to another even if there is no work to be done in a given place. Administrators should realise even as a casual labourer on starving 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. [608E-F]

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that if any worker remains idle on any day, the country loses the wealth that he would have produced during that day. Our wage structure is such that a worker is always paid less than what he produces. [610B-C]

3. The Union of India and the other respondents are directed to pay wages to the workmen who are employed as casual labourers at the rate equivalent to the minimum pay in the pay scales of the regularly employed workers in the corresponding cadres but without any increments with effect from 5th of February, 1986 and corresponding Dearness Allowance and Addl. Dearness Allowances, if any, payable thereon. Other benefits which are now being enjoyed by the casual labourers shall continue to be extended to them. The arrears of wages payable shall be paid within four months. [609B-C; 610G]

The respondents are directed to prepare a scheme for absorbing as far as possible the casual labourers who have been continuously working for more than one year in the Posts and Telegraphs Departments 610-Fl

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 373 of 1986. (Under Article 32 of the Constitution of India). A.K. Goel, E.X. Joseph and N.S. Das Bahl for the petitioners.

V.C. Mahajan, Girish Chandra, Mrs. Sushma Suri and Miss A. Subhashini for the Respondents.

The Judgment of the Court was delivered by VENKATARAMIAH, J. These petitions are filed on behalf of persons who are working as 'Daily Rated Casual Labour' in the Posts and Telegraphs Department. The 'Daily Rated Casual Labour' includes three broad categories of workers, namely, unskilled, semiskilled and skilled. The unskilled labour consists of safai workers, helpers, peons etc. and are mostly engaged in digging, carrying loads and other similar types of work. The semi-skilled labour consists of carpenters, wiremen, draftsmen, A.C. mechanics etc. who have technical experience but do not hold any degree or diploma. The skilled labour consists of labour doing technical work, who hold requisite degrees/diplomas.

The principal complaint of the petitioners is that even though many of them have been working for the last ten years as casual A labourers, the wages paid to them are very low and far less than the salary and allowances paid to the regular employees of the Posts and Telegraphs Department belonging to each of the categories referred to above and secondly no scheme has been prepared by the Union of India to absorb them regularly in its service and consequently they have been denied the benefits, such as increments, pension, leave facilities etc. etc. which are enjoyed by those who have been recruited regularly. They allege that they are being exploited by the Union of India.

They have produced the order of the Director General, Posts and Telegraphs Department bearing No. 28-II/77-SR/STN dated 15.5.1980 which prescribes the rate or rates of wages payable to the casual labour in the Telecommunication Wing of the Department. The relevant part of the order reads thus:

"No. 28-II/77-SR/STN Office of the Director General Posts and Telegraphs, New Delhi-1, 15.5.1980 To Subject: Increase in rate of daily wages for the casual labour employed in the Telecom. Wing of P & T.

The employment of casual labour in the Telecom. Wing, who are working for a reasonably long period, on continuous basis was one of the items under discussion in the P & T Department council (JCM). The potential of absorption of the large force of casual mazdoor in regular grade was limited on the Telecommunication side. As an alternative to regular absorption it was proposed that a wage related to the minimum of the pay scale of Time-Scale Group-D cadre with the benefit of neutralisation for the rise in cost-Index as applicable to regular employees may be effected.

2. The President is now pleased to decide that the A rates of daily wages for the casual labour employed in the Telecom. Wing of P & T will be as follows:-

(i) Casual labour who has not completed 720 days of service in a period of three years at the rate of 240 days per annum with the Department as on 1.4.80.

_____ No change.
They will continue to be paid at the approved local rates.

(ii) Casual labour who having been working with the Department from 1.4.77 or earlier and have completed 720 days of service as on 1.4.80.
_____ Daily wages
equal to 75% of 1/30th of the minimum of Group time Scale plus admissible D.A.

(iii) Casual labour who has been working in the Department from 1.4.1975 or earlier and has completed 1200 days of service as on 1.4.1980.
_____ Daily wages
equal to 1/30th of the minimum of the Group Time Scale plus 1/30th of the

admissible D.A.

(iv) All the casual labourers will, however, continue to be employed on daily wages only.

(v) These orders for enhanced rates for category

(ii) & (iii) above will take effect from 1.5.80.

(vi) A review will be carried out every year as on the 1st of April for making officials eligible for wages indicated in paras (ii) and (iii) above.

(vii) The above arrangement of enhanced rates of daily wages will be without prejudice to absorption of casual mazdoors against regular vacancies as and they occur

sd/-

(M.S. Yegneshwaran) Asst. Director General (Stn.)"

The above order is followed by the another order bearing No. 10-4/83-R dated 26.7.1984 which reads as under:-

To All General Managers Telecom.

Subject: Increase in rates of daily wages for the casual/ semi-skilled/skilled labour.

Sir,

The employment of the casual semi

skilled/skilled labour in the Telecom. Wing who are working for a reasonably long period, on continuous basis has been engaging the attention of this Directorate for quite sometime past. The potential of absorption of labour of the type in regular grade was limited on the Telecommunication side. As an alternative to regular absorption the need was being felt that wage related to the minimum of the pay scale of semi skilled skilled casual labour with the benefit of neutralisation for the rise in cost index as applicable to regular employees may be effected as is at present available to casual un-skilled labour working under the P & T Department.

2. The President is now pleased to decide that the rates of daily wages for the semi-skilled/skilled casual labour employed in the Telecom. Wing of the P & T Department will be as under:-

(i) Casual semi-skilled/skilled labour who has not completed 720 days of service over a period of three years or more with the department.

No change.

They will continue to be paid at the approved local rates.

(ii) Casual semi-skilled/skilled labour who has completed 720 days of service over a period of three years or more.

_____ Daily wage equal to 75% of 1/30th of the minimum of the scale of semi-skilled (Rs. 210-270) or skilled (Rs.260-350) as the case may be, plus admissible DA/ADA thereon.

(iii) Casual Labour who has completed 1200 days of service over a period of 5 years or more. _____ Daily wage equal to 1/30th of the minimum of the pay scale of semi-skilled (Rs.210-270) skilled (Rs.260-350) as the case may be, plus DA/ADA admissible thereon.

(iv) All the casual semi-skilled/skilled labour will, however continue to be employed on daily wages only.

(v) These orders for enhanced rates for category

(ii) and (iii) above will take effect from 1.4.1984. (vi) A review for making further officials eligible for wages vide (ii) and (iii) above will take effect as on 1st of April every year.

(vii) If the rates calculated vide (ii) and (iii) above happen to be less than the approved local rates, payment shall be made as per approved local rates for above categories of labour.

(viii) The above arrangements of enhanced rates of daily wages will be without prejudice to absorption of casual semi-skilled/skilled labour against regular vacancies as and when they occur.

(ix) The benefit of increased rates of daily wages will not be admissible to the casual semi- skilled/skilled labour in whose case the continuous spells of duty are intervened by a period of more than six months. The absence of more than six months may, however, be condoned by the Divisional Engineer on one of the two grounds namely, prolonged illness on production of medical certificates or nonemployment due to non- availability of work. In the case of absence beyond six months at a time on account of illness for the past years, the production of medical certificate may not be insisted upon and the period of break may be condoned if the Divisional Engineer is satisfied about the genuineness of the absence

4. These enhanced rates of daily wages are applicable to the semi-skilled/skilled casual labour who strictly conform to the job content of corresponding regular posts

in scales of Rs.210- 270 and Rs.260-350 as the case may be and that there should not be any variation in the respective job content. In case of slight variation/doubt cases may be referred to the . . P. & T for review .

Yours faithfully, (V. Ramaswamy) Assistant Director General (Stn.)"

Aggrieved by the discrimination made against them by these orders which very heavily weighed against them, the petitioners submitted a statement of demands through the Secretary General, BPTEF, New Delhi, of which they were members, claiming regularisation of casual labourers, payment of interim relief, payment of bonus, supply of dresses, leave and medical facilities etc. They received a reply from the Department on January 10, 1986 which read as under :-

"Sub: Demands of casual labour-daily rated workers.

Ref: Your letter No. PF/Casual Labour/86 dated 13.

12. 1985.

Please refer to your above cited letter. The position regarding the various demands in your above cited letter is as below:-

(i) Regularisation of Casual Labour.

This is being done as per existing instructions of department of Personnel & Training as against the vacancies as and when they arise.

(ii) Payment of interim relief.

Revision of wages is done once in a year for casual labourers of category 1 (those who have not completed 720/1200 days in 3/5 years) in the month of April taking into account the prevailing local rates in consultation with the local authorities. However, in respect of categories (ii) and (iii) i.e. for those who have completed 720/1200 days in 3/5 years, the revision is done as and when DA/ADA. Interim Reliefs are being granted to regular staff at the rate of 3/4th full of the minimum of the scale of regular class-IV employees

(vii) Regularisation of skilled/semi-skilled/ unskilled labour in similar grade:-

Provision has been made in the recruitment rules wherever possible to give preference in recruitment for corresponding semi-skilled/skilled workers. Regarding unskilled labour, they will be taken as Group staff as and when vacancies arise, on their becoming eligible for absorption as per instruction of DGP & T.

(S. KRISHAN) DIRECTOR (ST) 10.1.1986."

The petitioners were not satisfied with the above reply received by them. They, therefore, filed the above petitions and the first of them bearing Writ Petition No. 302 of 1986 was filed on 5.2.1986 for the issue of a writ in the nature of mandamus to the Union of India to direct it to pay to the petitioners same salary and allowances and other benefits as are being paid to the regular and permanent employees of the Union of India in the corresponding cadres and to direct the Union of India to regularise the service of the casual labour who had been in continuous service for more than six months.

The allegation made in the petitions to the effect that the petitioners are being paid wages far less than the minimum pay payable under the pay scales applicable to the regular employees belonging to corresponding cadres is more or less admitted by the respondents. The respondents, however, contend that since the petitioners belong to the category of casual labour and are not being regularly employed, they are not entitled to the same privileges which the regular employees are enjoying. 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 rendered 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 eliminate 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 petitioners 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 starving 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. The further classification of casual labourers into three categories namely (i) those who have not completed 720 days of service; (ii) those who have completed 720 days of service and not completed 1200 days of service and (iii) those who have completed more than 1200 days of service for purpose of payment of different rates of wages is equally untenable. There is clearly no justification for doing so. Such a classification is violative of Articles 14 and 16 of the Constitution. It is also opposed to the spirit of Article 7 of the International Covenant on Economic, Social and Cultural Rights, 1966 which exhorts all States parties to ensure fair wages and equal wages for equal work. We feel that there is substance in the contention of the petitioners. In *Dhirendra Chamoli and Another v. State of U.P.*, [1986] 1 SCC 637 this Court has taken almost a similar view with regard to the employees working in the Nehru Yuvak Kendras who were considered to be performing the same duties as Class IV

employees. We accordingly direct the Union of India and the other respondents to pay wages to the workmen who are employed as casual labourers belonging to the several categories of employees referred to above in the Postal and Telegraphs Department at the rates equivalent to the minimum pay in the pay scales of the regularly employed workers in the corresponding cadres but without any increments with effect from 5th of February, 1986 on which date the first of the above two petitions, namely, Writ Petition No. 302 of 1986 was filed. The petitioners are entitled to corresponding Dearness Allowance and Addl. Dearness Allowance, if any, payable thereon. Whatever other benefits which are now being enjoyed by the casual labourers shall continue to be extended to them.

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 unemployment, the right of every one who works to just and favourable remuneration ensuring a decent living for himself and for family, the right of every one 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 simultaneously. 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 organization 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 production. It is again for this reason that managements and the Government agencies in particular should not allow workers to remain as casual labourers or temporary employees for an unreasonably long period of time, where is any justification to keep persons as casual labourers for years as is being done in the Postal and Telegraphs Department? Is it for paying them lower wages? Then it amounts to exploitation of labour. Is it because you do not know that there is enough work for the workers? It cannot be so because there is so much of development to be carried out in the communications department that you need more workers. The employees belonging to skilled, semi-skilled and unskilled classes can be shifted from one department to another even if there is no work to be done in a given place. Administrators should realise that if any worker remains idle on any day, the country loses the wealth that he would have produced during that day. Our wage structure is such that a worker is always paid less than what he produces. So why allow people to remain idle? Anyway they have got to be fed and clothed. Therefore, why don't we provide them with work? There are several types of work such as road making, railway construction, house building, irrigation projects, communications etc. which have to be undertaken on a large scale. Development in these types of activities (even though they do not involve much foreign exchange) is not keeping pace with the needs of society. We are saying all this only to make the people understand the need for better management of man power (which is a decaying asset) the non-utilisation of which leads to the inevitable loss of valuable human resources.

Let us remember the slogan: "Produce or Perish". It is not an empty slogan. We fail to produce more at our own peril. It is against this background that we say that non-regularisation of temporary employees or casual labour for a long period is not a wise policy. We, therefore, direct the respondents to prepare a scheme on a rational basis for absorbing as far as possible the casual labourers who have been continuously working for more than one year in the Posts and Telegraphs Department.

The arrears of wages payable to the casual labourers in accordance with this order shall be paid within four months from today. The respondents shall prepare a scheme for absorbing the casual labourers, as directed above, within eight months from today.

These petitioners are accordingly disposed of.

N.P.V.

Petitions disposed of.