

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA:

CWP.No.151 of 2001.

Date of Decision :26.2.2007.

Rashtriya Mazdoor Sangh.Petitioner.

Versus:

State of H.P. and another. ...Respondents.

Coram:

The Hon'ble Mr.Justice Dev Darshan Sud, Judge.

Whether approved for reporting?¹

For the petitioners: Mr.J.L.Kashyap, Advocate.

For Respondents 1 to 3: Mr.Rajan Dewan,
Addl.Advocate General.

For Respondents No.4 & 6: Mr.K.D.Sood, Advocate.

For Respondent No.5: Mr.A.K.Sharma, Advocate.
For respondent No.7: Mr.Lalit K.Sharma,
Advocate.

Dev Darshan Sud, J.

The present petition has been filed by the Rashtriya Mazdoor Sangh, which has espoused the cause of daily waged and work charged workers employed by the Public Works Department, Irrigation and Public Health and other Departments of the State of Himachal Pradesh.

¹ Whether reporters of Local Papers may be allowed to see the judgment?

The main grievance of the petitioner is that the daily waged and work charged workers are being discriminated against by charging insurance premium at a high rate covering accident personal injuries etc. and that individual policies in the name of workmen are not issued in the name of the workers. According to the averments made by the petitioner, the Group Personal Accident Insurance Scheme has been introduced which made it compulsory for all daily waged and work charged workers of various departments including Boards and Corporations to be insured. This scheme was introduced some where in the year 1996 and has been continued since then. It is not disputed that the scheme is still inforce. The scheme has a **laudable** purpose when it provides accident cover to poor workmen who are engaged on daily wage. It is compulsory for all Heads of the Department to ensure that the insurance cover is taken out for all these workmen.

By an order dated 21.1.2000 (Annexure:P-4), the Commissioner-cum-Secretary (Fin.) to the Government of Himachal Pradesh informed all the Administrative Secretaries, Heads of Departments in Himachal Pradesh, Boards, Corporations, Universities, all the Deputy Commissioners in Himachal Pradesh, Engineer-in-Chief, H.P. PWD and I.P.H. that the Government has approved the renewal of Group Personal Accident Insurance Scheme for daily waged workers and work charged staff for a further period of one year from 25.1.2000 to 24.1.2001 for which premium at the rate of

166/- per annum per worker would be charged which would provide risk cover of Rs.2,00,000/- per worker. It was further directed that all the Departments, Boards and Corporations etc. will pay the premium to the New India Assurance Company Ltd. in one installment and such sum to be deducted from the wages payable to the workers for the month of January or February, 2000 as the case may be. The business in the scheme would be shared by all the Public Sector Insurance Companies in the ratio of 40:20:20:20 i.e. 40% for the lead Company in this case i.e. New India Assurance Company Ltd. and the other to the remaining nationalized Insurance Companies. By another circular dated 28.11.1999 (Annexure:P-8), the Commissioner-cum-Secretary (Fin.) has directed all the Administrative Secretaries and Heads of the Departments in Himachal Pradesh etc. that after consultation with N.G.Os Federation, the Indexed Group Personal Accident Insurance Scheme for regular, ad-hoc, contractual, part-time and daily waged employees of State Government Departments, Boards , Corporations and Universities it was decided that compulsory personal accident insurance cover is required for all the aforesaid employees. The business is again to be shared in the ratio of 40:20:20:20 i.e. 40% for National Insurance Company and the rest to be shared equally by the other nationalized Companies. A premium of Rs.40/- per annum per employee is required to be paid for covering a risk of Rs.2,00,000/- . The circular further directs that:

"4.This scheme will not cover the workers of departments like PWD & IPH and bodies like the H.P. Housing Board who are already covered under similar scheme floated by New India Assurance Co. Ltd., Shimla.

5. Issuance of policy: The policy will be issued to the Head of Department by designation on individual name basis. The HOD will submit a consolidated list of employees to National Insurance Co. Shimla within 30 days of the issue of this notification in the following format:-

Sr.No.	Name of employee.	Father/husband	Name:
	Designation:"		

Learned counsel appearing for the petitioner submits that daily waged and work charged employees have been discriminated against without there being any reasonable criteria or justification. There is no nexus between the imposition of higher premium and the object sought to be achieved. According to the learned counsel the object is to insure the workers. It is submitted by him that daily waged and work charged employees are required to pay about four times higher insurance premium on the same sum assured while the other employees as detailed in Annexure:P-8 are required to pay only Rs.40/- per annum. He further submits that either the sum assured should be increased to Rs.3,00,000/- for each employee or they may be treated at

par with the category of employees as detailed in Annexure:P-8.

The learned counsel appearing for the State has submitted that the regular employees are not given high risk jobs and that the daily waged and work charged employees are working in high risk employment. As such, they cannot be treated at par with regular employees etc. The Insurance Companies have also adopted the similar stand and made a reference to the Insurance Schemes which have been floated by them.

I find it strange and that the State should adopt such stand for daily waged workers and work charged employees without placing on record any supporting material or record showing the nature of the employment which would demand a higher rate of insurance cover. When Annexurs:P-4 and P-8 are read together, it disclose a total non application of mind. The two circulars do not contain any material or reason from which it can be ascertained as to why a different insurance premium is being charged from the two categories of employees. Annexure:P-8 also includes within its ambit daily waged workmen. The record shows that daily waged and work charged employees have been subjected to payment of premium at a higher rate that is to say 166/- rupees per annum per workmen or daily waged and work charged @ Rs.40/- per annum for other employees categorized in Annexure:P-8 which category also includes daily waged employees. There is nothing on record to show as to how this

criteria has been evolved. The pleadings on the record of the State are scanty and deficient. It is laudable that the workers interest should be protected which is otherwise also Constitutional obligation on the State but it is inexplicable as to why daily waged and work charged employees should be treated differently. If a lower premium is being charged from the category of employees as mentioned in Annexure:P-8, surely the daily waged and work charged employees who do not have security of employment as regular employees, deserve the same, if not better treatment from the respondents. However, nothing is being said on this aspect in view of the fact that the direction is being issued to the State to re-consider the entire matter. Any observation from this court would pre-judge the entire issue. A bare reading of the two annexure ex-facie discloses invidious discrimination to which the members of the petitioner have been subjected to.

Learned counsel for the petitioner also argued on the aspect regarding the fact that the employees had suffered personal injury and no compensation was paid to them. He made number of submissions regarding the fact that employees had suffered personal injuries but they were not paid any compensation for the injuries suffered by them. Suffice it to say that if they were covered by the Group Insurance Scheme, they were entitled to such payment on establishing that such injuries have been suffered. Respondent-State is directed to look into the matter and take appropriate action.

The Insurance Companies who have been added as respondents, have made number of submissions touching the merits of the case and also the schemes which have been introduced by them. I find it un-necessary to go into this aspect of the matter and nothing is being said on the respective contentions put-forth by the counsel. Annexure:P-4 is quashed and set aside. The writ petition is disposed of with the following directions:

(a) That respondent No.1 will work out reasonable modalities for insuring daily waged and work charged employees keeping in view the decision taken vide Annexure:P-8;

(b) While taking such decision, respondent No.1 will associate the petitioner in the matter and if so desired, to work out the technical details with Insurance Companies. The decision taken vide Annexure:P-8 will be kept in mind and;

(c) Respondent No.1 will further decide as to the viability of giving individual insurance policies to the workmen, more especially when such policies are being taken out in individual names of the workmen vide Annexue:P-8.

(d) This exercise will be undertaken and completed within a period of six months from today.

(e) It is further directed that in the meanwhile no workers will be left without

insurance cover and the present arrangement would continue.

The writ petition is, therefore, disposed of in terms of the aforesaid directions. There shall be no order as to costs.

**(Dev Darshan Sud),
Judge.**

February 26 ,2007(R)