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UNION OF INDIA AND ORS.

v.

DHARMA PAL AND ORS. ETC.

MARCH 29, 1996

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[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Labour Law :

Industrial Disputes Act, 1947/Equal Remuneration Act, 1976 :

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Casual Labourers/Daily wage workers—Regularisation of—Union Territory of Chandigarh—Work charge employees/Casual labourers/Daily wage workers working in the Government Departments for more than 10 years—Scheme framed by the Government for regularisation approved and directed to be implemented—Employees who are regularised would be entitled

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to all the regular payment at the scale of pay prescribed to the Central Government employee—Workers who are not regularised are entitled to minimum salary prescribed for the post—In addition to that they are also entitled to 60% of the D.A. at Punjab pattern—Procedure for retrenchment to be followed in respect of the workers who are required to be retrenched.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7062 of 1996 Etc.

From the Judgment and Order dated 1.4.92 of the Central Administrative Tribunal, Chandigarh in O.A. No. 276 CH. of 1989.

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K. Madhava Reddy, P.S. Poti and M.R. Sharma, Kanwaljeet Kochhar, J.D. Jain, K. R. Nambiar, C.M. Sharma, M.C. Dhingra and Anjani Sharma for the appearing parties.

The following Order of the Court was delivered :

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Leave granted.

We have heard learned counsel on both sides.

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Pursuant to the direction given by this Court the appellants have framed the scheme. Shri K.B. Sharma, Superintending Engineer, Construction Circle No. 2, Chandigarh Administration has placed the same along

with the additional affidavit. The Scheme has been approved by the Central Government. The scheme reads as under :

For work charged employees :

"(i) All the works establishment (excluding office of Ministerial Clerical and drawing cadres below the level of junior Engineer), engaged in the construction/execution of maintenance work, shall be called 'Work Force'. The work force includes buildings, roads, public health activities comprising augmentation of water supply, canals, drainage, electrical and electricity etc. The 'work division' shall be a unit for casual or daily wage work force and a 'circle' for work charged establishment. Separate cadre and seniority list for each category shall be maintained in the Division and Circle as the case may be.

(ii) Workers engaged on jobs, which are likely to be of a short duration, i.e., less than 240 days in a year, will be terminated on completion of work. No seniority list of such workers will be required to be maintained.

(iii) Workers who have completed five years service as on 31st August, 1995 will be considered for Regularisation against the available regular posts subject to the fulfilment of requirements as laid down in the Recruitment Rules for the post in question, if they were recruited before 6.1.1992, the date on which a ban was imposed on the recruitment of daily/casual workers.

(iv) Since a complete ban on recruitment of work charged casual/daily wage employees was imposed by Chandigarh Administration, those recruited in contravention of this policy decision after this date, i.e., 6.1.1992 will be considered for their regularisation only on the assessment of justification/requirements on the basis of norms approved for the continued nature of work and attaching the specific approval of Home Department, Chandigarh Administration.

For Casual/Daily Wagers

(v) Workers working as Casual labourers in works which have more or less fixed period of completion will be eligible for payment of

A benefits as admissible to them under rules. However, they will not be considered for regularisation automatically. Their requirement has to be reassessed after commissioning the work. Thus, the workers will be liable to be retrenched on completion of works except categories in limited numbers who are required for the operation and maintenance of the completed works. In their cases specific approval of the Home Department should be taken.

B (vi) Daily wage employees who have completed 10 years or more service as on 31.8.1995 shall be considered for regularisation w.e.f. 31.8.1995 on the availability of posts. Such employees shall be entitled for minimum of the scale w.e.f. the date of their regularisation. On regularisation, these employees shall be liable for transfer any where within the Engineering Department, U.T. Chandigarh.

C (vii) In respect of all such daily wages employees, who have not yet completed 10 years service, a special review should be carried out at the level of Head of Department regarding their requirement.

D (viii) In the case of those employees whose services are no longer required and have been taken after 6.1.1992 and specific approval of Home Department, Chandigarh Administration does not exist, they may be relieved of their duties at the earliest possible."

E Shri Poti, learned senior counsel has brought to our notice letter dated January 4, 1996 addressed by the Joint Secretary, Personnel to all the heads of the Departments in which it was stated that they were examining the payment of the D.A., C.C.A. H.R.A. to all the daily wage workers. By our order dated January 18, 1996, while quoting the above letter that Shri K. Madhava Reddy, learned senior counsel when was confronted with the same, had expressed his inability to respond to the same. Consequently, we have directed him to obtain instructions in that behalf. Shri Reddy has stated today that pursuant to that letter follow up action was taken by the appellants in their letter dated March 4, 1996 wherein the appellants had examined the impact of the direction issued by the Administrative Tribunal. It is stated that 3647 daily wage/casual employees are now on the muster rolls. If D.A., H.R.A. and C.C.A. are allowed at full rates it would work out at the approximate rate Rs. 8 crores.

F H Therefore, direction seeking their approval has been sought from the

Government of India. He stated that the Government of India was not willing to extend the same benefit though formal order has not been communicated so far. The Government of India is willing to permit the appellant to pay 60% of the amount of the minimum pay on par with Punjab pattern. Instead of D.A., H.R.A. and C.C.A., appellants, therefore, are willing to continue to pay to the daily wage workers above 60% subject to the above scheme. Shri Sharma learned senior counsel appearing for all the respondents in appeal arising out of SLP No. 27844/95 has brought to our notice the provisions of the Equal Remuneration Act, 1976 and Schedules 5 and 3 of the Industrial Disputes Act, 1947.

In view of the rival contentions, the only question is : whether the appellants would be permitted to proceed in the light of the scheme framed by them or give direction to continue to pay, as directed by the Tribunal. After giving due consideration to the respective contentions, we think that the appropriate course would be to give approval to the scheme framed by the appellants. In view of the settled law by recent decisions all the daily wage employees are required to be regularised in accordance with the rules in vogue following the principles of rules of recruitment, reservations and existence of vacancies. Admittedly, there is no rules operating in the field. As a result, all of them have been continuing on daily wage basis. It is true that CAT at Chandigarh had on earlier occasion directed to pay to 88 daily wage employees D.A., H.R.A. and C.C.A. Instead of the repetition, we think that the scheme requires enforcement.

In view of the scheme now framed, the appellants are directed to regularise all those who have completed the prescribed period of days, viz., 240 days against the existing vacancies applying the rules of reservation in the order of seniority in the respective categories mentioned in the scheme. Such regularised employees would be entitled to all the regular payment at the scale of pay prescribed to the Central Government employees. Those who could not be regularised are directed to be regularised in the order of seniority as had when vacancies arise. Work would be continued to be taken from them as long as the work exists. Even those who were engaged as daily wage/casual labour, who could not complete 240 days but were required to be retrenched, the procedure prescribed for retrenchment under the Industrial Disputes Act should be followed. A list of them in the order of seniority should be maintained. Last-come first-go principle should be followed in that behalf. As and when vacancies arise or need for

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A the work arises, they should be called for work immediately without asking them to get their names sponsored by the Employment Exchange. The daily wage workers/casual workers who are not regularised and taken work from them are entitled to minimum of scale of pay prescribed for that post. In addition to that, they are also entitled to 60% of the D.A. at Punjab pattern

B which is being followed in all other cases. The payment to all the candidates whose service are regularised/continuing on daily wage/casual labour shall be calculated from one year prior to the date of filing of the application in the Central Administrative Tribunal, Chandigarh. The appellants are directed to pay the same within a period of four months from to-day.

C The appeals are accordingly disposed of. No costs.

R.P.

Appeals are disposed of.