

A

STATE OF H.P. AND ORS.

v.

GEHAR SINGH

FEBRUARY 27, 2007

B

[DR. AR. LAKSHMANAN AND ALTAMAS KABIR, JJ.]

*Service Law:*

C

*Regularisation—Daily wage workers in Irrigation and Public Works Department—Continuing in service for more than 10 years—Tribunal directing their appointment as work charged employees w.e.f. 1.1.94—But Government regularizing w.e.f. 1.1.03—Held, notwithstanding the fact that services of works were regularized w.e.f. 1.1.2003, they cannot be denied benefits directed to be given to them by the Tribunal as affirmed by High Court which had already accrued to them under the Scheme approved in Mool Raj Upadhyaya's case.*

D

E

Respondents were employed on daily wage basis as Class III and Class IV employees in the Irrigation and Public Works Department of the State of Himachal Pradesh. The State Government framed a scheme for Betterment (Appointment) Regularisation of Muster Roll/Daily Wage Workers. The said scheme came to be considered before the Supreme Court in *Mool Raj Upadhyaya's* case. The Court modified the Scheme, *inter alia*, to the effect that Daily Wage/Muster Roll workers who had completed 10 years or more of continuous service with a minimum of 240 days in a calendar year on December, 31, 1993, would be appointed as work charged employees w.e.f. January 1, 1994 and would be put in the respective time scale; and those who did not complete 10 years of such continuous service till December 31, 1993 would be appointed as work charged employees w.e.f. the date they complete the said 10 years service and on such appointed date they would be put in the respective time scales. Their services would be regularized in a phased manner on the basis of seniority-cum-suitability including physical fitness. On 6.5.2000 the State Government circulated a fresh policy to the effect that regularization of daily wage workers would be done with prospective effect on vacant posts or by creating fresh posts with prior approval of Finance Department. This was challenged in the State Administrative Tribunal, which

F

G

H

held that respondents would be granted work charged status w.e.f. January 1, 2000. However, the appellants regularized services of the respondents w.e.f. January 1, 2003, and filed a writ petition before the High Court contending that the policy dated 6.5.2000 barred retrospective regularization and, therefore, the order of the State Tribunal be quashed. The High Court, relying upon *Mool Raj Upadhyaya's* case dismissed the writ petition. Aggrieved, the State Government filed the appeal.

**Dismissing the appeal, the Court**

**HELD:1.1.** The High Court did not commit any error in dismissing the writ petitions filed by the State Government. The Scheme as referred to in the case of *Mool Raj Upadhyaya* envisages two stages in regularising the services of the Daily Wage/Muster Roll workers. In the first stage, after completion of 10 years or more continuous service with a minimum of 240 days in a calendar year on 31st December, 1993, Daily Wage/Muster Roll workers were to be appointed as work-charged employees with effect from 1st January, 1994. Thereafter, they were to be regularised in the second stage in a phased manner on the basis of seniority cum suitability including physical fitness. [Para 17] [370-E-F]

*Secretary, State of Karnataka & Ors. v. Umadevi & Ors.*, decided by Supreme Court on 10th April, 2006, referred to.

**1.2.** Notwithstanding the fact that the services of the respondents have been regularised with effect from 1st January, 2003 and they have joined their posts from that date without protest, they cannot, be denied the benefits as directed to be given to them by the Tribunal and affirmed by the High Court which had already accrued to them under the Scheme which was approved in *Mool Raj Upadhyaya's* case. [Para 19] [371-C]

**CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 1037 of 2007.

From the Judgment and final Order dated 16.11.2005 of the High Court of Himachal Pradesh at Shimla in C.W.P. No. 364 of 2004.

**WITH**

Civil Appeals Nos. 1043, 1042, 1041, 1040, 1039 and 1038 of 2007.

J.S. Attri, B.D. Sharma, Suryanaryana Singh, Pragati Neekhara Singh, D.K. Sinha, A.K. Gupta and M.C. Dhingra, Anil Nag for the appearing parties and Gehar Singh, Respondent-in-Person.

A The Judgment of the Court was delivered by

**ALTAMAS KABIR, J.** 1. Leave granted in all the Special Leave Petitions.

2. As the appellants in all these appeals are similarly placed, all the appeals will stand disposed of by this common judgment.

B

3. The appellants are employed on a daily wage basis in the Irrigation and Public Health Wings of the Himachal Pradesh Public Works Department. They are classified as Class III and Class IV employees who are being paid their daily wages in keeping with the minimum wages prescribed by the Government of Himachal Pradesh from time to time. A number of the appellants

C

4. A scheme for Betterment (Appointment) Regularisation of Muster Roll/Daily Wage Workers in Himachal Pradesh was prepared by the Government of Himachal Pradesh, the salient features whereof are reproduced hereinbelow:-

D

“1. Daily wage Muster Roll workers, whether skilled or unskilled, who have completed 10 years or more of continuous service with a minimum of 240 days in a calendar year as on 31.12.1991, will be treated as monthly rated employees, on a consolidated fixed pay without any allowances, and an annual increment, as para-1 Annexure-A. They shall be entitled to annual increment for those months, in which they work for a minimum of 15 working days, per calendar month. They shall continue to be monthly rated employees, till they are appointed as work-charged employees.

E

F

2. All those daily rated employees whether skilled or unskilled who had completed 10 years of continuous service with a minimum of 240 working days in a calendar year as on 31.12.1987, shall be appointed as work charged employees in a phased manner as soon as the stay orders of the Hon'ble High Court of Himachal Pradesh is vacated. On appointment as work-charged employees, they shall be put in the time-scale of pay applicable to the corresponding lowest grade in the Government.

G

3. The daily rated workers, who would have completed 20 years of service as on 31.12.1992 shall be regularised w.e.f. 1.4.1993 on the basis of seniority cum suitability including physical fitness. On

H

regularisation, they shall be put in the minimum of the time scale of pay applicable to the lowest corresponding post concerned under the Govt. and would be entitled to all other benefits available to regular Govt. servants of the corresponding grade. A

4. In the event of any anomaly between the wages prescribed for the Monthly Rated Employees and that prescribed by the Govt. from time to time under the Minimum Wages Act, 1948, the Monthly Rated Employees are entitled to wages, which are higher, at any point of time, in future." B

5. The aforesaid Scheme fell for the consideration of this Court in the Writ Petition filed by Shri Mool Raj Upadhyaya which was heard along with several other writ petitions where the relief prayed for was similar. In all the said writ petitions filed under Article 32 of the Constitution, the employees had claimed regularisation of their services as well as for payment of salary, allowances and other benefits as were being given to the regular employees on the principle of "*equal pay for equal work*". While considering the said betterment scheme, this Court modified the same by substituting the aforesaid paragraphs numbers 1 to 4 with the following paragraphs:- C D

"(1) Daily-wage/Muster Roll Workers, whether skilled or unskilled, who have completed 10 years or more of continuous service with a minimum of 240 days in a calendar year on December 31, 1993, shall be appointed as work-charged employees with effect from January 1, 1994 and shall be put in the time scale of pay applicable to the corresponding lowest grade in the Government; E

(2) Daily-wage/Muster Roll Workers, whether skilled or unskilled, who have not completed 10 years of continuous service with a minimum of 240 days in a calendar year on December 31, 1993, shall be appointed as work-charged employees with effect from the date they complete the said period of 10 years of service and on such appointed they shall be put in the time scale of pay applicable to the lowest grade in the Government. F

(3) Daily-wage/Muster Roll Workers, whether skilled or unskilled, who have not completed 10 years of continuous service with a minimum of 240 days in a calendar year on December 31, 1993, shall be paid daily wages at the rates prescribed by the Government of Himachal Pradesh from time to time for daily-wage employees falling in Class III and Class IV till they are appointed as work-charged employees in G H

A accordance with paragraph 2;

(4 ) Daily-wage/Muster Roll Workers shall be regularised in a phased manner on the basis of seniority-cum-suitability including physical fitness. On regularization they shall be put in the minimum of the time scale payable to the corresponding lowest grade applicable to the Government and would be entitled to all other benefits available to regular Government servants of the corresponding grade.” ..

B

6. It was directed that the Scheme, as modified, was to be implemented with effect from 1st January, 1994 and if any excess amount had been received by the employees on the basis of interim orders passed by this Court, the same would not be required to be refunded by them.

C

7. On 6th May, 2000, the State Government circulated a fresh policy on the regularisation of Daily Wage/Contingent Paid workers which provided that eligible daily wage workers/contingent paid workers would be considered for regularisation against vacant posts or by creation of fresh posts with the prior approval of the Finance Department and that such regularisation in all cases would be with prospective effect. It was also stipulated that in future even in the Public Works Department and Irrigation and Public Health Department, regularisation/bringing daily wagers on work charged category would also be with prospective effect as in other departments.

D

E

8. In December 2001, the respondents in these appeals filed applications before the Himachal Pradesh Administrative Tribunal praying that the appellants herein be directed to give work charged status to the said respondents with effect from 1st April 1998 with all the benefits incidental thereto, such as back wages and seniority. The appellants herein filed reply to the said applications contending that the Government of Himachal Pradesh had formulated a policy for regularisation of daily wage workers in a phased manner subject to the availability of posts with prospective effect as envisaged in the policy published on 6th May, 2000. By its order dated 23rd October, 2003, the Tribunal allowed the applications filed by the respondents herein on the basis of the judgment of this Court in the case of Mool Raj Upadhyaya and directed the appellants herein to grant work-charged status to the respondents with effect from 1st January, 2000, with all consequential benefits, without any further delay.

F

G

9. Despite such direction given by the Tribunal, the appellants herein have regularised the services of the respondents with effect from 1st January,

H

2003.

A

10. On 25th May, 2004, the State of Himachal Pradesh filed a Writ Petition contending that the regularisation policy dated 6th May, 2000, barred retrospective regularisation and accordingly prayed for quashing of the order passed by the Tribunal. The High Court however, relying on the judgment of this Court in the case of *Mool Raj Upadhyaya* (supra), dismissed the writ petition on the ground that there was no distinction between the facts canvassed in the writ petition and the factual position in *Mool Raj Upadhyaya's* case. It is against the said order of the High Court that these appeals by special leave have been filed.

B

11. At the time when the Special Leave Petitions were listed for admission, it was brought to the notice of this Court that the questions involved in these appeals were similar to those being considered by a Constitution Bench of this Court in Civil Appeal Nos. 3595-3612/1999 (*Secretary, State of Karnataka & Ors. v. Umadevi & Ors.*) Consequently, this Court by order dated 10th April, 2006 directed that all these matters be listed after judgment was pronounced in the said civil appeals.

C

D

12. It may be indicated that judgment in the said appeals Nos. 3595-3612/1999 was pronounced by the Constitution Bench on 10th April, 2006.

13. These matters have been taken up for hearing after the decision in *Umadevi's* case .

E

14. Mr J.S. Attri, learned advocate, appearing for the Appellant-State of Himachal Pradesh, submitted that since the respondents had prayed for regularisation of their services, the State Government formulated a fresh scheme for regularisation of the daily wage workers in a phased manner so that they could all be absorbed in due course of time. He urged that the respondents were given the benefit of such policy in 2003 and consequently their claim that such benefit should be given to them from 1st January, 2000, was untenable and would involve the State Government into making huge financial commitments.

F

G

15. Mr. Attri submitted that since the services of the respondents have been regularised, there was no further cause for grievance available to the respondents. He urged that the State Government had formulated a fresh policy for regularisation of all Daily Wage/Muster Roll workers in accordance with paragraph 4 of the Scheme as substituted by the Supreme Court in its

H

A judgment in the case of *Shri Mool Raj Upadhyaya*. He urged that the services of the respondents had been regularised in pursuance of the said policy with prospective effect from the date of such regularisation.

16. Opposing the stand taken on behalf of the appellants, Mr. M.C. Dhingra, learned advocate, submitted that the very basis of the arguments advanced on behalf of the appellant-State of Himachal Pradesh was on an erroneous understanding of the relief sought for by the respondents who had at no point of time claimed regularisation of their services. Mr. Dhingra urged that in the application under Section 19 of the Administrative Tribunals Act, 1985, the respondents had merely prayed for a direction upon the appellants herein to grant them Work Charged status with effect from 1st January, 2000 with all the consequential benefits, in keeping with paragraph 1 of the Scheme as substituted by this Court in the case of *Mool Raj Upadhyaya*. Since the Tribunal had understood the case of the respondents herein in its true perspective, it had directed the appellants to grant Work Charged status to the respondents herein. The High Court also found that the matter was squarely covered by the judgment of this Court in the case of *Mool Raj Upadhyaya* and accordingly dismissed the writ petitions filed by the appellant-State of Himachal Pradesh.

17. On a careful consideration of the submissions made on behalf of the respective parties, we are of the view that the High Court did not commit any error in dismissing the writ petitions filed by the State of Himachal Pradesh. The Scheme as referred to in the case of *Mool Raj Upadhyaya* envisages two stages in regularising the services of the Daily Wage/Muster Roll workers. In the first stage, after completion of 10 years or more continuous service with a minimum of 240 days in a calendar year on 31st December, 1993, Daily Wage/Muster Roll workers were to be appointed as work-charged employees with effect from 1st January, 1994. Thereafter, they were to be regularised in the second stage in a phased manner on the basis of seniority cum suitability including physically fitness. Even while challenging the direction given by the Himachal Pradesh Administrative Tribunal on 23rd October, 2003, the State of Himachal Pradesh made out a case that the respondents were claiming regularisation of their services with effect from 1st April, 1998. It was also urged that it had been brought to the notice of the Tribunal that the respondents were daily waged workers and as per the instructions dated 6th May, 2000, they were entitled for work charged status only as and when the posts were sanctioned by the State Government in a phased manner strictly on the basis of seniority.

18. The aforesaid case made out by the State of Himachal Pradesh before the High Court was a clear departure from the directions given in *Mool Raj Upadhyaya's* case. The respondents had only claimed the benefit of the Betterment Scheme which was placed before this Court in *Mool Raj Upadhyaya's* case and had prayed for work charged status from 1st January, 2000, before the Tribunal whereas the change in policy was brought about on 6th May, 2000. It is on that basis that the Tribunal directed that the respondents be given work charged status with effect from 1st January, 2000. A B

19. Notwithstanding the fact that the services of the respondents have been regularised with effect from 1st January, 2003 and they have joined their posts from that date without protest, they cannot, in our view, be denied the benefits as directed to be given to them by the Tribunal and affirmed by the High Court which had already accrued to them under the Scheme which was approved in *Mool Raj Upadhyaya's* case. C

20. We, therefore, see no reason to interfere with the judgment of the High Court impugned in these appeals. All the appeals are accordingly dismissed without any order as to costs. D

RP.

Appeals dismissed.