

PETITIONER:
SATYANARAYAN SHARMA AND ORS.

Vs.

RESPONDENT:
NATIONAL MINERAL DEVELOPMENT CORPORATION LTD. AND ORS.

DATE OF JUDGMENT 06/08/1990

BENCH:
SHARMA, L.M. (J)
BENCH:
SHARMA, L.M. (J)
VERMA, JAGDISH SARAN (J)
REDDY, K. JAYACHANDRA (J)

CITATION:
1990 AIR 2054 1990 SCR (3) 618
1990 SCC (4) 163 JT 1990 (3) 374
1990 SCALE (2) 169

ACT:
Labour and Services: Daily-rated workmen--Principle of regularisation--When arises--'Equal pay for equal work'--Doctrine-Applicability of.

HEADNOTE:

The petitioners, claiming to be daily-rated workmen of the respondent Corporation in a writ before the High Court demanded regularisation of their services and equal pay for equal work on the ground that they were discharging the same duties as the regular workers. Their claim was contested by the respondents on the ground that there was no work for them for a long time and they had been continued on rolls on humanitarian grounds. The High Court rejected their claim.

In their counter affidavit to the special leave petition it was stated on behalf of the respondents that there was no vacancy in the establishment to absorb the petitioners, that they were surplus to the requirement of the project and that it had proposed a scheme of voluntary retirement for their benefit which some of them had accepted.

Dismissing the special leave petition, the Court,

HELD: 1. The principle of regularisation of a daily-rated workmen and payment to him of the pay equal to that of a regular workman arises only when he is doing the same work as the regular workman and there being a vacancy available for him, he is not absorbed against it or not even paid the equal pay for the period during which the same work is taken from him. [620E-F]

2. In the instant case, there were no vacancies or work available in the establishment for absorption of the petitioners. The question of directing their absorption and regularisation, therefore, does not arise. However, they be given the benefit of the voluntary retirement scheme and paid the specified amounts in addition to other dues. [619H; 620A; G]

JUDGMENT:
CIVIL APPELLATE JURISDICTION: Special Leave Petition

(Civil) No. 123 17 of 1987.

From the Judgment and Order dated 2.9.1987 of the Madhya Pradesh High Court in Misc. Petition No. 3308 of 1985.

M.K. Ramamurthy and A.K. Sanghi for the Petitioners.

Vinod Bobde, P.S. Nair and K.V. Sreekumar for the Respondents.

The following Order of the Court was delivered

This petition for special leave is against the judgment dated 2.9.1987 of the High Court of Madhya Pradesh dismissing the petitioners' writ petition (M.P. No. 3308 of 1985). The petitioners demand regularisation of their services claiming to be daily-rated workmen for a long time in the mines of the Diamond Mining Project, Panna of the National Mineral Development Corporation Ltd. Their demands are of regularisation and "equal pay for equal work" on the ground that they are discharging the same duties as the regular workers. The management has throughout denied the petitioners' claim and alleged that, in fact, the petitioners have been continued on rolls on humanitarian grounds for several years, even though there is no work for them; and as such, there is no question of regularising the petitioners and giving them the pay of regular workers when in fact they are not doing any work for a long time.

The High Court rejected the petitioners' claim and came to the following conclusion:

"The petitioners are not regular employees, they do not have any specific job to do, they are surplus to the establishment and merely kept on the roll on humanitarian ground. The respondents are also running in heavy losses during the last three years and it is not possible to absorb the petitioners immediately as regular workmen. In fact, the petitioners are being paid their daily wages in spite of their being no work available for them."

Aggrieved by dismissal of the writ petition, the petitioners have filed this petition for special leave to appeal under Article 136 of the Constitution.

In response to notice of this petition, a counter-affidavit has been filed on behalf of respondent No. 2 reiterating the stand taken before the High Court. It has been stated therein that there is no vacancy in the establishment to absorb the petitioners and the accumulated loss to

the establishment as on 31st March, 1988 is Rs. 10,29,40,583. A copy of the balance sheet has also been enclosed with the counter-affidavit. It has been stated that the petitioners being surplus to the requirement of the Project, they cannot be regularised and their retention on the rolls is purely on humanitarian grounds so far. Further facts have been stated in support of their contention. It has also been stated that a Voluntary Retirement Scheme offering considerable amount to these daily-rated workmen has been framed, which is Annexure R-V to the counter affidavit. This document shows the amount of retrenchment compensation and the ex-gratia payment offered to the 63 daily-rated workmen under this Scheme. The 54 petitioners are included therein. It was stated at the hearing before us that 9 out of these 63 daily-rated workers mentioned in Annexure R-V have accepted this Scheme of Voluntary Retirement and respondent No. 2 is prepared to give benefit of the same even to those who may not have agitated their claim.

We do not find any ground to interfere with the High Court's decision in view of the clear findings supported by evidence that there are no vacancies or work available in the establishment for absorption of the petitioners and that

for quite some time they have been continued on rolls and paid in spite of there being no work for them. On these facts, the question of directing their absorption and regularisation does not arise. The principle of regularisation of a daily-rated workman and payment 'to him of the pay equal to that of a regular workman arises only when the daily-rated workman is doing the same work as the regular workman and there being a vacancy available for him, he is not absorbed against it or not even paid the equal pay for the period during which the same work is taken from him. On the clear findings in this case, this is not the position. This petition must, therefore, fail.

In spite of our above conclusion, keeping in view the offer made on behalf of respondent No. 2 in the counter-affidavit together with Annexure R-V thereto which was reiterated at the hearing before us, we direct that all the 63 daily-rated workmen including the 54 petitioners herein mentioned in the aforesaid Annexure R-V to the counter affidavit be given the benefit of the Voluntary Retirement Scheme framed by respondent No. 2 and they be paid the specified amounts in addition to their all other dues. Subject to this direction, the special leave petition is dismissed. No costs.

P.S.S.

Petition

dismissed.

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