

STATE OF U.P. AND ORS.

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v.

U.P. MADHYAMIK SHIKSHA PARISHAD SHRAMIK SANGH
AND ANR.

NOVEMBER 6, 1995

B

[K. RAMASWAMY AND B.N. KIRPAL, JJ.]

Service Law :

Daily Wagers—Claim for equal pay for equal work and regularisation—High Court allowing the claim and directing State Government to regularise claimants by creating appropriate posts—Held, order of High Court not justified—Creation of posts is an administrative procedure and a matter of executive policy—Appropriate course would be to consider daily wagers for regularisation on the basis of their seniority and performance as and when regular posts are created or fall vacant—Ordered accordingly.

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The U.P. Madhyamik Shiksha Parishad engaged daily wagers in class-IV service for doing the manual work during the examinations conducted by it. The respondent-Union filed a writ petition before the High Court claiming regularisation of daily wagers and pay emoluments to them equal to regular class IV employees. The High Court allowed the writ petition. Aggrieved, the State Government filed the appeal by special leave.

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Allowing the appeal, this Court

HELD : 1. The High Court was not justified in directing the appellants to pay equal pay for equal work and also regularisation of the services of the daily wagers by creating appropriate posts. [782-F]

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2.1. It is an administrative procedure that creation of a post is a condition for filling up the post on permanent basis. The exigencies of the administration and the need for the creation of number of posts are matters of executive policy by the appropriate government. [782-G]

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2.2. Unless the posts are created, the daily wagers are not entitled to be fitted into any regular post nor are they entitled to equal wages though the performance of the manual duty may be like the duty of regular class IV employees. [783-A]

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- A 2.3. In the circumstances, the appropriate course would be that as and when regular posts are created or posts fall vacant, the daily wage employees, on the basis of their seniority, length of service and performance of work, may be considered for regularisation according to appellant rules and rules of reservation in vogue. Until then their services will be taken as and when exigencies would arise and payment of daily wages made as determined by the District Magistrate from time to time. [783-D-E]
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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10282 of 1995.

- C From the Judgment and Order dated 20.5.93 of the Allahabad High Court in C. Misc. W.P. No. 14781 of 1990.

D.V. Sehgal and R.B. Misra for the Appellants.

R.D. Upadhyay for the Respondents.

- D The following Order of the Court was delivered :

Leave granted.

- E Having heard the learned counsel on both sides, we think that it is a fit case for our interference under Art. 136. It would appear that the respondent is representing daily wagers in class IV service working with the U.P. Madhyamik Siksha Parishad, U.P. Though the High Court had found that they have been regularly working for over 15 years doing similar work on par with the regular Class IV employees and consequentially directed the appellants to pay equal pay for equal work and also regularisation of their services by creating appropriate posts, we think that the directions given do not appear to be correct.
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- G It is an administrative procedure that creation of a post is a condition for filling up the post on permanent basis. The exigencies of the administration and the need for the creation of number of posts are matters of executive policy by the appropriate government. It is stated in the Special Leave Petition filed in this Court that during the examinations conducted by the Board, when the exigencies demand for doing the manual work like lifting of bundles, pasting of envelopes and shifting of answer books etc. the daily wagers are engaged and a sum of Rs. 25 per day was being paid as fixed by the Distt. Magistrates of Allahabad under the Minimum Wages
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Act. Unless the posts are created, they are not entitled to be fitted into any regular post. The performance of the manual duty may be like the duty of regular class IV employees. However, they are not entitled for the payment of equal wages so long as there are no posts created in that behalf. We can understand that if there are vacant posts available in Class IV and they are filled up by appointing them to these posts on daily wages performing the same duties of regular employees, perhaps there may be justification for issuing directions for regularisation of their services according to relevant rules and payment of the salary to the post to which they are fitted. But in view of the fact that no posts are created or existing, we cannot uphold the direction issued by the High Court to pay equal wages or to regularise their services.

It is stated in paragraph 5(h) of the S.L.P. that the Board has been regularising daily wagers in class IV service as and when the post is created or falls vacant, on the basis of length of engagement of the daily wagers and performance of the work. The procedure so adopted is fair. Under these circumstances, we think that the appropriate course would be that as and when regular posts are created or posts fall vacant, these daily wage employees, on the basis of their seniority, length of service and performance of work, may be considered for regularisation according to rules and rules of reservation in vogue. Until then their services will be taken as and when exigencies would arise and payment of daily wages made as determined by the District Magistrate from time to time.

The appeal is accordingly allowed. No costs.

R.P.

Appeal allowed.