A HALLI GOWDA & ORS.

v.

MANAGING DIRECTOR, K.S.R.T.C. & ANR.

MARCH 8, 1989

B [R.S. PATHAK, CJ, RANGANATH MISRA AND M.N. VENKATACHALIAH, JJ.]

Statutory Organisations—One set of daily wage employees cannot be discriminated as against another in the matter of regularisation of service and grant of time scale pay.

C **The petitioners who had served the respondent—Corporation for long periods on daily wage basis prayed for regularisation of services and grant of time scale pay from their dates of initial appointment on the ground that others similarly placed had been granted these benefits.**

D **The Court, after noticing that there were discrepancies in the factual position adopted by the parties,**

DIRECTED: The matter to be examined is with reference to factual position as to when the 19 persons in Annexure 'A' were initially employed and when they have been regularised as against the initial E **employment of each of the petitioners. This can be done only by reference to appropriate records. We direct that a senior officer of the Corporation shall be named by respondent No. 1 to look into these allegations and at the time the question is examined by such officer the petitioners shall be given appropriate opportunity of being heard, if asked for through counsel also, and all relevant documents should be** F **looked into to ascertain whether the claim of the petitioners that they have been discriminated against in the facts indicated in their writ petition particularly with reference to Annexure 'A' is correct; and in case it is found that the petitioners have not been given the benefit which has given to the 19 daily rated Conductors specified in Annexure 'A'; petitioners may be conferred the same benefit as has been exten-** G **ded to those 19 persons unless the respondent is able to assign satisfactory and cogent reasons and states as to why petitioners are not entitled to the same benefit. This would be so on the footing that regularisation does not require a specified period of service to have been put in. [939E-H]**

H ORIGINAL JURISDICTION: Writ Petition No. 1325 of 1987.

(Under Article 32 of the Constitution of India) A

P. Rangaswamy, K.K. Gupta and Capt. Virendera Kumar for the Petitioners.

K.R. Nagaraja and R.S. Hegde, for the Respondents. B

The following Order of the Court was delivered:

ORDER

Thirty-two petitioners in this application under Art. 32 of the Constitution are Bus Conductors in the employment of the Karnataka State Road Transport Corporation, respondent No. 1. They have alleged that the respondent-Corporation is a statutory organisation and is 'State' within the meaning of Art. 12. The normal practice prevalent in the Corporation is to initially appoint Conductors on daily wage basis and regularise them in due course. According to them, 19 daily wage Conductors as mentioned in Annexure 'A' to the petition were regularised and brought on the time-scale of pay with effect from the original date of their employment as daily wage Conductors, while though the petitioners have served for quite a long period they have not yet been regularised. They have alleged discrimination and claimed relief on the basis of Art. 14. They have asked for a direction to the Transport Corporation to bring them on the time-scale by regularisation from the date each of them came to be employed by the Corporation, as stated in Annexure 'B'. C D E

The Corporation in its return to the rule has accepted the position that it is a statutory body created under s. 3 of the Road Transport Corporation Act of 1950. There is no challenge to the allegation of the petitioners that initial appointment is on daily wage basis and as and when regular vacancies arise the daily rated employees are brought on time-scale of pay and services are regularised. Paragraph 9 of the counter-affidavit specifically challenged the assertion of the petitioners that 19 similarly placed employees were confirmed on the date of initial employment on daily rated basis. The plea in paragraph 9 is as follows: F G

> "The information furnished in Annexure-A showing that 19 persons who were working in different divisions have been appointed on time-scale on the same date is absolutely wrong and misleading. The petitioners have sworn H

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> false affidavit without making any effort to verify the factual position. The date of confirmation in majority of the cases has been shown in Annexure-A as the date of their appointment just to prejudice this Court."

B Learned counsel for the petitioners placed reliance on the decision of this Court in *Daily Rated Casual Labour* v. *Union of India & Ors.*, [1988] 1 SCC 122 and an order made on 14th of July, 1988 in Writ Petition No. 8307-11/83 which is still awaiting final disposal. The facts of the reported decision were very different. It would be sufficient to refer to paragraph 2 of the judgment:

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> "The principal complaint of the petitioners is that even though many of them have been working for the last ten years as casual labourers, the wages paid to them are very low and far less than the salary and allowances paid to the regular employees of the Posts and Telegraphs Department
D belonging to each of the categories referred to above and secondly no scheme has been prepared by the Union of India to absorb them regularly in its service and consequently they have been denied the benefits, such as increments, pension, leave facilities etc. etc. which are enjoyed by those who have been recruited regularly. They allege
E that they are being exploited by the Union of India."

Petitioners have not made these allegations and their sole grievance is of discrimination on the basis that while they have not been regularised though they have been serving for a good number of years—in some cases about 14 years—the 19 persons named in Anne-
F xure 'A' have been regularised from the date of initial employment. It is, therefore, not necessary to refer to the decision. The order in the pending writ application is also on a different set of facts and, therefore, need not be further referred to.

At the hearing of the writ application, petitioners relied upon a
G draft seniority list published by the Corporation in support of their stand while the Corporation on the basis of a document appended to the counter-affidavit maintained that the particulars were wrong and since the document was only at the draft stage and mistakes appearing therein were yet to be corrected, no reliance can be placed on the particulars appearing therein and the original record should be refer-
H red to.

In view of the pointed question raised by the petitioners and the denial in the return, we made an order on 28.2.1989 to the following effect:

> "The dispute has arisen before us regarding the identity of all the persons. The Registrar General is directed to assign an Officer to examine the photostat copy of the Original Record in possession of learned counsel for the respondents for the purpose of determining whether there is any discrepancy between that record and the printed list which has been furnished before us in relation to the 34 petitioners as well as the 19 employees set out in Annexure 'A' annexed to the Writ Petition."

The report dated 2nd of March, 1989 on the basis of the printed document and the photostat copies of records made available at the time of examination to the Officer shows that there are discrepancies. The original record, however, is not available in the Court.

It is not disputed before us by counsel for the respondents that in case benefit of regularisation has been conferred on daily rated employees from the date of initial employment and such benefit has not been extended to the petitioners, the grievance grounded upon Art. 14 of the Constitution would be valid. The matter to be examined, therefore, is with reference to factual position as to when the 19 persons in Annexure 'A' were initially employed and when they have been regularised as against the initial employment of each of the petitioners. This can be done only by reference to appropriate records. We direct that a senior officer of the Corporation shall be named by respondent No.. 1 to look into these allegations and at the time the question is examined by such officer the petitioners shall be given appropriate opportunity of being heard, if asked for through counsel also, and all relevant documents should be looked into to ascertain whether the claim of the petitioners that they have been discriminated against in the facts indicated in their writ petition particularly with reference to Annexure 'A' is correct; and in case it is found that the petitioners have not been given the benefit which has been given to the 19 daily rated Conductors specified in Annexure 'A', petitioners may be conferred the same benefit as has been extended to those 19 persons unless the respondent is able to assign satisfactory and cogent reasons and states as to why petitioners are not entitled to the same benefit. This would be so on the footing that regularisation does not require a specified period of service to have been put in. The respondent-

A Corporation shall designate the authority within two weeks and the enquiry by him in the manner directed above shall be completed within three months. On the basis of the report furnished by such authority the respondent is directed to take a final decision within two months thereafter.

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There shall be no direction as to costs.

H.L.C.