STATE OF RAJASTHAN

v.

KUNJI RAMAN

[WITH VICE VERSA]

DECEMBER 17, 1996

[S.C. AGRAWAL AND G.T. NANAVATI, JJ.]

Labour Law—Rajasthan Service Rules, 1951—Rule 2(g)(h)—Rajasthan Service (Concession on Project) Rules, 1975—Rule 4—Public Works Department—Work charged establishment—Service conditions—Non application of Rajasthan Service Rules, 1951 and Subsidiary Rules—Whether discriminatory—Held, No—Claim of parity with employees of regular establishment—Not justified—Equal pay for equal work—Constitution of India, Art. 39(d).

Respondent along with 36 employees working on Mahi Project filed a Writ Petition as benefits of house rent allowance, project allowance, leave encashment were not given to them on the ground that the Rajasthan Service (Concessions on Project) Rules, 1962 were not applicable to them as they were work-charged employees. The petitioners contended that persons employed as work-charged employees perform the same functions and discharge the same duties as workmen on the regular establishment and, therefore, differential treatment given to them amounted to hostile discrimination; that on the principle of 'equal pay for equal work' workmen of the work charged establishment were entitled to same benefits as were made available to the workmen on the regular establishment and that the Rajasthan Service Rules and Rajasthan Service (Concession on Project) Rules are violative of Articles 14 and 16 of the Constitution in as much as they deny equal treatment to the workmen of the work-charged establishment.

The High Court allowed the Writ Petition holding that the employees employed on work-charged establishments did not belong to the same class and were governed by different set of Rules, they could not claim parity with the regular establishment employees on the basis of the principle of equal pay for equal work and, therefore, clauses (g), (h) and (i) or Rule 2 of the Rajasthan Service Rules were not discriminatory and violative of

A Articles 14 and 16 of the Constitution. However, it was held that project allowance payable under the Project Rules being compensatory in nature and not a source of profit to the employees, on the basis of the doctrine of 'equal pay for equal work' compensatory allowance had to be paid to the work-charged employees also at the same rate at which it was being paid
B to the employees on regular establishment.

The High Court struck down Rules 2(b) and (d) of the 1962 Project Rules and Rules 4(2) and (4) of 1975 Project Rules also as violative of Articles 14 and 16 of the Constitution and it was held that the Project Rules would, therefore, apply to all the employees working on Mahi Project
C irrespective of whether they were permanent, temporary or work charged employees and declared that the petitioner and other work charged employees working on the Mahi Sagar Project were entitled to payment of project allowances in the same manner in which they were paid to the permanent or temporary staff working on the Project but the petitioner and other work charged employees shall not be entitled to any arrears and
D that they should be paid the project allowance under the 1975 Rules from the date of the order. The State filed this appeal against the judgment of the High Court. The petitioner also filed Civil Appeal against the order of non payment of arrears.

E The appellant State alleged that the work-charged employees had always been treated differently from employees on regular establishment and therefore, separate rules had been framed for regulating their recruitment and conditions of service; that for the employees engaged in the work-charged establishment of Mahi Sagar Project there were separate standing others governing the terms and conditions of their service; that
F the High Court committed a grave error in striking down Rules 2(b) and (d) of the Project Rules 1962 and Rule 4(2) and (4) of project Rules 1975.

The question raised for consideration was whether by treating the work-charged employees on the Mahi Project differently from the
G employees working on regular establishment of P.W.D. and making the Rajasthan Service Rules and the Project Rules inapplicable to them, the Government could be said to have acted in a discriminatory and arbitrary manner.

Allowing the State Appeal and dismissing the appeal of the workmen,
H this Court

HELD 1.1. A work-charged establishment broadly means an establishment of which the expenses, including the wages and allowances of the staff, are chargeable to "works". The pay and allowances of employees who are borne on a work-charged establishment are generally shown as a separate sub-head of the estimated cost of the works. The work-charged employees are engaged on a temporary basis and their appointments are made for the execution of a specified work. From the very nature of their employment, their services automatically come to an end on the completion of the works for the sole purpose of which they are employed. Thus a work-charged establishment is materially and qualitatively different from a regular establishment. [262-E-G]

1.2. In the State of Rajasthan the Public Works Department is maintaining two separate establishments: (1) Regular and (2) Work-charged. The employees working in the regular establishment are governed by the Rajasthan Service Rules, 1951 and the work-charged employees are governed by the Work-charged Employees Service Rules. The RSR are made inapplicable, *inter alia*, to the work-charged employees. The work charged employees fall under two categories; (1) those who are working on a project and (2) those who are not working on a project. For the workmen engaged on the work-charged establishment of Mahi Bajaj Sagar Project the Government had framed separate standing orders under the Industrial Employment (Standing Orders) Act, 1946 and they apply to all persons engaged on work-charged establishment of the said Project whose terms of service are not regulated by the RSR, Rajasthan Civil Service (Classification, Control and Appeal) Rules and any other Rules framed under Article 309 of the Constitution by the Government of Rajasthan. The standing orders provide not only for classification, recruitment and termination of service but also for wages and allowances and other service conditions of the persons engaged on the Mahi Project. Whereas the employees who are not working on a project get work-charged pay scale those who are working on a project get a special pay scale and they are also entitled to other benefits and allowances as are applicable to all the employees covered under the Industrial Disputes Act, 1947, Factories Act, 1948 and Industrial Employment (Standing Orders) Act, 1946. The petitioner and other employees represented by him were undisputably governed by the said certified standing orders. They were not treated as full-time Government employees and, therefore, were free to utilise their free time in the manner they wished. They were also entitled to grant of

A overtime wages. A sub-division is regarded as a unit for the purpose of establishment of the work-charged employees. A separate seniority list of each category is maintained in each unit for the purpose of promotion as well as retrenchment. The service of work-charged employee is ordinarily not transferable from one work-charged establishment to another work-charged establishment. [262-H; 263-A-F]

B

1.3. A work-charged establishment thus differs from a regular establishment which is permanent in nature. Setting up and continuance of a work-charged establishment is dependent upon the Government undertaking a project or a scheme or a 'work' and availability of funds for executing C it. So far as employees engaged on work-charged establishments are concerned not only their recruitment and service conditions but the nature of work and duties to be performed by them are not the same as those of the employees of the regular establishment. A regular establishment and a work-charged establishment are two separate types of establishments D and the persons employed on those establishments thus form two separate and distinct classes. For that reason, if a separate set of rules are framed for the persons engaged on the work-charged establishment and the general rules applicable to persons working on the regular establishment are not made applicable to them, it cannot be said that they are treated in an arbitrary and discriminatory manner by the Government. It is well E settled that the Government has the power to frame different rules for different classes of employees. [263-G-H; 264-A-B]

1.4. The Project Rules have been framed by the Government in exercise of the power available to it under Rule 42 of the RSR. They are F subsidiary Rules made for the purpose of granting special concessions and allowances to Government servants working on projects. When non-application of the main Rules, namely RSR to work-charged employees is not found to be violative of Articles 14 and 16 by the High Court it is difficult to appreciate how the subsidiary Rules for that reason only can be held to be violative of those Articles. The High Court failed to consider this aspect G and erroneously struck down Rules 2(b) and (d) of the 1962 Project Rules and Rules 4(2) and (4) of the 1975 Project Rules. [264-C-E]

1.5. When an employee working in the regular establishment is transferred to a project he has to leave his ordinary place of residence and service H and go and reside within the project area. That is not the position in the case

of an employee who is engaged on the work-charged establishment for executing that work. Respondent and other employees on whose behalf he had filed the petition were all engaged for execution of the Mahi Project and thus they became a part of the work-charged establishment of Mahi Project. They were not required to shift from their regular place of service. While fixing the pay scales of employees of the work-charged establishment of Mahi Project the element of Project allowance was also included therein and for that reason their pay scales were higher than the pay scales of general category work-charged employees, some of whom were transferred and posted on the Mahi Project. [264-G-H; 265-A-C]

1.6. What they really want is parity with the employees of the regular establishment. In other works, what they want is that they should be treated as regular employees of the Public Works Department of the Rajasthan Government and should be given all benefits which are made available under the RSR and the Project Rules. Such a claim is not justified. The High Court committed an error in declaring Rules 2(b) and (d) of the Project Rules 1962 and Rules 4(2) and (4) of the Project Rules 1975, as *ultra vires* Articles 14 and 16 of the Constitution. [265-E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 652 of 1993 Etc.

From the Judgment and Order dated 29.1.92 of the Rajasthan High Court in D.B.C.W.P. No. 187 of 1987.

Aruneshwar Gupta for the Appellant, in C.A. No. 652/93 Respondent in C.A. No. 653/93.

M.P. Raju, T.U. Rajan, Liangri Nivmai and L.J. Vadakara for the Respondent in C.A. No. 652/93, in C.A. No. 653/93 in Appellant.

The Judgment of the Court was delivered by

NANAVATI, J. Both these appeal arise out of the judgment and order dated 29.1.92 of the Rajasthan High Court in D.B. Civil Writ Petition No. 187 of 1987. Civil Appeal No. 652 of 1993 is filed by the State of Rajasthan, Respondent No. 1 in the writ petition and Civil Appeal No. 653 of 1993 is filed by Kunji Raman who was the writ petitioner. Both these appeals are, therefore, heard together and disposed of by this common judgment.

A Kunji Raman was employed on March 28, 1974 as a Fitter in the Mechanical Division-II of Mahi Project. He was promoted and appointed as Lathe Operator on October 23, 1975. On January 12, 1987 he filed the aforesaid writ petition in his behalf and on behalf of 36 other employees, as benefits of house rent allowance, project allowance, leave encashment B are not given to them on the ground that the Rajasthan Service Rules, 1951 (for short RSR) and the Rajasthan Service (Concessions on Project) Rules, 1962 (for short 'Project Rules') are not applicable to them as they are work-charged employees. It was the contention of the petitioner that persons employed as work-charged employees perform the same functions and discharge the same duties as workmen on the regular establishment C and, therefore, differential treatment given to them amounts to hostile discrimination. It was also contended that on the principle of 'equal pay for equal work' workmen of the work-charged establishment are entitled to same benefits as are made available to the workmen on the regular establishment. The validity of the RSR and Project Rules was also chal- D lenged on the ground that they are violative of articles 14 and 16 of the Constitution inasmuch as they deny equal treatment to the workmen of the work-charged establishment.

The High Court held that the employees who are on regular estab- lishment and the employees employed on work-charged establishments do E not belong to the same class and are governed by different set of Rules; and, therefore, they cannot claim parity with the regular establishment employees on the basis of the principle of 'equal pay for equal work'. It rejected the contention that clauses (g), (h) and (i) of Rule 2 of RSR are discriminatory and, therefore, violative of Articles 14 and 16 of the Con- F stitution. However, on the ground that project allowance payable under the Project Rules is compensatory in nature and not a source of profit to the employees, it held that on the basis of the doctrine of 'equal pay for equal work' compensatory allowance has to be paid to the work-charged employees also at the same rate at which it is being paid to the employees on regular establishment. The High Court, for that reason, struck down G Rules 2(b) and (d) of the 1962 Project Rules and Rules 4(2) and (4) of 1975 Project Rules also (as 1975 Project Rules had replaced 1962 Project Rules) as violative of Articles 14 and 16 of the Constitution. It further held that the Project Rules would, therefore, apply to all the employees working on Mahi Project irrespective of whether they are permanent, temporary or H work-charged employees. The High Court allowed the writ petition and

declared that the petitioner and other work-charged employees working on the Mahi Sagar Project are entitled to payment of project allowances in the same manner in which they are paid to the permanent or temporary staff working on the Project. Calling in question, this part of the judgment and order, the State has filed, with the leave of this Court, Civil Appeal No. 652 of 1993. As the High Court held that the petitioner and other work-charged employees shall not be entitled to any arrears and that they should be paid the project allowance under the 1975 Rules from the date of the order, the petitioner has filed Civil Appeal No. 653 of 1993.

The contention of the appellant-State is that the work-charged employees have always been treated differently from employees on the regular establishment and, therefore, the State Government has framed separate Rules, under Article 309 of the Constitution, for regulating their recruitment and conditions of service. They are : the Rajasthan Public Works Department (Building & Roads including Gardens, Irrigation, Water works and Ayurvedic Departments) Work-charged Employee Service Rules, 1964 (hereinafter referred to as the Work-charged Employees Service Rules). Their service conditions are, therefore, governed by those Rules and not by the RSR and the 'Project Rules'. Even in the class of work-charged employees there are two categories namely; (1) General category - work-charged employees and (2) work-charged employees who are employed on projects; and, their service conditions also differ. For the employees engaged in the work-charged establishment of Mahi Sagar Project there are separate standing orders framed under the Industrial Employment (Standing Orders) Act, 1946, governing the terms and conditions of their service. The High Court having held that the Governor has power under the proviso to Article 309 of the Constitution to frame different rules for different categories of government servants in various services and, therefore, it was open to the Government to exclude the applicability of Rajasthan Civil Service Rules, committed a grave error in holding that Rules 2(b) and (d) of the Project Rules, 1962 which have now been superseded and Rules 4(2) and (4) of the Project Rules, 1975 are violative of Articles 14 and 16. It was further contended that the High Court failed to appreciate that the petitioner and the work-charged employees on whose behalf the petition was filed had acquired the status of permanent work-charged employees of the Mahi Project and thus belonged to a separate category of work-charged employees and the petition was not filed on behalf of other categories of work-charged employees

A viz. apprentice, casual, temporary and quasi-permanent. The High Court, therefore, committed a grave error in striking down Rules 2(b) and (d) of the Project Rules, 1962 and Rule 4(2)(4) of the Project Rules, 1975 with respect to those other categories of work-charged employees also. On the other hand it was contended on behalf of the work-charged employees that there being no difference between the nature of work and the duties performed by them and the employees on regular establishment, treating them in a different manner in the matter of service conditions amounts to hostile discrimination and, therefore, those provisions of the RSR and the Project Rules which make those Rules inapplicable to work-charged employees employed on projects are violative of Articles 14 and 16 of the Constitution. It was also contended that the High Court having held that the work-charged employees of the Mahi Project are entitled to project allowances wrongly deprived them of the said benefit for the period prior to the date of the decision.

Therefore, the question that arises for consideration is whether by treating the work-charged employees of the Mahi Project differently from the employees working on the regular establishment of P.W.D. and making the RSR and the Project Rules, 1962 and 1975 inapplicable to them, the Government can be said to have acted in a discriminatory and arbitrary manner.

A work-charged establishment as pointed out by this Court in *Jaswant Singh* v. *Union of India*, [1979] 4 SCC 440 broadly means an establishment of which the expenses, including the wages and allowances of the staff, fare chargeable to "works". The pay and allowances of employees who are borne on a work-charged establishment are generally shown as a separate sub-head of the estimated cost of the works. The work-charged employees are engaged on a temporary basis and their appointments are made for the execution of a specified work. From the very nature of their employment, their services automatically come to an end on the completion of the works for the sole purpose of which they are employed. Thus a work-charged establishment is materially and qualitatively different from a regular establishment.

In the State of Rajasthan the Public Works Department is maintaining two separate establishments: (1) Regular and (2) Work-charged. The employees working in the regular establishment are governed by the RSR

and the work-charged employees are governed by the Work-charged Employees Service Rules. The RSR are made inapplicable, *inter alia*, to the work-charged employees. The work-charged employees fall under two categories : (1) those who are working on a project and (2) those who are not working on a project. It appears that for the workmen engaged on the work-charged establishment of Mahi Bajaj Sagar Project the Government has framed separate standing orders under the Industrial Employment (Standing Orders) Act, 1946 and they apply to all persons engaged on work-charged establishment of the said Project whose terms of service are not regulated by the RSR, Rajasthan Civil Service (Classification, Control and Appeal) Rules and any other Rules framed under Article 309 of the Constitution by the Government of Rajasthan. The standing orders provide not only for classification, recruitment and termination of service but also for wages and allowances and other service conditions of the persons engaged on the Mahi Project. Whereas the employees who are not working on a project get work-charged pay scale those who are working on a project get a special pay scale and they are also entitled to other benefits and allowances as are applicable to all the employees covered under the Industrial Disputes Act, 1947, Factories Act, 1948 and Industrial Employment (Standing Orders) Act, 1946. The petitioner and other employees represented by him are undisputably governed by the said certified standing orders. They are not treated as full-time Government employees and, therefore, are free to utilise their free time in the manner they wish. They are also entitled to grant of overtime wages. A sub-division is regarded as a unit for the purpose of establishment of the work-charged employees. A separate seniority list of each category is maintained in each unit for the purpose of promotion as well as retrenchment. The service of a work-charged employee is ordinarily not transferable from one work-charged establishment to another work-charged establishment.

A work-charged establishment thus differs from a regular establishment which is permanent in nature. Setting up and continuance of a work-charged establishment is dependent upon the Government undertaking a project or a scheme or a 'work' and availability of fund for executing it. So far as employees engaged on work-charged establishments are concerned, not only their recruitment and service conditions but the nature of work and duties to be performed by them are not the same as those of the employees of the regular establishment. A regular establishment and a work-charged establishment are two separate types of establishments and

A the persons employed on those establishments thus form two separate and distinct classes. For that reason, if a separate set of rules are framed for the persons engaged on the work-charged establishment and the general rules applicable to persons working on the regular establishment are not made applicable to them, it cannot be said that they are treated in an B arbitrary and discriminatory manner by the Government. It is well-settled that the Government has the power to frame different rules for different classes of employees. We, therefore, reject the contention raised on behalf of the appellant in Civil Appeal No. 653 of 1993 that clauses (g), (h) and (i) of Rule of RSR are violative of Articles 14 and 16 of the Constitution and uphold the view taken by the High Court.

C

The Project Rules have been framed by the Government in exercise of the power available to it under Rule 42 of the RSR. They are subsidiary Rules made for the purpose of granting special concessions and allowances to Government servants working on projects. When non-application of the main rules, namely, RSR to work-charged employees is not found to be D violative of Articles 14 and 16 by the High Court it is difficult to appreciate how the subsidiary Rules for that reason only can be held to be violative of those Articles. The High Court failed to consider this aspect and in our opinion, erroneously struck down Rules 2(b) and (d) of the 1962 Project Rules and Rules 4(2) and (4) of the 1975 Project Rules.

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It was also contended on behalf of the State that the High Court having held that the workmen working on the regular establishment and the employees working on a work-charged establishment belong to two separate categories and, therefore, separate classification made by the Government in that behalf is reasonable, committed a grave error in F striking down Rules 2(b) and (d) of the 1962 Project Rules and Rules 4(2) and (4) of the 1975 Project Rules by invoking the principle of equal pay for equal work. The reason given by the High court for taking that view is that the project allowance is compensatory in nature and, therefore, the classification made between the work-charged employees and the G employees of the regular establishment has no rational nexus with the object sought to be achieved by those Rules. What the High Court failed to appreciate is that when an employee working in the regular establishment is transferred to a project he was to leave his ordinary place of residence and service and go and reside within the project area. That is not the position in the case of an employee who is engaged on the H work-charged establishment for executing that work. Respondent Kunji

Raman and other employees on whose behalf he had filed the petition were all engaged for execution of the Mahi Project and thus they became a part of the work-charged establishment of Mahi Project. They were not required to shift from their regular place of service. The High Court also failed to consider that for such employees the pay scales under the Pay Scale Rules are also different. The material produced by the State goes to show that while fixing the pay scales of employees of the work-charged establishment of Mahi Project the element of project allowance was also included therein and for that reason their pay scales were higher than the pay scales of general category work-charged employees, some of whom were transferred and posted on the Mahi Project. Except a general denial in the rejoinder affidavit by Kunji Raman no other material has been produced to point out that the said claim of the Government is not correct. The order dated 30.4.81 annexed with the rejoinder affidavit of Kunji Raman is with respect of those work-charged employees who were absorbed on 43 regular posts which were newly created. They thus ceased to be work-charged employees employed on a project and became general category work-charged employees whose pay scales were different and were, therefore, paid the project allowance. Thus the claim made by Respondent Kunji Raman and other similarly situated employees for granting them project allowance was really misconceived. From what is now stated by them in the counter affidavit, it appears that what they really want is parity in all respects with the employees of the regular establishment. In other words, what they want is that they should be treated as regular employees of the Public Works Department of the Rajasthan Government and should be given all benefits which are made available under the RSR and the Project Rules. Such a claim is not justified and, therefore, the contention raised in that behalf cannot be accepted. We hold that the High Court committed an error in declaring Rules 2(b) and (d) of the Project Rules, 1962 and Rules 4(2) and (4) of the Project Rules, 1975 as *ultra vires* Articles 14 and 16 of the Constitution.

We, therefore, allow Civil Appeal No. 652 of 1993 and dismissed Civil Appeal No. 653 of 1993. In view of the facts and circumstances of the case there shall be no order as to costs.

R.A. State appeal allowed and Workmen appeal dismissed.