CASE NO.:
Appeal (civil) 691 of 2001
Special Leave Petition (civil) 1490 of 1999
Appeal (civil) 692 of 2001

PETITIONER:
GUJARAT AGRICULTURAL UNIVERSITY

Vs.

RESPONDENT:
RATHOD LABHU BECHAR & ORS.

DATE OF JUDGMENT: 18/01/2001

BENCH:
A.P.Misra, D.P.Mohapatro

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T..J

MISRA, J.

Delay condoned in SLP Â© No. of 2001 (CC No. 2360).

Leave granted in all the special leave petitions.

The aforesaid appeals raise common questions hence are being disposed of by means of this common judgment. These appeals arise out of industrial disputes through references by the Government of Gujarat under Section 10 (1) (C) of the Industrial Disputes Act, 1947. It raised the following questions:

Whether the employees listed in the scheduled annexed be made permanent, as from the day, when they complete 240 days service, and if in affirmative, whether they are entitled to all the benefits at par with the permanent employees, and be paid arrears.

Before entering into the issues in this case it is necessary to give certain essential facts in order to appreciate the controversies.

The appellant is an educational institution fully aided by the State Government and is engaged in the educational activities in agriculture and allied sciences and humanity and is also prosecuting research in agriculture and other allied science. It performs its duties and functions under the statutory provisions and in doing so it engages daily rated labourers for various activities. According to the appellant these labourers are being paid their wages as per the minimum wages fixed by the State Government from time to time under the Minimum Wages Act. They were engaged due to exigencies of work, without considering relevant factors about their educational qualification, age limit and other relevant requirements for the purpose of regular appointment under the Recruitment

Rules. There are different agricultural research centres at different places with different projects and these daily rated workers are unskilled, semi-skilled, skilled and field labourers of different categories. Since the University is grant- in-aid institution fully funded by the State Government it requires prior permission/sanction of the State Government for appointment of its employees. In fact, all the posts are sanctioned by the State Government and thereafter they are filled by the University, as per the Recruitment Rules. The present case pertains to daily wage workers who are plumbers, carpenters, sweepers, pump operators, helpers and masons etc. According to the appellant, no posts are sanctioned for them and hence they are working on daily rate basis. Thus their appointments are on irregular basis and not in accordance with the recruitment rules.

The respondents raised, as aforesaid, an industrial dispute who are daily rated employees, before the Industrial Tribunal, Rajkot. The Industrial Tribunal directed the appellant to regularise the services of all such daily rated labourers who have completed 10 years of service (with minimum of 2400 days) as on 1.1.1993 with pay and all allowances along with other benefits of the permanent class IV employees. The appellant being aggrieved filed the writ petition before the High Court challenging this award. Learned Single Judge partly allowed the writ petition and set aside the award, however, with a direction to the appellant to make the payment to the workmen at the minimum of the pay scale and also to frame a scheme for the regularisation of such daily rated labourers. The appellant not satisfied filed letters patent appeals.

The Special Leave Petition (C) No. 1490 of 1999, arises out of the Letters Patent Appeal No. 1047 of 1997, which concern 23 respondents who were working as carpenters, masons, plumbers etc. in the appellant-University. The appellant has a huge campus covering the large area of about 16000 sq. mtrs. and 240 staff quarters of the employees at Junagadh and other places. Nine daily rated workers were involved in Letter Patent Appeal No. 1051 of 1997 from which arises Special leave Petition (C) No. 2528 of 1999. Similarly, there were three daily rated workers in Letter Patent Appeal No. 1095 of 1997 which gave rise to the Special Leave Petition (C) No. 2529 of 1999. SLP of 2001 (arising out of CC No. 2360 of 1999) arises out of LPA No. 808 of 1998 wherein the respondents representing the daily rated workers of Junagadh Jilla Majdoor Sangh.

Learned Single Judge relying on the decision of this Court in Daily Rated Casual Labour Employed under P & T Department Vs. Union of India & Ors., 1988 (1) SCC 122, a case of daily rated casual workers of the P & T Department, directed the appellant to submit a scheme for conferring permanent status to the respondents. At this stage, when the question of framing a scheme, came to the fore, before the Single Judge, learned counsel for the appellant submitted then that such a scheme of giving permanent status to these workers could not be confined to these workmen as large number of such workmen are involved, disputes about which are pending for adjudication in the various labour courts. It was suggested, it would be fair and just, instead of making multiple scheme in each such pending matters, be permitted to frame a comprehensive scheme to cover all pending litigations. The appellant specifically

denies any such statement being given by the counsel for the appellant. The submission is, this fact was challenged even before the bench of Letters Patent Appeal, but the court did not advert to this question. However, the letters patent appeals were dismissed with the following observations:

As a result of foregoing discussion, all these three appeals are summarily dismissed. The learned single Judge had directed the appellant to submit a scheme for consideration of the Tribunal with regard to extending permanent status to the workmen in question and the like workmen employed under it within a period of two months from the date of receipt of writ of the judgment and order, but, since the above direction was given way back in the month of April, 1997, we direct the appellant to submit a scheme for consideration of the Tribunal with regard to extending permanent status to the workmen in question and the like workmen employed under it within a period of one month from the date of receipt of writ of this order, and the Tribunal shall thereafter make an award within three months after inviting objections and suggestions from the respective parties. There shall be no order as to costs.

Aggrieved by this, the appellant filed the aforesaid appeals, in this Court.

Since the appellant was fully funded by the State Government, the appellant was permitted to implead the State of Gujarat in these appeals and notice was issued to it on the 8th February, 1999 by this Court. It seems instead of contesting various issues, during pendency of these appeals in this interregnum, learned counsel for the appellant submitted a scheme framed by the university for the absorption of these employees with the approval of the State Government, which is also filed in this case. Learned counsel for the respondents desired to file objections to this scheme, which this Court permitted. The objections accordingly were filed by the respondents.

We heard learned counsel for the parties at length and considered the objections of the respondents with respect to the proposed scheme for the regularisation of daily rated workers. The proposed scheme is reproduced below:

SCHEME FOR REGULARISATION OF DAILY RATED LABOURS OF THE GUJARAT AGRICULTURAL UNVIERSITY.

1. Daily-wager workers, whether skilled, semi-skilled or unskilled, who have completed 10 years or more of continuous service with a minimum of 240 days in each calendar year as on 31.12.1999, shall be regularised as regular employees with effect from 1.1.2000 and shall be put in the time scale of pay applicable to the corresponding lowest grade in the University subject to the following terms and conditions:

(a) The daily rated employees shall be eligible and must possess the prescribed qualifications for the post at the time of their appointment on daily rated basis.

(b) Daily-wager employees shall be regularised in a phased manner to the extent of available regular sanctioned posts/vacancies on the date of regularisation and on the

basis of seniority-cum-suitability including physical fitness.

(C) The work and conduct of such employees should have been of over all good category and satisfactory and no disciplinary proceedings are pending against them.

(d) The regularisation will be against the posts/ vacancies of the relevant categories only.

2. Daily workers, whether skilled semi- skilled or unskilled, who have completed 10 years of continuous service with a minimum of 240 days in each calendar year as on 31.12.1999 but could not be regularised shall be treated as monthly rated employees w.e.f. 1.1.2000 in the fixed pay without allowances as per the following formula:

Prepared by University:

Daily rate Fixed pay = prescribed by 26+ Rs.500 the Government fromtime to time for skilled,semi-skilled, unskilled workers as the case may be

They would be entitled to an annual increment of Rs. 15/-, Rs. 20/- and Rs. 25/- respectively for unskilled, semi-skilled and skilled workers till their services are regularised as per para-1.

3. Daily-wager whether skilled, semi-skilled or unskilled who have not completed 10 years of service with a minimum of 240 days in each calendar year shall be paid daily wage at the rates prescribed by the Government of Gujarat from time to time for daily wager employees falling in Class III and Class IV.

4. The seniority of the daily rates Class III and IV employees so regularised vis-Â -vis Class III and IV employees appointed on regular basis shall be determined w.e.f. 1.1.2000. The inter se seniority of such daily rate Class III & IV employees shall be determined in accordance with the date of joining the post on daily rated basis. If the date of joining the post(s), on daily rated basis by such daily rated employees was the same, then the elder employee shall rank senior to an employee younger in age. If the date of joining of the directly recruited regular employees and the date of regularised employees as per this scheme is the same, the direct recruit shall be senior.

So, the larger issues inter se between the University and its workers, at this stage, are no more contentious as the University has decided to grant permanent status to the contesting and other workers in a phased manner for which the aforesaid scheme has been finalised. Thus the question which focuses our attention is, whether the scheme sub serves the workers aspirations and satisfy the judicial scrutiny, on the facts and circumstances of this case. The fact which emerges is, that reference for the adjudication of industrial dispute was made in the year 1987. The Industrial Tribunal directed the appellant to regularise the services of all such workers who have completed 10 years of service as on 1st January, 1993. The Single Judges records:

It is also true that the facts of the present case have also similar shade as was in the case of Chief

Conservator of Forests and another Vs. Jagannath Maruti Kondhara reported in 1996(1) LLJ 1223 to prime facie reach a conclusion about the unfair labour practice in depriving the workmen of their status of permanency and privileges attached thereto.

It further records that the Tribunal has not adverted to some of the questions which implicitly arises in any industrial dispute concerning grant of permanent status. It records that no opportunity was given to the employer after reaching this conclusion of giving workmen permanent status hence these issues require investigation. Thus it set aside the finding of the Tribunal to make all workmen permanent w.e.f. the date they complete 10 years on or before 1st January, 1993 and directed it to decide this question afresh through a scheme. But the direction to make payment to such workmen at the minimum pay scale of similarly situated workmen on permanent basis remained unaffected. This direction was confirmed by the Division Bench of the High Court.

Learned senior counsel, Mr. Rajeev Dhawan appearing for the appellant submits, that the scheme as proposed has been thoroughly scrutinised, examined taking into consideration the interests of the workers within the permissible limit of the availability of finance. He submits with vehemence, it would not be possible for the University to grant permanency to all its employees working as daily rated workers, who have completed 10 years of service, on the 1st January, 1993. The proposal for grant of permanent status as per the scheme is that all such employees who have completed 10 years or more of continuous service with minimum of 240 days in each calendar year as on 31st December, 1999 should be regularised. This extension of period from 1st January, 1993 to 31st December, 1999 was made for two purposes. First, to bring more workers in its arm for regularisation and secondly, to bring it within the financial means available to the University. In fact, Single Judge has set aside the grant of permanency from 1st January, 1993 and left it open to the appellant to frame a scheme for their absorption. Mr. Dhawan also challenges the grant to all such employees minimum pay scale who have completed 10 years of service, based on the anvil of equal pay for equal work, A minimum regular pay scale is only admissible to the regularised employees doing the same nature of work.. The submission is, such employees could only be entitled to the minimum wages admissible to class IV employees of the State. Unless an incumbent is regularised he would not be entitled for this minimum pay scale. He further submits, since there are no equivalent posts in existence today, hence question of equal pay on equivalent post does not arise, so also no question of applying the principle of equal pay for equal work.

Reliance was placed in the case of State of Haryana and Ors. Vs. Jasmer Singh and Ors. 1996(11) SCC 77 and State of Haryana Vs. Surinder Kumar and Ors. 1997(3) SCC 633, to give credence to his this submission of equal pay for equal work. He further relies on the following observation of the Division Bench that present is not a case where such an issue arises:

The workmen are not claiming equal pay for equal work but they are claiming permanent status as Class IV

employees.

The submission on behalf of the respondents is, the stand of the University that there are no permanent posts for absorption of such workers, on the facts of this case, where the appellant has been taking work from its workers year after year for more than one decade, then non-creation of posts itself constitutes an unfair labour practice. In fact by the time this industrial dispute was referred, respondent- workers completed 5 years of their continuous service and when arguments were concluded they completed 10 years of their continuous service. Both, the Tribunal and the learned Single Judge found the existence of permanent nature work requiring them to be regularised.

Respondents objection to Item No.1 of the proposed aforesaid scheme which requires completion of 10 years prior to 31st December, 1999 for regularisation is that it is dehors the interest of the workers, specially when some of the workers are working from 1973 onwards. Thus this cut off date for regularisation requires a re-look. With reference to Item No.1(a), the objection is, that the University had failed to produce any evidence to show any qualification for the posts on which they are to be absorbed. The recruitment rules which have been placed for the first time before this Court do lay down some qualifications but their experience of working for such a long time itself should be sufficient for their eligibility. With reference to Item (1)(b) and 1(d) the objection is, there should not be any phased regularisation, when work has been taken for such a long time. All such qualified workers should be regularised from the date they completed 10 years of their continuous service. With reference to Item No.1(c) the submission is, there is no case whatsoever about any unsatisfactory work of any of these respondent workmen nor any proceedings are pending against them. In other words, there is no serious objection to it. Next, with reference to Item No.2 which provides, all daily workers who have completed 10 years of continuous service with minimum of 240 days in each calendar year as on 31st December, 1999 but could not be regularised, w.e..f. 1st January, 2000 they would be entitled for a fixed pay without allowance as prescribed by the Government from time to time for skilled, semi-skilled and unskilled workers plus Rs.500/- p.m. They would also be entitled to annual increment of Rs.15/-, Rs.20/- and Rs.25/- respectively for the unskilled, semi-skilled and skilled workers till their services are regularised. The objection is instead these workers should be paid minimum pay scale (without increment) as admissible to regularised workman on such post from 1st January, 1993. Similarly, Item No.3 refers to such daily wagers, skilled, semi- skilled or unskilled who have not completed 10 years of service with a minimum of 240 days in each calendar year to be paid minimum wages at the rates as prescribed by the Government of Gujarat from time to time for daily wagers falling in Class III and Class IV. The objection is the same that they should also be paid minimum pay scale. No serious submission with reference to Item No.4 has been made.

From the aforesaid, it emerges that the learned Single Judge had concurred with the finding of the Tribunal that contesting workmen have been working in the appellant University regularly for a long number of years. The

existence of permanent nature of work was inferred on this account and also due to the vastness of appellant establishment. The regularisation is claimed only in respect of Class IV employees. The main objection, which was raised earlier and is raised before us is that a person could only be regularised on any vacant post and if there be one he should be qualified for the same as per qualification, if any, prescribed. In fact, the Tribunal has held on the date of the award, most of the workmen had completed 10 years of their service. It is also well settled, if work is taken by the employer continuously from daily wage workers for a long number of years without considering their regularisation for its financially gain as against employees legitimately claim, has been held by this Court repeatedly as an unfair labour practice. In fact, taking work, from daily wage worker or ad hoc appointee is always viewed to be only for a short period or as a stop gap arrangement, but we find new culture is growing to continue with it for a long time, either for financial gain or for controlling its workers more effectively with sword of damocles hanging over their heads or to continue with favourved one in the cases of ad hoc employee withstaling competent and legitimate climants. Thus we have no hesitation to denounce this practice. If the work is of such a nature, which has to be taken continuously and in any case when this pattern become apparent, when they continue to work for year after year, only option to the employer is to regularise them. Financial viability no doubt is one of the considerations but then such enterprise or institution should not spread its arms longer than its means. The consequent corollary is, where work is taken not for a short period or limited for a season or where work is not of part time nature and if pattern shows work is to be taken continuously year after year, there is no justification to keep such persons hanging as daily rate workers. In such situation a legal obligation is cast on an employer if there be vacant post to fill it up with such workers in accordance with rules if any and where necessary by relaxing the qualifications, where long experience could be equitable with such qualifications. If no post exists then duty is cast to assess the quantum of such work and create such equivalent post for their absorption.

Learned Single Judge set aside the order of the Tribunal granting regularisation from the date of the award and left it to the University to formulate an appropriate scheme for their absorption. The Division Bench felt certain enquiry is necessary before grant of permanent status to its employees, namely, to find the extent of permanent nature of work required for creating corresponding posts before absorption. The relevant portion of the Division Bench judgment is quoted hereunder:

The learned single judge observed that the Tribunal had not taken into consideration certain relevant aspects notwithstanding that such question implicitly arises in a case of industrial dispute concerning grant of permanent status and emoluments and privileges attached there to by the workmen under the Industrial Dispute Act, nor the Tribunal had considered after reaching the conclusion about long duration of work and existence of permanent work the extent to which permanent nature of work is available in each trade and corresponding necessity of number of permanent workmen to discharge that work before directing the employer to make all the workmen as permanent on

completion of 10 years of service as on 1.1.1993 nor thereafter if they were in service prior to the date of making of reference, nor does it appear from the award that in the first instance any opportunity was given to the employer after reaching the conclusion about necessity for making the concerned workmen permanent to discharge its managerial obligation for framing a scheme or making such employees permanent and placing before the Tribunal. These issues require investigation into further facts and depend upon evidence of variable nature which can be led before the Tribunal.

What emerges is, all the respondent workmen are eligible for absorption on the facts of this case subject to any eligible qualification under the rule if any. Though no recruitment rules were filed in the proceedings either before the Tribunal or in the High Court but while proposing the scheme a copy of the recruitment rules for various cadres have been placed before us on behalf of the appellant University. This gives in column no.1 the serial no., in column no.2 the name of the post, in column no.3 the pay scale, in column no.4 the age limit and in column no.5 the qualification. Serial no.10 deals with Peon and Class IV servants, serial no.13 deals with Operator-cum- Mechanic, serial no.14 deals with Chowkidar, serial no.25 deals with Plumber and serial no.33 deals with Carpenter. This shows that recruitment rules did have these posts in its ambit about which we are concerned, yet no posts were created. This proposed creation of post is churned out only after this long battle by the workmen as against the appellant. It was not expected from the institutions like the present appellant, especially when it is fully funded by the State Government that this process of absorption should have taken such a long time and to have yielded to it only after this long battle. This legal position is well known not only to the appellant but the State who is funding it, then why to do it only after courts intervention. It is true, creation of post does involve financial implication. Hence financial health of a particular institution plays important role to which courts also keep in mind. The Court does exercise its restrain where facts are such where extent of creation of post creates financial disability. But at this juncture we would like to express our note of caution, that this does not give largess to an institution to engage larger number of daily wage workers for long number of years without absorbing them or creating posts which constitutes an unfair labour practice. If finances are short engagement of such daily wage workers could only be for a short limited period and if continuous work is required it could only do so by creating permanent post. If finances are not available, take such work which is within financial mean. Why take advantage out of it at the cost of workers.

One of the questions which is also up for our consideration is, apart from the fact who are to be regularised, what would be payable to these daily wage workers who have completed more than 10 years of continuous service. Submission for the respondents is, that such daily wage workers should be paid the same minimum scale of pay as admissible to the regularised incumbent based on the principle of equal pay for equal work. Daily rated casual labour employed under P&T Department through Bhartiya Dak Tar Mazdoor Manch Vs. Union of India and Ors. (Supra), was a case of daily rated casual labourers of the P&T department

doing work similar to that of the regular workers of the department. This Court held:

...Even though the Directive Principle contained in Articles 38 and 39(d) may not be enforceable as such by virtue of Article 37 but it may be relied upon by the petitioners to show that in the instant case they have been subjected to hostile discrimination. The State cannot deny at least the minimum pay in the pay scales of regularly employed workmen even though the Government may not be compelled to extend all the benefits enjoyed by regularly recruited employees. Such denial amounts to exploitation of labour. The Government cannot take advantage of its dominant position, and compel any worker to work even as a casual labourer on starvation wages. It may be that the casual labourer has agreed to work on such low wages.

State of Haryana and Ors. vs. Piara Singh and Ors. 1992 (4) SCC 118. This was a case of ad hoc/temporary government employees. This Court held, those eligible and qualified and continuing in service satisfactorily for a long period have right to be considered for regularisation. Long continuing in service gives rise to a presumption about the need for a regular post. In such cases government should consider feasibility of regularisation having regard to the particular circumstances with a positive approach and empathy for the concerned person.

In Surinder Singh and Anr. Vs. Engineer-in-Chief, C.P.W.D. and Ors. 1986 (1) SCC 639, this Court holds entitlement of equal pay for equal work for the daily wage workers of C.P.W.D. to the wages equal to the regular and permanent employees employed to do identical work. Mool Raj Upadhyaya Vs. State of H.P. and Ors. 1994 Supp (2) SCC 316, was a case of regularisation based on the claim for equal pay for equal work of daily wages of Class III and Class IV employees in the Irrigation and Public Health Wings of H.P. Some of them worked for more than 10 years. They were being paid minimum wages prescribed by the State Government but were seeking regularisation and parity of pay with regular employees. The State Government came out with a scheme which was modified by this Court to the following effect. The relevant portion of which is quoted hereunder:

Taking into consideration the facts and circumstances of the case, we modify the said scheme: xxx xxx

(3) daily-wage/muster-roll workers, whether skilled or unskilled who have not completed 10 years of service with a minimum of 240 days in a calendar year on 31.12.1993., 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 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 regularisation 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.

Strong reliance is placed on this decision on behalf of the University. Submission is, heavy financial constrain would result in case all employees are to be regularised or minimum pay scale is to be given to unabsorbed employees which would be beyond the capacity of the appellant. The affidavit of G.A. Shah, Deputy Secretary to the Government, Agricultural Department, on behalf of the State, avers that the financial burden which would surface and to be fastened on the State Government will be very heavy which would be more than 15 crores towards the arrears only as per the award if it is implemented. The averment is, there are 5100 daily rated labourers including seasonal labourers which in addition will place heavy recurring financial burden on the State Government. However, we do respect and give due consideration for any unbearable financial strains but we are not impressed by this, specially on the facts of this case, when work is being taken from them for a long number of years without giving them the due benefit for their regularisation. As we have said, which we are keeping in mind that financial constraint is also to be kept in mind when any scheme is framed at a particular time. In Dharwad Distt. P.W.D. literate daily wage employees Association and Ors. Vs. State of Karnataka and Ors. 1990 (2) SCC 396 this Court held:

Though the scheme so finalised is not the ideal one but it is the obligation of the court to individualise justice to suit a given situation in a set of facts that are placed before it. Under the scheme of the Constitution the purse remains in the hands of the executive. The legislature of the State controls the Consolidated Fund out of which the expenditure to be incurred, in giving effect to the scheme, will have to be met. The flow into the Consolidated Fund depends upon the policy of taxation depending perhaps on the capacity of the payer. Therefore, unduly burdening the State for implementing the constitutional obligation forthwith would create problems which the State may not be able to handle. Therefore, the directions have been made with judicious restraint.

To the similar effect, namely, involvement of financial burden is also a relevant consideration was held in Rao Somashekara and Ors. Vs. State of Karnataka and Anr. 1997 (7) SCC 649, Raj Narain Prasad and Ors. Vs. State of U.P. and Ors. 1998 (8) SCC 473, Hindustan Machine Tools and Ors. Vs. M. Rangareddy and Ors. 2000 (7) SCC 741.

In Delhi Veterinary Association Vs. Union of India and Ors. 1984 (3) SCC 1, it was observed by this Court:

At the same time while fixing the pay scales, the paying capacity of the Government, the total financial burden which has to be borne by the general public, the disparity between the incomes of the Government employees and the incomes of those who are not in Government service and the net amount available for Government at the current taxation level.

In the light of the aforesaid decisions we now proceed to examine the proposed scheme. Under Clause 1 it is

proposed that all daily wage workers, whether skilled, semi-skilled or unskilled who have completed 10 years or more of continuous service with a minimum of 240 days in each calendar year as on 31st December, 1999 is to be regularised and be put in the time scale of pay applicable to the corresponding lowest grade in the university. However, the said regularisation is subject to some conditions. Under Clause 1(a) such employee is eligible only if he possess the prescribed qualifications for the post at the time of their appointment. The strong objection has been raised to this eligibility clause. The submission is, those working for a period of 10 or more years without any complaint is by itself a sufficient requisite qualification and any other rider on the facts of this case would prejudice these workers. We find merit in this submission. We have perused the qualifications referred in the aforesaid recruitment rules according to which, qualification for Peon is that he should study upto 8th std., for Operator-cum-Mechanic, should have Diploma in Mechanic having sufficient knowledge of vehicle repairing experience in automobiles or tractors Dealers workshop for two years, for Chowkidar, he must be literate and have good physique. Literate is not defined. For Plumber to have I.T.I. Certificate.

We feel that daily rate workers who have been working on the aforesaid posts for such a long number of years without complaint on these posts is a ground by itself for the relaxation of the aforesaid eligibility condition. It would not be appropriate to disqualify them on this ground for their absorption, hence Clause 1(a) need modification to this effect.

In Bhagwati Prasad Vs. Delhi State Mineral Development Corporation 1990 (1) SCC 361, this Court observed:

The main controversy centres round the question whether some petitioners are possessed of the requisite qualifications to hold the posts so as to entitle them to be confirmed in the respective posts held by them. The indisputable facts are that the petitioners were appointed between the period 1983 and 1986 ever since, they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always aid the person to effectively discharge the duties and it is sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications.

Thus in view of their long experience on the fact of this case and for the concerned posts the prescribed qualification, if any, should not come in the way of their regularisation. Clause 1(b) provides for the regularisation of daily wagers in a phased manner to the extent of available sanctioned post.

The decision to absorb some of the employees at one point of time or in a phased manner depends on facts and circumstances of each case. Where very large number of workers are required to be absorbed, this Court accepted the formula, in the past to absorb such employees under a Scheme in a phased manner. This is done to work it out within its financial means. Every liberty and entitlement is always subject to such financial limits. But in considering such absorption, the financial means have to be stretched to the maximum but should not be a defence with motive to disentitle the claim of the workmen. The grant of this phased absorption thus is in itself a mechanism under this principle. But as we have said this mechanism is not a tool to misuse for taking away any legitimate right of any worker. The Court has to be cautious in exercising its discretion. On the one hand it has to keep the interest of the workers alive and on the other to see that employer does not become spineless for the lack of funds eroding the very workers interest. In the present case admittedly in the first phase in terms of Clause 1, one block of daily wage worker is to be regularised for which the posts are being created. We want to make it clear, in creating posts Government shall see maximum posts are created to absorb maximum such workers who have completed ten years as on 31st December, 2000, as these workers have more than eligible claim. Thereafter, even reassessment for additional posts, about which we are referring should be done in the same perspective. In other words there may still be number of workers who may still not be covered for absorption under the first phase of Clause 1 due to initial non-availability of posts though working for a long number of years. We are saying so because Clause 1 (d) is silent, what number of posts Government is being created initially for the first phase of absorption.

According to the State counter if absorption is made from 1.1.1993 of all those who have completed ten years of service as per Tribunal order, the payment towards arrears would be to the tune of 15 crores. Since in the proposed scheme, absorption is from 1st January, 2001, the State has already gained much more than this arrears of more than 15 crores. In this light and in the absence of details being placed before us, we are leaving the extent of creation of the posts on the State Government. We hope and trust, the Government who is the guardian of the people and is obliged under Article 38 of the Constitution, to secure a social order for the promotions of welfare of the people, to eliminate inequalities in status, will endeavour to give maximum posts even at the first stage of absorption, and do the same in the same spirit for creating additional posts after enquiry as we are indicating hereunder. It is necessary that the State Government to set up an enquiry to find what further number of additional posts are required for regularising such other daily rated workers, and after assessing it, to create such additional posts for their absorption. This exercise should be done by the State Government within a period of six months. The submission on behalf of the respondent is that those who are not regularised and are continuously working for 10 or more years with minimum of 240 days in each calendar year, they should be paid minimum pay scale as admissible to an incumbent regularised on similar post doing similar work instead of minimum wages as prescribed by the Government. The dispute thus is, whether such workers to be paid minimum daily wage as Government prescribes as per the scheme or pay

them the minimum pay scale admissible to such regularised worker without increment and other benefit. This Court in one set of decisions have said to regularise them in one block and pay them the same minimum pay scale as admissible to a regular employee as in; Surinder Singh and Anr. Vs. Engineer-in-Chief, C.P.W.D. and Ors. 1986 (1) SCC 639, U.P. Income Tax Department Contingent Paid Staff Welfare Association Vs. Union of India and Ors. (1987) Supp. SCC 658, 1998 State of Punjab and Ors. Vs. Devinder Singh and Ors. 1998 (9) SCC 595, Chief Conservator of Forests and Anr. Vs. Jagannath Maruti Kondhare and Ors. 1996 (2) SCC 293 and in other cases to absorb in a phased manner under a scheme which depends on the facts of each case. In Mool Raj Upadhyaya Vs. State of H.P. and Ors (supra), this Court approved a scheme under which the daily wage workers whether skilled or unskilled who have not completed 10 years of service was to be paid daily wage at the rates prescribed by the Government of H.P. from time to time for daily wage employees falling under Class III and IV till they are appointed regularly. Strong reliance is placed on behalf of the University on this case and also, looking to the fact that it has no impressive source of its own, being an Agricultural University, depending on the State fund, we hold they should be paid minimum wages as prescribed by the Government from time to time as proposed under the scheme. We approve both clauses 2 and 3 on the facts and circumstances of this case. In fact, in seeking minimum pay scale to such daily rated workers as admissible to a regular employee is based on the principle of equal pay for equal work. It is pertinent to refer, in this case the observation of the High Court: Workmen are not claiming equal pay for equal work but they are claiming permanent status as Class IV employees as they are working and have gained more than sufficient experience in their work.

Ghaziabad Development Authority and Ors. Vs. Vikram Chaudhary and Ors. 1995 (5) SCC 210, this was a case of temporary daily wage employees claiming parity with regular employees. It was held, in the absence of availability of regular post for appointment, such a claim is not sustainable. However, it was held that they should be given minimum wages under the statute if any, or the prevailing wages in the locality. To the same effect is Basudev Pati Vs. State of Orissa and Anr. 1997 (3) SCC 632.

State of Haryana and Ors. vs. Jasmer Singh and Ors. 1996 (11) SCC 77, this was a case where Mali-cum-Chowkidars/Pump Operators claimed parity in employment based on the anvil of equal pay for equal work who were daily wagers. It was held, they are not entitled to such parity with regular workmen. They can get only the minimum wages.

In the present case after absorption of employees under Clause 1, we have already directed, the State Government what they have to do in coordination with the appellant University to assess and find additional regular posts required by the university. In doing so, they shall keep in mind the continuous work which the workers are doing for long number of years and after fixing the number it should further create such additional posts as necessary and absorb them. This exercise to be undertaken, as aforesaid, within six months. So for this reason we would not like to disturb the proposed scheme except to the extent we have

observed above. We are sure no slackness would be exercised both by the appellant and the State in completing this exercise within the said period. Apart from what we have observed, we do not find any infirmity in the scheme.

Accordingly we approve the aforesaid scheme framed by the University and as approved by the State Government, subject to the modifications which we have recorded above. In terms of the said modified scheme, the judgment of the High Court stands modified. As respondents/workmen have suffered for a long duration of time it is appropriate that aforesaid scheme is implemented expeditiously at an early date. The first phase of absorption to be completed within three months. The appeals are accordingly disposed of in the aforesaid terms. Costs on the parties.