

instance of the Chief Minister but his allegations do not go beyond creating suspicion and it is settled law that suspicion, however strong it may be, can not take the place of proof. The plea of *maia fides*, thus, deserves to be rejected and is hereby rejected.

(49) For the reasons recorded above, these writ petitions are partly allowed. The impugned orders, Annexure P-194 (in C.W.P. 1898 of 1992), Annexure P-715 (in C.W.P. 5864 of 1992) and Annexure P-29 (in C.W.P. 5404 of 1993) are set-aside. All these matters are remitted to the Assessing Authority to re-open the whole issue and decide the controversy involved in view of the law laid down by us, both with regard to branch transfers and consignment to agents. The Assessing Authority would decide the aforesaid contentious issues between the parties keeping in view the proposition of law as enunciated above and would deal with each item suspect of either being inter-state sale, branch transfer or consignment to agents on the para-meters of law laid down by us. The matter, as mentioned above, would be dealt by the highest taxing authority in the District other than the District of Hisar. Parties are, however, left to bear their own costs.

R.N.R.

Before Hon'ble R. S. Mongia & K. K. Srivastava, JJ.

RAM KUMAR & OTHERS,—Petitioners.

versus

STATE OF HARYANA & OTHERS,—Respondents.

C.W.P. No. 9766 of 1995.

November 8, 1995.

Constitution of India, 1950—Arts. 226/227—Daily wagers claiming parity of emoluments with regular employees—Work discharged identical to duties of regular employees—Not entitled to same emoluments—Cannot compare a daily wage employee to a regular employee—Daily wager not subject to disciplinary control.

Held, that so far as the service conditions of daily wage employees are concerned, they cannot be compared with the regular incumbents. A daily wage employee is not subject to disciplinary control of the employer inasmuch as he may come for work on a particular day or may not come and still the employer would have no right to take any disciplinary action against such an employee who may be absent for a day or for a longer period. He is not required to take any leave from the employer for a particular day

on which he does not wish to come. Consequently to compare a daily wage employee with the regular employees for the purpose of payment of wages does not arise.

(Para 2)

Vikram Singh, Advocate, for the Petitioners.

Atul Mahajan, Advocate, for the respondents.

JUDGMENT

R. S. Mongia, J.

(1) This order will dispose of this writ petition as well as C.W.P. No. 17870 of 1994.

(2) The petitioners, who are working on daily wage basis, claim parity of the payment of emoluments with the regular employees of the respondents on the ground that they are discharging identical duties as the regular employees. Learned counsel for the respondents, however, has cited a recent judgment of the apex Court in *Ghaziabad Development Authority and others v. Vikram Chaudhary and others* (1), wherein it has been observed that so long as there are no regular posts available for appointment, the question of making pay on a par with the regular employees to the daily wage employees does not arise. Otherwise also, we are of the view that so far as the service conditions of daily wage employees are concerned, they cannot be compared with the regular incumbents. A daily wage employee is not subject to disciplinary control of the employer inasmuch as he may come for work on a particular day or may not come and still the employer would have no right to take any disciplinary action against such an employee who may be absent for a day or for a longer period. He is not required to take any leave from the employer for a particular day on which he does not wish to come. Consequently, to compare a daily wage employee with the regular employees for the purpose of payment of wages especially in view of the judgment referred to above, does not arise. Consequently, we do not find any merit in these writ petitions which are hereby dismissed.

J.S.T.

(1) 1995 (5) S.C.C. 210.