

(2005) 12 DEL CK 0099

In the Delhi High Court

Case No : Writ Petition (C) No. 4953 of 2002

Ajeet Kumar

APPELLANT

Vs

Management of Rail India Technical and Economic Services
Ltd. and Another

RESPONDENT

Date of Decision : 06-12-2005

Acts Referred:

Citation : (2006) 108 FLR 447 : (2006) 1 LLJ 1035

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : K.L. Gupta, for the Appellant; Anil Airi, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—By way of this writ petition, the petitioner is impugning an Award dated April 25, 2001 whereby the Labour Court has answered the reference against the petitioner/workman. It appears that the petitioner was appointed as a field helper/gangman the management of the Rail India Technical & Economic Services Limited (now known as RITES). The petitioner has stated in his claim statement that he was appointed w.e.f. November 4, 1988 on casual basis while according to the respondents, the petitioner was effected on contractual and temporary basis w.e.f. November 4, 1988 to June 30, 1990 in its project known as the O & M Project and an appointment letter dated December 21,1989 was issued to the petitioner wherein these terms of appointment were mentioned. There is no dispute that the petitioner accepted the terms and conditions on which he was appointed and functioned as a field helper/gangman in terms thereof. The period of contract was extended from time-to-time which finally expired on June 30, 1991. The respondents have submitted that the petitioner/workman accepted full payment for contract period and that his services came to an end upon expiry of the contract.

2. The petitioner on the other hand has contended that he was posted on project work. On account of the nature of duties performed by him, his eyesight started

deteriorating requiring examination by Dr. Rajinder Kumar Bali on May 15, 1991 who referred the petitioner to Dr. S.K. Saha. Instead of complying with the doctor's recommendation to put the workman on light duty, the petitioner's services were terminated on June 30, 1991 due to his poor eyesight.

3. The petitioner assailed the termination before the Labour Court upon failure of conciliation. The following dispute was referred for adjudication to the Labour Court vide an order dated October 14, 1992:

Whether the services of Sh. Ajeet Kumar have been terminated illegally and/or unjustifiably by the management and if so, to what relief is he entitled and what directions are necessary in this respect.

4. The claim of the petitioner was challenged and the matter proceeded to evidence culminating in the Award against the workman dated April 25, 2001 which has been assailed herein.

5. According to the respondents, the petitioner was not on regular duty and was unable to carry out the operations and maintenance activities due to his poor eyesight. He was examined at the Bali Nursing Home at New Delhi which had submitted a report. Perusal of the report dated January 21, 1991 shows that the medical experts had observed thus:

Dimension of vision both near and distant- He is using convex lens for near vision but he can read only at very close distance with difficulty.

6. Based on these observations, the doctor had advised that the petitioner's both near and distant eyesight was very poor and that he was required to get corrective lenses. According to the doctor, the petitioner could be considered for job if the vision defect to the extent of the petitioner's problem was condonable. A medical examination report dated May 15, 1991 of the petitioner placed on the record before the Labour Court which was conducted by Dr. S.K. Saha shows that the petitioner, due to his visual defect, should not be put on a job requiring perfect visual activity. However, it was recommended that he can be put on jobs where he has not to strain to read and write.

7. A medical report placed before the Labour Court on August 1, 1991 shows that the petitioner continued to have very poor vision in both eyes and he was opined as being colour blind as well. This medical examination appears to have been conducted by a medical officer at the B.S. Mehta Eye Hospital at the instance of the petitioner and in the report it is stated that the petitioner could only be given light office work. The medical examination of the petitioner shows that he was having defect of vision since childhood and that he was using corrective spectacles for a long time before his engagement. It was also pointed out that his brother was also suffering from the same problem. The record placed before the Labour Court also shows that when the petitioner was having difficulty as a field helper/gangman, he was put to work as a messenger in the office of the respondent No. 1 at Nehru Place but he could not perform this duty even.

8. In view of the aforestated factual position, it is not possible to hold that the petitioner suffered his visual impairment on account of the discharge of official duties assigned to him.

9. Furthermore, it has been pointed out by the respondent No. 1 that it is engaged in the business of consultation services in the transportation area. If the consultation project is large, services of various persons are engaged on temporary/casual basis for the duration of such project. It was in such capacity that the workman's services were engaged as a field helper for Anpara/ Unchhahar projects. The petitioner was one out of many such persons who were appointed on such basis without any medical test. The petitioner's attendance is stated to have been poor and in the seventh month during which he remained with the respondent he was on leave for 33 days. He was unable to discharge his duties as a field helper/gangman. On account of his poor eyesight, he could not carry out any operations and maintenance activities. The medical tests were necessitated in such circumstances and if was advised by the experts that he could not be assigned any job requiring perfect visual activity. It was during this period that project was completed and the contract came to an end by efflux of time.

10. The petitioner has been unable to prove that he was appointed against a permanent post. Some of the relevant clauses contained in this appointment letter read as follows:

13. You were appointed on contractual basis as a daily wages temporary Field Helper-cum-Gangman in our O & M Project w.e.f. November 4, 1988 on the following terms and conditions:

14.1. Your appointment on contractual basis was made for the period from November 4, 1988 to June 30, 1999 as it is proposed to utilise your services up to that date against this project. Accordingly, your appointment is purely contractual and temporary and unless terminated earlier, it shall automatically come to an end on June 30, 1990.

4. You are being paid wages @ Rs. 28/80 per day or as such a rate as may be in force in the Company from time-to-time with effect from the date of your appointment. On completion of 180 days service on daily wages on May 3, 1989 you have been and will continue to be paid wages w. e.f. May 4, 1989 in scale of Rs. 196-232 plus dearness allowance and other compensatory allowances as may be in force from time-to-time relevant to the scale of pay.

5. You will be entitled to reimbursements of actual medical expenses incurred on yourself and the members of your family as defined in the relevant Medical Rules of RITES, on the same basis as is applicable to the other regular employees of the Company after completion of 180 days of employment till the date of termination of this contract.

11. The respondent has contended that the petitioner has concealed the material

portion of the appointment letter in the copy which has been filed along with the writ petition. According to the respondent the petitioner has actually signed the appointment letter against the stipulation that the terms and conditions offered by the respondent in the appointment letter were acceptable to him.

12. My attention has been drawn to an office order dated July 31, 1990 issued by the respondent No. 1 whereby the respondent No. 1 extended the employment of the petitioner till December 31, 1990 besides ten other employees which letter is stated to have been communicated to all concerned. The petitioner was, Therefore, put to notice about the duration of the contract.

13. I find that the respondent has established on record that the petitioner was appointed as a casual worker on contract basis for a particular project w.e.f. November 4, 1988 and that despite his diminishing vision and impairing visual, the respondent No. 1 continued him for the entire duration of the contract.

14. The Award of the Industrial Adjudicator has been further assailed by the petitioner on the ground that the petitioner was appointed to perform operation and maintenance duties which are perennial and cannot be termed as temporary. This is adequately explained by the responder No. 1 when they state that the respondent No. 1 is itself engaged against projects and it is for the operation and maintenance of the respective projects during their duration that it engages the workmen on casual basis. There is no dispute on behalf of the petitioner that the project against which the appointment was made stands concluded.

15. Placing reliance on the pronouncement of the Allahabad High Court entitled Ram Chandra and Others Vs. Rajasthan State Road Trans. Corporation and Others, , it is contended that if the contractual employment is resorted to as a mechanism to frustrate the claim of the employee to become regular or permanent against a job which continues or the nature of duties are such that the colour of contractual engagement is given to take it out from the principle clause then such agreement shall have to be tested on the anvil of pleadings and bona fide. Perusal of the judgment shows that the matter related to the post of a librarian in the university.

16. In the instant case, the respondent No. 1 itself undertakes projects and it cannot possibly be contended that the respondent No. 1 is resorting to contractual employment as a facade to avoid the consequences of regular engagement of workmen. The petitioner was put to notice about the duration of his engagement and he unconditionally accepted the terms on which he was offered appointment. The petitioner also accepted the extension of the contract period without any objection. Consequently, the principles laid down in Surat Mahila Nagrik Sahakari Bank Ltd. Vs. Mamtaben Mahendrabhai Joshi, j are of no assistance to the petitioner as in the facts of the instant case, it cannot be held that the contract in the present case is not genuine.

17. Placing reliance on the judgment reported at Bombay entitled Dilip Hanumantrao Shirke and others Vs. Zilla Parishad Yavatmal and others, it has

been contended that irrespective of post to which an appointment is made, the Court would need to examine the nature of duties also to arrive at a conclusion as to whether the requirement of the service was for a short duration or was perennial in nature. This case is clearly distinguishable inasmuch as in the instant case, no material has been placed before the Labour Court by the petitioner to show that the project where he was appointed continues to subsist or that there is a perennial requirement of his services for the same.

18. Learned counsel for the petitioner has relied on *Wazir Singh v. Managing Director of Tarn Taran Co-operative Sugar Mills Ltd., Amritsar* and Anr. 2001 Lab IC 1277, to urge that the very fact that the workman has continued to work beyond the period of appointment letter would establish that the appointment of the workman was not contractual.

19. It is noteworthy that in the instant case, the appointment of the petitioner for a fixed tenure was by a written letter and further the extension of the same was by a specific written communication. The petitioner accepted the original appointment as well as the extension without any demur or prejudices. In this situation, it cannot possibly be held that the engagement of the petitioner beyond the period of the original contract was rendering the contract as a camouflage for the real nature of his employment.

20. I also find that the petitioner has made varying claims with regard to his appointment in order to support his case. I find that in the cases cited on behalf of the petitioner, no letter has been issued making an appointment of the workman on a contract basis.

21. I also find that in the pronouncement entitled *Kerala Financial Corporation and Anr. v. O.K. Muraleedharan and Anr.*, (2001) 9 SCC 244, *Sanjay Kumar Sharma v. National Centre for Trade Information and Ors.* 2001 III LLJ 92 (Del), *Amit Yadav and Ors. v. Delhi Vidyut Board through its Chairman* 2002 IV LLJ 530 (Del), *Diwakar Sharma v. University of Delhi and Anr.* 2000 LabIC 628 it has been held that where a workman is engaged on contractual basis and this appointment was extended, the workman cannot claim to continue in employment beyond the contract period and his appointment stood lapsed on expiry of the specified/extended period.

22. In view of the settled principles of law, the petitioner cannot possibly urge any right or claim beyond what was offered to him in his letter of appointment which was admittedly extended.

23. In *Tapan Kumar Jana Vs. Calcutta Telephones and Others*, , the Court held whether a workman is engaged on casual basis without a written service contract or letter of appointment, for a particular urgent work, his services automatically came to an end when the work is over and there is no retrenchment when his services are terminated and, consequently, there was no question following the procedure relating to retrenchment. In such case, merely because the workman was required repeatedly for doing urgent work and thus had to work for this

considerable time and the termination of services would not amount to retrenchment.

24. In this view of the matter, the Award dated April 25, 2000¹ cannot be impugned on any legally tenable ground. I find no infirmity in the impugned Award.

25. Accordingly, the writ petition is dismissed. There shall be no orders as to costs.