
(2014) 06 BOM CK 0161
In the Bombay High Court
Case No : Writ Petition No. 10096 of 2010

Ashok Namdeo Sangale

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 25-06-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2014) 7 BomCR 910

Hon'ble Judges : R.V. Ghuge, J;N.H. Patil, J

Bench : Division Bench

Advocate : Rahul G. Walia, Advocate for the Appellant; Sachindra B. Shetye, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Ravindra V. Ghuge, J.—Heard. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. By this petition, the petitioner seeks to challenge the judgment and order dated 02/11/2013 delivered by the Central Administrative Tribunal, Mumbai Bench in Original Application No. 663 of 2001.

3. The learned advocate for the petitioner-Shri. Rahul G. Walia submits that the petitioner was orally appointed as a sweeper with the respondent No. 2 Department viz. Dy. Commissioner, Central Excise Pune-VII & IV Division, having his Office At-ICE House, 1st Floor 41-A, Sasoon Road, Pune-411 001. It is claimed that the petitioner has been continuously working w.e.f. 01/01/1993 till the date of his oral termination dated 30/08/2001. A categorical statement is made in Paragraph 3 of the petition that the petitioner served continuously from the date of his oral appointment as sweeper in the said department and completed more than 240 days of service. The petitioner was orally terminated on 30/08/2001.

4. The petitioner challenged his oral termination by filing OA No. 663 of 2001.

The petitioner was applicant No. 4 in the said O.A. along with Sanjay Arjun Patil, Mrs. Lata Rajendra Shah and Mr. Bhagwan Shalik Patil. The said O.A. was filed on 13/09/2001.

5. The petitioner has set out the following prayers in the said original application:

a) The Hon''ble Tribunal pleased to quashed and set aside the termination order dated 30/02/2001 so far Applicant Nos. 1, 2 and 3 are concerned and be pleased to allow the Applicant No. 4 to render his services on the post which he was holding until a regularly qualified candidate is made available from regular recruiting agency.

b) The Hon''ble Tribunal further be pleased to direct the Respondents herein to regularize the services of the Applicants on the post of the sweeper.

c) Any other and further orders as this Hon''ble Tribunal may deem fit, proper and necessary in the circumstances of the case.

d) Cost of this Original Application be provided for.

e) Joint Original Application be allowed to be filed.

6. By the aforesaid prayers (termination order should be read as 30/08/2001 instead of 30/02/2001 wrongly set out in prayer clause (a)), the petitioner sought the quashing and setting aside of his oral termination dated 30/08/2001 and sought reinstatement in service until a regularly qualified candidate is made available. It was also prayed that the petitioner be regularized in service on the post of sweeper.

7. It is submitted that after hearing the parties, by the impugned judgment and order dated 28/11/2003, the Original Application No. 663 of 2003 was dismissed. The petitioner has challenged the said judgment by filing this petition on 19/11/2010 which is seven years after the O.A. was dismissed. The remaining three applicants who were in the O.A. along with present petitioner, have not challenged the said judgment as per the knowledge of the petitioner.

8. The petitioner contends that the respondent No. 2-Department by office memorandum dated 10/09/1993 has floated a scheme titled as, "Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993. The said scheme was brought into force w.e.f. 01/09/1993. The salient features of the said scheme and which are germane to the case on hand are as follows:

2. This scheme will come into force w.e.f. 1-9-1993.

3. This scheme is applicable to casual labourers in employment of the Ministries/ Department of Govt. of India and their attached and subordinate officer, on the date of issue of these orders. But it shall not be applicable to casual workers in Railways, Department of Telecommunication and Deptt. of Posts who already have their own schemes.

4. Temporary status:-

i) Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this O.H. and who have rendered a continuous service of at least one year which means that they must have been engaged for a period of at least 240 days (206 days in the case of officers observing 5 days week).

ii) Such conferment of temporary status would be without reference to the creation/availability of regular Group "D" posts.

7. Despite conferment of temporary status, the services of a casual labourers may be dispensed with by giving a notice of one month in writing. A casual labourer with temporary status can also quit service by giving a written notice of one month. The wages for the notice period will be payable only for the days on which such casual workers is engaged on work.

9. The petitioner has, therefore, vehemently submitted that he is entitled for regularization in light of the scheme referred above, in as much as, his termination ought to have been set aside by the Tribunal. The impugned judgment of the Tribunal has resulted in miscarriage of justice and an unsustainable conclusion has been drawn by the learned C.A.T.

10. The petitioner has placed reliance upon the judgments of the C.A.T., dated 12/04/2006 delivered in O.A. No. 160 of 2005 in the case of Uday Madhukar Kadam Vs. Union of India and Shashikant Suhash Vilankar Vs. Union of India in O.A. No. 704 of 2002 dated 09/07/2004. He has also placed reliance upon reported judgments of the Honourable Supreme Court in the cases of Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, and The Workmen of Bhurkunda Colliery of Central Coalfields Ltd. Vs. The Management of Bhurkunda Colliery of Central Coalfields Ltd.,

11. The petitioner has also placed a chart on record which according to him was before the C.A.T. We have taken the said chart on record and marked it as Annexure "X" for identification. By the said chart, the petitioner has submitted that he has completed 240 days after joining duties on 01/01/1993 till 09/09/1993. He has, therefore, submitted that the learned C.A.T. should have allowed the application and granted benefits to the petitioner which were available to him as per the scheme dated 10/09/1993 referred above. Having completed 240 days in employment, therefore, renders the judgment of the learned C.A.T. unsustainable in law.

12. The petitioner has submitted that the judgments of the learned C.A.T. in the Uday Madhukar Kadam's case (supra) and Shashikant Suhash Vilankar Vs. Union of India in O.A. No. 704 of 2002 dated 09/07/2004, clearly indicate that completion of 240 days has been appreciated and the O.A. were allowed. He points out from the said judgment that the Tribunal has come to a conclusion in Paragraph 10 of the said judgment that since the applicant-Uday Madhukar

Kadam had completed 240 days and was still working as a sweeper with the respondent, he was held entitled for the temporary status flowing from the said scheme.

13. The petitioner by placing reliance on the Bhagwati Prasad's case (supra) has submitted that artificial breaks in service, which are aimed at depriving an employee of the benefits of continued service, need to be ignored. He has further submitted, placing reliance on The workmen of Bhurkunda Colliery of M/s. Central Coalfields Ltd. (supra), that continued employment for long spells entitles an employee for permanency.

14. The learned counsel-Shri. Sachindra B. Shetye on behalf of both the respondents takes a serious exception to the delay caused by the petitioner in filing this writ petition. He submits that O.A. No. 663 of 2001 was filed by four applicants and the petitioner was applicant No. 4. The said O.A. was dismissed by the impugned judgment dated 28/11/2003. The first three applicants have accepted the said judgment and have not challenged it. The petitioner, by filing this petition after seven years, has sought to challenge the said judgment. He submits that in the entire memo of the writ petition, the petitioner has not explained the delay of seven years in order to convince this Court that the delay be condoned. A lame and feeble excuse has been put forth by the petitioner stating that he was trying to bring the other three applicants together and was collecting money for filing this writ petition. He, therefore, submits that on ground of delay alone, the petition needs to be dismissed.

15. The learned advocate for the respondents has further submitted that the scheme was introduced to be made effective from 01/09/1993. The phraseology used in Clause 4(i) clearly indicates that the claimant must have rendered continuous service at least for one year on the date of application of the said scheme. He has further explained that in the said one year of continuous employment, the said applicant ought to have completed 240 days in continuous service as on 01/09/1993. Petitioner has not claimed any such benefit after the introduction of the scheme. After being terminated, he has challenged his termination and in doing so, has further prayed for benefits flowing from the said scheme.

16. It is further submitted by the respondents that the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) has issued an Office Memorandum dated 12/07/2004. The said memorandum is in continuation with the Scheme dated 10/09/1993. Clarifications have been issued in relation to the said scheme.

17. The salient features of the Office Memorandum below Clause 2 are as under:

Sr. No.

Points raised

Clarifications

1.

Whether the casual employees who were not initially engaged through employment exchange are entitled to the benefit of temporary status?

Since it is mandatory to engage casual employees through employment exchange is irregular hence such casual employees can not be bestowed temporary status.

2.

Whether temporary status could be granted to the part-time casual employees?

No.

3.

Will the casual labourers initially engaged after crossing the upper age limit prescribed for recruitment to Group "D" posts be eligible for grant of temporary status?

No age limit has been prescribed for grant of temporary status, However, for the purpose of subsequent regularization, the conditions regarding age and educational qualifications prescribed in the relevant recruitment rules will apply.

4.

Will the wages of casual employees would be debited to the salaries sub-head of the establishment or to the entingant sub-head?

Since the casual employees on ground of temporary status would be entitled for wages on actual basis, their wages will have to be debited to the subhead wages;

5.

Whether the casual employees working in administrative offices observing 5 days week would be entitled to the benefit of paid weekly off?

Since the facility of paid weekly off is admissible after 6 days of continuous work, this would not be admissible to casual employees working for 5 days in a week.

6.

For the purpose of assessing leave entitlement how should qualifying period be reckoned?

Qualifying period should be reckoned with reference to actual number of days duty performed ignoring days of weekly off, leave and absence etc. All days of duty will be counted irrespective of intervening spells of absence, which do not constitute break in service.

7.

Frequency at which leave will be credited.

Twice a year, on the 1st January and 1st of July credit will be afforded for the proceeding half year or fraction, thereof, on a pro-rate basis at the rate of one day for every 10 days of work.

18. The learned advocate for the respondents, therefore, submits that a casual employee who has been enrolled through the Employment Exchange was alone entitled for the benefits under the said scheme. Clause (6) of the memorandum indicates that the employee should have worked for 240 days in continuous employment excluding weekly off, leave or absence. He has, therefore, stated that the petition which otherwise needs to be dismissed on account of delay and laches, is devoid of merit.

19. Having heard the learned advocates for the respective sides, we have gone through the petition paper book and annexure "X" tendered by the petitioner across the bar.

20. So far as delay in filing this petition is concerned, we are of the considered view that the reason put forth by the petitioner that he was trying to bring the applicants together and that he was collecting money for filing of this petition, is a lame excuse. The petitioner has kept silent for seven years. The petition is filed after the said period of seven years, which we find to be an inordinate delay. We are unable to accept the contention of the petitioner that the petition was filed within reasonable time. As such, on this count alone the petition does not deserve to be entertained.

21. Notwithstanding the above, we find from annexure "X" which is a statement submitted by the petitioner that he has been working in spells with the respondents. On 09/09/1993, the petitioner has put in 233 days service by intermittently working between 01/01/1993 and 09/09/1993. The learned C.A.T. has specifically come to a conclusion that the petitioner has not worked for 240 days in continuous employment with the respondents.

22. The petitioner was orally appointed as a casual sweeper. It is not the case of the petitioner that there are sanctioned vacant posts of sweepers with the respondents. It has been stated by the respondents that there are no such posts available and the work allotted to the petitioner was of casual nature. Beside doing the work of a sweeper, he has not allotted any other work with the respondents. His job of sweeping was for a maximum period of about four hours as was the case of the other applicants before the C.A.T. The job of sweeping was restricted only to the extent of cleaning the office premises of the respondent.

23. We have gone through the scheme introduced by Office Memorandum dated 10/09/1993 and the clarifications vide Office Memorandum dated 12/07/2003. It is clear from the said scheme that the petitioner was required to work for a continuous period of 240 days which would have entitled him to be accorded the temporary status. However, Clause (6) clearly indicates that such casual labourers who acquired temporary status would not be brought on the

permanent establishment unless they were selected through regular selection process.

24. The Honourable Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, has held that unless permanent vacant posts are created and the recruitment is made by following the due procedure of law, casuals and temporaries could not have been accommodated in service. Paragraph Nos. 45 and 47 of the Secretary, State of Karnataka & Ors. judgment (supra) read thus:-

45. While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain--not at arms length--since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to avoid a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India.

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

25. So far as the judgment of the C.A.T. in case of Shashikant Suhash Vilankar Vs. Union of India in O.A. No. 704 of 2002 dated 09/07/2004, is concerned, learned C.A.T. had specifically come to a conclusion in Paragraph 11 as follows:

11. It is observed that the applicant was engaged prior to the due date as per 1993 Scheme i.e. 01.9.1993. There is no dispute that the applicant is still working as Sweeper, the work are permanent in nature and the applicant has completed 240 days. In view of the law laid down in Piara Singh's case and Mohanpal's case, applicant is entitled for temporary status and regularization of service.

Needless to state, in the said case the applicant Shashikant Vilankar was working with the respondents as a sweeper and had completed 240 days service. In that backdrop, the learned C.A.T. had allowed the Original Application and had accorded temporary status to the applicant. In the case on hand, the petitioner had approached the C.A.T. after his termination.

26. In the case Uday Madhukar Kadam, the C.A.T. has observed that he was working since 01/08/1993 and was on the establishment on 10/09/1993. He had completed 240 days in continuous employment. The condition of being sponsored by the Employment Exchange did not matter as he could get the benefit of the circular dated 24/05/1985. The petitioner in the instant case as per the conclusions of C.A.T., had not worked for 240 days on 10/09/1993.

27. The ratio laid down by the Honourable Supreme Court in the cases of Bhagwati Prasad and The workmen of Bhurkunda Colliery of M/s. Central Coalfields Ltd. (supra), is not applicable in the instant case since they are distinguishable on facts involved in the said cases. In the Bhagwati Prasad case (supra), there was no such scheme as was applicable in the instant case. In The workmen of Bhurkunda Colliery of M/s. Central Coalfields Ltd. (supra), the workmen had approached under the labour laws before the Industrial Tribunal seeking regularization of the workmen who were performing manufacturing

activities and were retrenched on account of having claimed permanency. In the said case as well there was no such scheme applicable as like in this case.

28. We have gone through the impugned judgment delivered by the C.A.T. in the light of the facts and the law. As discussed above, we do not find that the C.A.T. has committed any error in arriving at its conclusion in the impugned judgment. We do not find any perversity in the impugned judgment. The writ petition, therefore, deserves to be dismissed on account of delay as well as on merits.

29. In the light of the above, the Writ Petition is dismissed with no order as to costs. Rule is accordingly discharged.