

(2015) 11 KAR CK 0063

In the Karnataka High Court

Case No : Writ Petition Nos. 22788-22789 of 2013 (S-CAT)

B. Papanna and Others

APPELLANT

Vs

Bharat Sanchar Nigam Limited and Others

RESPONDENT

Date of Decision : 02-11-2015

Acts Referred:

Citation : (2015) 11 KAR CK 0063

Hon'ble Judges : Mohan M. Shantana Goudar and B. Veerappa, JJ.

Bench : Division Bench

Advocate : P.A. Kulkarni, Advocate, for the Appellant; Vishnu Bhat, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mohan M. Shantana Goudar, J.—The order dated 19th April 2013 passed by the Central Administrative Tribunal, Bengaluru Bench, Bengaluru in Original Application Nos. 525 & 526 of 2011 is called in question in these writ petitions.

2. The mother of petitioner No. 1 and the husband of petitioner No. 2 who were working as Temporary Status Casual Mazdoors died while in service in the Department of Telecom. These petitioners were appointed as Casual Mazdoors on compassionate basis with effect from 15.06.2001 and 13.07.2001 respectively. Appointment of the petitioners were made by respondent No. 2 in accordance with the Department of Telecom Executive Instructions/Circular dated 07.05.1991. However, the said circular seems to have been replaced on 10.12.1999 by another Instructions/Circular, whereunder power of appointment seems to have been shifted from Head of the Circle to the Headquarters at Delhi. After working for certain length of time, the petitioners sought change of their temporary status as Casual Mazdoors. However, they were not given the temporary status. Consequently, the petitioners moved Central Administrative Tribunal, Bengaluru Bench in OA No. 525 & 526 of 2011 respectively which came to be dismissed by the impugned order.

3. A scheme dated 07.11.1989 was framed by the Telcom Department as "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1989. That was a scheme for conferment of temporary status on all the Casual Labourers who are currently employed and have rendered regular service of atleast one year. After conferment of temporary status, the casual labourers would get certain benefits such as wages on daily rates with reference to minimum of pay scale with Group-"D" official including DA, HRA and CCA. However, such temporary status employees are not the permanent or regular employees of the Department and they continue to be temporary employees of the Department. Certain other benefits also flow from the said scheme of 07.11.1989 in favour of the temporary status casual labourers.

4. Sri. P.A. Kulkarni, learned advocate appearing on behalf of the petitioners relying upon Executive Instructions dated 07.05.1991 under which the son, the daughter or the wife of the demised employee is taken on duty as casual labourers on compassionate grounds. According to him petitioners were also taken to duty as casual labourers under the very Instruction dated 07.05.1991. According to him, under such Instructions dated 07.05.1991, the casual labourers like the petitioners will be eligible for confirmation of the temporary status.

Per contra Sri. Vishnu Bhat, learned advocate appearing on behalf of the respondents argued in support of the order of the Tribunal below, relying upon judgment of the Apex Court in the case of BSNL v. Narayan Thimmappa Madivel (Civil Appeal No. 6176/2008 decided on 17.10.2008).

5. The Executive Instructions dated 07.05.1991 issued by the Department of Telecom to the subordinate authorities reads as follows:

"Subject: Grant of Casual Employment to the ward of deceased Temporary Status Casual Mazdoors.

I am directed to say that a proposal to grant casual employment to the wards of Temporary Status Casual Mazdoors who die in harness has been under consideration in this Department. The matter has been carefully examined and it has been decided that in the cases of "Temporary Status Casual Mazdoors" who die in harness leaving behind their family in indigent condition, the wards (i.e., son, daughter or wife) of such deceased may be given casual employment in relaxation of ban imposed vide No. 270-6/84-STN dated 30.3.1985 and 22.6.1988. This will be subject to the condition that none in the family (son, daughter or wife) is employed in whatsoever capacity. The casual labourers so appointed will be eligible for conferment of temporary status and regularization against Group "D" posts as per "Casual Labourers (Grant of Temporary Status and Regularization) Scheme" and orders issued from time to time.

All such cases may be decided with the specific approval of CGMs."

6. From the aforementioned instructions, it is clear that the department has

decided that in the cases of Temporary Status Casual Mazdoors who died in harness leaving behind their family in indigent condition, the wards of such deceased may be given casual employment in relaxation of ban imposed vide No. 270-6/84-STN dated 30.03.1985 and 22.06.1988. It is also made clear that in the said instructions that the casual labourers so appointed will be eligible for conferment of temporary status and regularization against Group "D" posts as per the "Casual Labourers (Grant of Temporary Status and Regularization) Scheme" and orders issued from time to time. It is no doubt true that the instructions dated 07.05.1991 makes it clear that the casual labourers appointed on casual basis will be eligible for conferment of temporary status as per the Casual Mazdoors (Grant of Temporary Status and Regularization) Scheme. The very scheme i.e., Casual Mazdoors (Grant of Temporary Status and Regularization) Scheme was the subject matter of interpretation before the Apex Court in the case of BSNL v. Narayan Thimmappa Madivel (Civil Appeal No. 6176/2008 decided on 17.10.2008). The Apex Court in the said judgment has ruled that the said scheme cannot be considered as a continuous and on going scheme intended to give temporary status to all the casual labourers as and when they completed continuous service for the period prescribed in the said scheme; that such scheme is one time scheme under which the persons who are employed on the date of commencement of the scheme and who had rendered the prescribed continuous service were entitled to temporary status and the scheme did not postulate grant of temporary status to casual workers who were subsequently employed, as and when they complete continuous service for the prescribed period. It is thus made clear in the said judgment that the same is onetime scheme and that the benefit was given to the persons who were working as casual labourers, one year prior to the said scheme and they would be given temporary status after completion of one year as on the date of the scheme. However, the persons who were appointed subsequent to the scheme are not entitled for conferment of the temporary status. It is beneficial to note Paragraphs 3 and 4 of the said judgment of the Apex Court in the case of BSNL v. Narayan Thimmappa Madivel. (cited supra) which read thus:

"3. The scheme dated 7.11.1989 referred to by the is the casual Labourers (Grant of Temporary Status and Regularisation) Scheme 1989 of the Telecom department. That was a Scheme for conferring contemplated "temporary status on casual labourers who are currently employed and have rendered continuous service of at least one year". Interpreting a similar Scheme this Court had held that such a Scheme could not be considered as a continuous on going Scheme intended to give temporary status to all casual workers as and when they completed continuous service for the period prescribed in the said scheme; that such scheme were one-time Scheme under which persons who were in employment on the date of commencement of the scheme and who had rendered the prescribed continuous service were entitled to temporary status and the scheme did not postulate grant of temporary status to casual workers who were subsequently employed, as and when they completed continuous

service for the prescribed period (See: Union of India (UOI) and Another Vs. Mohan Pal, etc. etc.,). The said principle applies to the 1989 scheme of the telecom department also. Therefore the Tribunal could not have relied on the 1989 scheme to direct conferment of temporary status to respondent who was engaged on 1.8.1998.

4. The Respondent had also relied on a department circular dated 29.9.2000 in his application before the Tribunal. Infact the respondent admitted that the said circular contemplated giving temporary status to those who were engaged earlier to 1.8.1998. The said circular, in no way helps the respondent. The Circular of Telecom Department dated 29.9.2000 stated that the department's letter dated 12.2.1999 granted temporary status to casual labourers eligible as on 1.8.1998, and all casual labourers not eligible for temporary status on 1.8.1998 were to be disengaged forthwith. The circular dated 29.9.2000 does not say that those engaged on 1.8.1998 cannot be considered as having become eligible for temporary status on 1.8.1998 itself. It is apparent that to become eligible for grant of temporary status, the candidate must have been in service as on 1.8.1998 and should have worked as casual labourer continuously for the period prescribed in the letter dated 12.2.1999, as on 1.8.1998. The respondent admittedly was not engaged as casual labourers prior to 1.8.1998. As the respondent was engaged only on 1.8.1998 and was not in service for a continuous period of one year prior to that date, he was not entitled to grant of temporary status even under the letter dated 12.2.1999 read with circular dated 29.9.2000. This aspect has been completely lost sight of by the Tribunal and the High Court."

7. The Tribunal relying upon the very judgment rejected the prayer of the petitioners, since the petitioners are appointed on 15.06.2001 and 13.07.2001 respectively (i.e., after the promulgation of the scheme dated 07.11.1989). They are not entitled for conferment of temporary status, in view of the observations of the Apex Court mentioned supra.

Hence, no interference is called for. Petitions fail and the same stand dismissed.

However, it is made clear that the petitioners to continue as Casual Labourers.