

(2004) 07 DEL CK 0054

In the Delhi High Court

Case No : Writ Petition (C) No. 5031 of 1993

Bhagwan Das and Others

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 14-07-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 25, 25(F)

Citation : (2005) 1 SLJ 447

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Anis Suhrawardy and S. Mehdi Imam, for the Appellant; Beenashaw Soni and S.N. Bhandari and amices Curiae., for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—Petitioners by this writ petition seeks a writ of mandamus directing the respondents 1 and 2 to place them above respondents 3 to 7 in seniority. Direction is also sought against respondents 1 and 2 i.e. University of Delhi and Delhi University Press to grant to the petitioners appropriate pay scales as that of Compositors and also direct deduction of contributions towards Provident Fund and ESI. Petitioners also seek direction to respondents 1 & 2 to grant arrears of salary at the rate and dates from when their juniors are being paid as Compositors. Regularization of service is also sought on the footing that respondents 3 to 7, who were junior to them have been regularized.

2. The admitted facts as emerge from the record may be noted :

Petitioners were working as daily wages from 16.1.1975 in the Delhi University Press. Petitioners claim that their services were illegally terminated w.e.f. 25.1.1976 Disputes had arisen, which were referred by the State Government to the Labour Court on 9.5.1977. The Labour Court after trial gave its award on 23.1.1990. While holding the petitioners to be daily wagers, it did not accept the management's contention that they had left employment of their own. The

termination was held to be illegal and without any cause and without following the requisite procedure u/s 25 of the ID Act. As a consequence, the Labour Court directed reinstatement of the petitioners with back wages. One of the petitioners i.e. petitioner No. 6 namely Rajesh Chand, was found to be in gainful employment between 1.2.1980 and 1982 and was not granted back wages. The respondents challenged the award of the Labour Court in a writ petition which was dismissed. The respondents pursuant to the award of the Labour Court and dismissal of the writ petition, have reinstated the petitioners.

3. The main plank of the submission of the learned Counsel for the petitioners, Mr. Anis Suhrawardy is that the Labour Court having found the termination illegal and having directed reinstatement with back wages, the petitioners are entitled to continuity of service with all consequential benefits flowing there from. It is stated that respondents 3 to 7, who were junior to the petitioners have been regularized in service. Accordingly, it is urged that the petitioners who were also entitled for continuity in service being senior to respondents 3 to 7, having been engaged prior to them, should be granted regularization and seniority over the said respondents. He submits that petitioners would also be entitled for absorption as permanent employees and payment at the same pay scale as was applicable to respondents 3 to 7.

4. It is in the above factual matrix that we have to consider the prayers of the petitioners for absorption, regularization and grant of continuity of service. To enable consideration of the matter in the light of pleas taken in legal proceedings and the writ petition that had been filed by the petitioners, orders passed thereon also deserve to be noticed.

5. Reference as made before the Labour Court was "Whether the services of the workmen detailed in Annexure 'A' have been terminated illegally and/or unjustifiably and if so, to what relief are they entitled ?" One of the grievances was that the workers were not given the higher wages for which they were pressing. Reference was held to be maintainable. Petitioners, as noted earlier, were held to be Daily Wagers. Petitioners contended before the Labour Court that they were working as Compositors in the statement of claim. Respondents did not specifically deny this in their reply. The Labour Court found that their services were terminated after giving a break in service as workmen had demanded more wages. Further that their services could not be terminated either to victimise them for demanding more wages or without complying with the provisions of Section 25(F) of the I.D. Act.

6. However, it would be seen that the only relief granted was reinstatement with back wages by the Labour Court. Respondents preferred C. W.P. 2199/1990. The said writ petition was dismissed holding as under :

There is no dispute that each of the workmen had completed 240 days of service and Therefore, there is breach of Section 25 of the Industrial Disputes Act. No fault can be found with the award Dismissed."

7. The petitioners also filed C.W.P. 1475/1991. Petitioners sought payment of minimum wages from 16.1.1975 to 25.1.1976, when their services were terminated. Further back wages were sought to be claimed from 25.1.1976 till the date of reinstatement. Petitioners also sought wages of skilled workers claiming to be Compositors. The Division Bench, while disposing of the writ petition, despite other reliefs being sought by the petitioners, directed payment of only back wages at the prescribed minimum wages rate as issued by Delhi Administration from the date of termination till the date of award. As for the claim for full back wages as skilled workmen as Compositors, the Court held that these raise disputed questions of fact and could well be decided under the Industrial Disputes Act, which remedy the petitioners might seek. It would thus be seen that as far back as on 13.11.1992, the Division Bench of this Court held that the petitioners could seek remedy for full back wages and wages as Compositors being skilled workmen, by invoking the provisions of Industrial Disputes Act. It was held that such disputed questions could not be decided in the writ petition.

8. Petitioners in the present writ petition have produced number of documents, challans, job work documents, etc., in support of their contention that they were working as "Compositors". Copy of internal nothings of the University are produced to show that 11 Daily Wagers were working as "Compositors" in the Press.

9. The respondents have averred in the counter to writ petition that the petitioners were not performing the duties of Compositors and that they were only working as Distributors. Further that this was a disputed question of fact. Respondents have produced on record the minimum qualifications prescribed for Compositor Grade-I and Grade-II. Based on which, qualification for Grade-I is matriculation with 5 years experience of the trade, while for Grade II, it is matriculation and knowledge of composition and proof correction or three years experience of the trade. It is stated that none of the petitioners meet the eligibility educational criteria for the posts of Compositors. It is not denied that they were working as semi-skilled workers in the Press. Ms. Beenashaw Soni, learned Counsel for respondents next contended that respondents 3 to 7 had been appointed to the posts following a regular selection procedure and hence there was no question of regularization being granted by mere length of service.

10. To assist the Court on the question of right of the petitioners to continuity in service or regularization, I had requested Mr. S.N. Bhandari, Senior Advocate to act as an amicus Curiae. Mr. Bhandari, learned Senior Advocate submitted that termination of service being declared illegal on account of non-compliance with Section 25 or other provisions of Industrial Disputes Act, could not ipso facto have the effect of granting continuity of service or regularization.

11. Reference may be invited to the observations by the Supreme Court in the following judgments :

(i) Madhyamik Siksha parishad Uttar Pradesh and Anit Kumar Mishra and Others, 1994 1 L.L.N. 851. The High Court while dealing with the regularisation of workers in education department had directed the appellant to take respondents back to service as casual workers and continue their service upon payment of wages admissible to the regular employees doing similar work. Further direction was issued to consider them for regular appointment as Lower Division Clerks as and when these posts are filled up on the basis of their qualifications and seniority as daily wages labourers. The Supreme Court setting aside the judgment of the High Court held as under :

We are unable to uphold the order of the High Court. There were no sanctioned posts in existence to which they could be said to have been appointed. The assignment was an ad hoc one which anticipatedly spent itself out. It is difficult to envisage for them, the status of workmen on the analogy of the provisions of Industrial Disputes Act, 1947, importing the incidents of completion of 240 days" work. The legal consequences that flow from work for that duration under the Industrial Disputes Act, 1947, are entirely different from what, by way of implication, is attributed to the present situation by way of analogy. The completion of 240 days work does not, under that law import the right to regularisation. It merely imposes certain obligations on the employer at the time of termination of the service."

(ii) Again the Supreme Court in Arundhati Ajit Pargaonkar (Dr.) v. State of Maharashtra and Ors., 1994 II CLR 1113, considered the claim of a Lecturer that having worked as Lecturer without break for nine years on the date the advertisement was issued, she was deemed to have been regularised, held that "Eligibility and continuous working for howsoever long period should not be permitted to overreach the law. Requirement of rules of selection through Commission cannot be substituted by humane considerations. Law must take its course. Consequently, the appellant was not entitled to claim that she should have been deemed to have been regularised as she had been working without break for nine years."

(iii) The Supreme Court in Allahabad Bank v. Prem Singh, 1997(3) L.L.N. 269, while dealing with the appointment of a temporary Cashier in a Bank held that "The status of the respondent was, at best, that of a daily wager. This being so, the decision of the Tribunal in holding that the respondent shall be deemed to have continued the service from June 16, 1977, and would also be entitled to usual pay and allowances is clearly untenable."

(iv) The Apex Court while considering the question of regularisation of a Daily Wager in State of Uttar Pradesh and Ors. v. Ajay Kumar, 1998 (1) L.L.N. 320=1998 (1) SLJ 164 held as under :

It is now settled legal position that there should exist a post and either administrative instructions or statutory rules must be in operation to appoint a person to the post. Daily-wage appointment will obviously be in relation to

contingent establishment in which there cannot exist any post and it continues so long as the work exists. Under these circumstances, the Division Bench was clearly in error in directing the appellant to regularize the service of the respondent to the post as and when the vacancy arises and to continue him until then. The direction in the backdrop of the above facts is, obviously, illegal."

12. It is not necessary to cite any further authority on this aspect. The Calcutta High Court in its judgment in *Patit Paban Ghosh and Ors. v. Director of Fisheries, West Bengal and Ors.*, 1961 CLR 709, has noticed the above trend from the cited judgments of the Supreme Court.

In view of the legal principles as enunciated in the pronouncements noted above, the petitioners would not be entitled to claim regularization or appointment in the posts as is sought to be claimed. Besides as observed by the Division Bench of this Court, the claim itself would involve disputed questions of fact regarding the exact nature of work, eligibility, entitlement of the petitioners for being appointed to the posts of Compositor. Respondents have contended that these petitioners did not have the requisite qualifications as per Gazette Notification and would even in any case be not eligible.

13. Mr. Anis Suhrawardy has sought to place reliance on the judgment of the High Court of Gujarat in *Vasantika R. Dalia v. Baroda Municipal Corporation* (SCA No. 10005/1996 dated May 5, 1997) wherein it was held that "while denying the backwages, nothing has been said in the positive terms with regard to continuity of service or otherwise but the fact remains that the relief of continuity has not been denied by any specific mention as has been done for the back wages. Thus, the petitioner duly have failed before the Division Bench in getting the relief of back wages for the intervening period but that does not mean the forfeiture of the continuity of the service." In the instant case, it would be seen that Labour Court has neither gone into the question of continuity of service nor the petitioner raised industrial dispute with regard to regularization or continuity of service despite the observations made by the Division Bench in CWP 1475/1991. Moreover, in view of the judgments of the Supreme Court, this authority would not advance the case of the petitioner. The said judgment also dealt with the post of Stenographer and not of Daily Wager.

In view of the foregoing discussion, petitioners have failed to make out a case for interference in exercise of writ jurisdiction. Petition is devoid of merit and is dismissed.