
(2018) 03 GAU CK 0161

In the Gauhati High Court

Case No : WP(C) 1273, 4127 of 2015, 2631, 6522 of 2016

BHARAT SANCHAR NIGAM LTD.

APPELLANT

Vs

DHANAPATI LAHKAR and 6 ORS

RESPONDENT

Date of Decision : 28-03-2018

Acts Referred:

Administrative Tribunal's Act, 1985 — Section 22(3)

Citation : (2018) 03 GAU CK 0161

Hon'ble Judges : MANOJIT BHUYAN

Bench : Single Bench

Final Decision : Allowed

Judgement

Â Manojit Bhuyan, J.

1.The four writ petitions i.e. WP(C) 1273/2015, WP(C) 2631/2016, WP(C) 4127/2015 and WP(C) 6522/2016 are directed against the common order

dated 08.04.2014 of the Central Administrative Tribunal, Guwahati Bench. WP(C) 1273/2015 arises out of Transfer Application No.62/2009,

represented by Mr. D.K. Bagchi, learned counsel for the petitioner Bharat Sanchar Nigam Limited (BSNL). WP(C) 2631/2016 arises out of Transfer

Application No.3/2009, represented by Mr. Y. Doloi, learned counsel for the petitioner BSNL, whereas WP(C) 4127/2015 and WP(C) 6522/2016

arises out of Transfer Application No.39/2009 and Original Application No.195/2009, both represented by Mr. R. Thadani, learned counsel for the

petitioner BSNL. Mr. G. Goswami, learned counsel appears on behalf of the respondents in the writ petitions above, save and except in WP(C)

1273/2015.

2. For reasons below, all the four writ petitions stands allowed by setting aside

the common order dated 08.04.2014. The matters stand remanded for de-novo hearing of the aforesaid Transfer Applications and the Original Application.

3. All the respondents herein are casual labourers in BSNL claiming benefits as Temporary Status Mazdoor as per the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Department of Telecommunication, 1989 (in short, '1989 Scheme'). The refusal on the part of the authorities to grant the status of Temporary Status gave rise to series of litigations before the Tribunal as well as before this Court. There has been directions of the Tribunal to extend the benefit of the 1989 Scheme in one bunch of O.As as well as direction in another bunch of O.As to the applicants to make individual representations before the concerned authorities, who in turn were directed to scrutinize, examine and consider each of the cases of the applicants claiming Temporary Status. In the absence of any positive results, a number of writ petitions were also filed seeking grant of the status of Temporary Mazdoor. However, the said writ petitions stood transferred to the Tribunal for adjudication. Transfer Applications were duly registered, three of such applications and common order passed thereon are before us today. The said Transfer Applications were dismissed by the Tribunal vide order dated 22.01.2010 on ground that the applicants therein failed to make out any case establishing any illegality, irrationality or mistake on the part of the authorities while considering the claims for Temporary Status. The said order of the Tribunal dated 22.01.2010 was put to challenge before this Court in a bunch of writ petitions, the lead case being WP(C) 2945/2011. By common judgment and order dated 19.03.2012, all the writ petitions were disposed of by setting aside the order dated 22.01.2010, with direction to the Tribunal to decide the respective Transfer Applications and Original Applications in the light of the observation and directions made in the said judgment and order dated 19.03.2012.

4. In the detailed judgment and order dated 19.03.2012, this Court had clarified that be it under the 1989 Scheme, where a person stood engaged as a casual labourer as on 01.10.1989 or under the Office Memorandum dated 01.09.1999, where a person had been on engagement as casual labourer on 01.08.1998, their entitlement to Temporary Status were dependent on completion of continuous service of, at least, one year as casual labourer, out of

which period of one year, he/she had been engaged on work for a period of 240 days (206 days in the case of offices observing five days week). In

the said judgment and order, the Court recorded that while the petitioners therein claimed that they are still working as casual workers and entitled to

be conferred the status of Temporary Mazdoors and the benefits accruing therefrom, the respondent authorities therein, on the other hand, vehemently

denied such claim. Under such a situation, the Court disposed of the writ petitions on the following observations and directions:

33. In the light of the 1989 Scheme, which we have interpreted above, the Office Memoranda, which were issued by the Government of India,

DoT, from time to time, as well as the claims of the petitioners, on the one hand, and the respondents' rigid stand denying the petitioners' claim, on the other, it was, in our considered view, wholly indispensable, on the

part of the learned Tribunal, to record evidence of the parties concerned. In other words, while the petitioners have claimed to have been in the service of the respondents, as casual labourers, and to have had

satisfied the conditions precedent for conferment of Temporary Status, the respondents have vehemently denied the petitioners' claim. In such

circumstances, determination of such disputed questions of fact demanded recording of evidence of the parties concerned.

34. In the case at hand, however, the disputed questions of fact were decided by the learned Tribunal without recording any evidence. This was, we

have no hesitation to hold, and we do hold, wholly illegal and untenable in law (See Section 22 of the Administrative Tribunal Act, 1985).

35. For the purpose of clarifying the position of law, one may take note of sub-Section (3) of Section 22 of the Administrative Tribunal Act,

1985, which contains the procedure and power of the Central Administrative Tribunal. Sub-Section (3) of Section 22 reads as under:

22. (1) ****

(2) ****

(3) A Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of

Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:

(a) Summoning and enforcing the attendance of any person and examining him

on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of section 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy

of such record or document from any office;

**** **** ****â??

36. On a bare reading of Clause (c) of sub-Section (3) of Section 22, it becomes clear that the Central Administrative Tribunal has the power to

receive evidence on affidavits and it has also the power to requisition any public record or document or any copy of such record or document from

any office and that it has also the power to summon and enforce attendance of any person and examining him on oath. There is, thus, no impediment

in determining and settling the disputed questions of fact by the learned Tribunal by taking recourse to its powers as embodied in sub-Section (3) of

Section 22.

37. Because of what have been discussed and pointed out above, it is appropriate, in our considered view, that having clarified the scheme for

conferment of Temporary Status on casual labourers under the 1989 Scheme and also under the 1999 Scheme, the matter be remanded back to

learned Tribunal, which has the requisite jurisdiction to adjudicate such disputed questions of fact, by recording evidence, which may be adduced by

the parties concerned and/or by obtaining such evidence as may be necessary for a just decision of the case.â??

5. On such remand, the Tribunal decided the cases and passed common order dated 08.04.2014. Sadly, the said common order appears to be a poor

reflection of the directions contained in the aforesaid judgment and order dated 19.03.2012. The Tribunal merely requested the counsel for the

respondents i.e. the BSNL authorities to provide answers to the queries which, in the opinion of the Tribunal, may legitimately arise to further the

contention of the parties. The Tribunal completed the factual determination on the following questions and answers.

â??Q.N.1. Were these applicants employed at any point of time?

Ans: Some worked under the Contractor and some others under the BSNL.

Q.No.2.Have any of these employees at any point of time been employed?

Ans: Any preceding year.

Q.No.3.Have they been paid any rate fixed by the employees?

Ans: Yes, they have paid the rate as fixed.

Q.No.4.When had the applicants have found their employment with you?

Ans: In 1988.

Q.No.5. They are still working with you?

Ans: No, they are not doing any work with us now.â??

6. The dispute in respect of claim to the status of Temporary Mazdoors subsists even as on date as the matter is yet to be brought to its logical

conclusion in terms of the aforesaid judgment and order dated 19.03.2012 by resorting to the procedure prescribed under sub-section (3) of Section 22

of the Administrative Tribunalâ??s Act, 1985. Even today, both parties are at loggerheads, where one party claims to have fulfilled the conditions

precedent for conferment of status as Temporary Mazdoors, while the other party fiercely denying the same.

7. On the above count, we have no option but to remand the matters to the Tribunal once again for resolving the apparent dispute by taking recourse

to the procedure prescribed under sub-section (3) of Section 22 of the Administrative Tribunalâ??s Act, 1985. On the finding above, we allow all the

four writ petitions by setting aside the common order of the Tribunal dated 08.04.2004. Since the dispute between the parties are long pending one, we

hope and trust that the same would be brought to its logical determination by the Tribunal as expeditiously as possible by following the procedure, as

indicated above. In this regard, the concerned Transfer Applications and the Original Application be restored to file for a de-novo hearing and

judgment thereof.

8. Ordered accordingly.