

(1998) 02 GUJ CK 0004
In the Gujarat High Court
Case No : S.C.A. No. 181 of 1998

Chhagan Ranchhod Kukvava

APPELLANT

Vs

General Manager, Western Railway and Another

RESPONDENT

Date of Decision : 11-02-1998

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21

Citation : (1999) 3 GLR 2231

Hon'ble Judges : K.G. Balakrishnan, J;J.M. Panchal, J

Bench : Division Bench

Advocate : P.H. Pathak, for the Appellant; J.J. Yagnik, for the Respondent

Judgement

K.G. Balakrishnan, J.—The order of the Central Administrative Tribunal, Ahmedabad Bench in O.A. No. 426 of 1995 is challenged by way of this petition before us. The petitioner contends that he was a casual labourer in Railway in Bhavnagar Unit from December 24, 1982 to March 20, 1984 and he had worked for 431 days and therefore, it is claimed that his name should be included in the live register of the casual labourers maintained by the respondents. In the original application, he had also prayed for a declaration that the action of the respondents in preparing and notifying list of casual labourers, who had, worked prior to January 1, 1981 is illegal and that the respondents should be directed to prepare up to date list of casual labourers. Before the Tribunal, the respondents contended that the name of the petitioner cannot be included in the live register, as he had worked for a period after January 1, 1981. The respondents also contended that the claim of the petitioner is belated and the original application was liable to be dismissed on the ground of delay. The Tribunal, after having considered the matter, held that the application filed by the petitioner was highly belated, as cause of action for the petitioner had arisen several years prior to the filing of the original application and the original application was accordingly dismissed. Hence this special civil application under Article 226/227 of the Constitution of India.

2. We heard Sri P. H. Pathak, learned Counsel appearing for the petitioner and Sri J. J. Yagnik, learned Counsel appearing for the respondents.

3. According to the petitioner, he worked as a casual labourer in Bhavnagar Unit of the respondents in December 1982 and continued as such till 1984. Even at the time when the petitioner joined as a casual labourer, there was a practice of registering the names of the casual labourers. This is evident from Annexure A2, dated June 28, 1980. As per circular Annexure A2, various units in the Railway are bound to maintain a register entering the names of the casual labourers and the labourers were to be issued yellow cards. When the petitioner was discharged on March 20, 1984, he could have submitted an application for registering his name in the register and it is not the case of the petitioner that he got his name registered. Subsequently, steps were taken to prepare live register of casual labourers. Pursuant to a judgment of the Supreme Court the Ministry of Railway issued direction to prepare live register for casual labourers and it was specifically mentioned that the register shall contain the names of the casual labourers, who had worked prior to January 1, 1981. Directions were issued to various units in the Railway, to prepare such live register. There was also a direction by the Railway authorities to various units to the effect that there shall not be any further engagement of casual labourers after July 14, 1981. Subsequently, direction, was issued to prepare supplementary list of casual labourers, who had worked prior to January 1, 1981. Labourers, who had worked prior to January 1, 1981, were also directed to submit their applications on or before March, 31, 1987. Consolidating all these circulars and directions, detailed instructions were issued on June 30, 1992, a copy whereof is produced at Annexure E. In Annexure E, Clause (D) it is stated that name of all open line casual labourers employed in a unit should be entered in a register. It is further stated that :

"the live register will be a running record of the casual labourers working in a particular unit/division in the case of project casual labourer and also of those discharged casual labourers waiting for re-engagement, but will exclude the names of the casual labourer no longer entitled to be kept in the live register, i.e.

(i) the names of casual labourers who have been absorbed in regular posts;

(ii) the names of casual labourers who were discharged prior to January 1, 1981 and not re-engaged thereafter for any reason; and

(iii) the names of discharged casual labourers who did not report for duty when called for on two occasions on the availability of work."

4. From the above clause, it is very clear that casual labourers, who were discharged prior to January 1, 1981 and had been denied employment for any valid reason, were not entitled to be included in the live register. In Clause (e) the way in which supplementary live register is to be maintained is also mentioned. It is stated that the names of casual labourers in the open line and in the projects who were discharged prior to January 1, 1981 for want of work or

due to completion of work and not re-engaged thereafter and who had applied by March 31, 1987 claiming the benefit of inclusion in the seniority list prepared by the administration for provisions of employment will, after verification of genuineness of the claims, by a committee of officers on each division, be entered in the supplementary live register. It is clear that the supplementary register intended to include only the persons who were discharged prior to January 1, 1981 and who were not re-engaged thereafter. The circular also makes it clear that such persons shall make their application by March 31, 1987 and that their claims will be considered by a committee of officers in each division. The counsel for the petitioner strenuously contended before us that the petitioner, who was working as a casual labourer from 1982 to 1984 was entitled to be included in the live register as well as in the supplementary register. The petitioner was aware of the fact, as is evident from the prayer made by him in the original application filed before the Tribunal, that the names of casual labourers who had worked prior to January 1, 1981, alone could be included in the live and supplementary register.

5. The claim of the petitioner was rejected by the Railway authority, as he was engaged as a casual labourer after January 1, 1981. Even though, there was a specific direction not to engage any casual labourer after July 14, 1981, some of the unit officers continued to engage labourers after January 1, 1981 and for such engagement/appointment, it was necessary to take approval from General Manager. So far as the present petitioner is concerned, he had not submitted any application for such approval, nor his unit office took any approval. Going by various circulars and orders produced before us, the petitioner's name could not have been included in the live register or supplementary register, unless his engagement as casual labourer was approved and regularised by the General Manager. The petitioner sat quiet after he was discharged on September 20, 1984 till he filed the first application in the year 1994. The petitioner had obtained an interim direction from the Tribunal to the effect that the authority may consider his case for inclusion in the live register. The authorities passed an order to the effect that the petitioner is not entitled to be included in the live register as he had worked subsequent to January 1, 1981. The Tribunal held that cause of action for the petitioner arose several years ago and the petition before the Tribunal was filed belatedly. After the discharge from the casual employment, the petitioner did not make any effort to get his name regularised. Such a practice was prevalent is evident from the documents produced by the petitioner himself. He did not take any step to see his appointment regularised so as to include his name in the live list. In order to include his name in the supplementary register also, he had not submitted any application on or before March 31, 1987. In this background, it is clear that there was laxity on the part of the petitioner if at all he had any right to be included in the live register of the casual labourers maintained by the authority.

6. u/s 21 of the Administrative Tribunals Act, 1985, there is a statutory bar to the Tribunal to entertain any application in respect of an order which is passed before

one year. The Tribunal has exercised power in accordance with law.

7. An order passed by the Tribunal can be challenged under Articles 226/227 of the Constitution of India only if there is any jurisdictional error or procedural errors apparent on the face of the record. It was observed by the Supreme Court in *Mohd. Yunus Vs. Mohd. Mustaqim and Others*, that a mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Article 227. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution of India is limited to seeing that an inferior Court or Tribunal functions within the limits of its authority and not to correct an error apparent on the face of the record much less an error of law. In exercising the supervisory power under Article 227, the High Court does not act as an appellate Court or Tribunal. It will not review or reweigh the evidence upon which the determination of the inferior Court or Tribunal purports to be based or to correct errors of law in the decision.

8. The learned Counsel for the petitioner has placed reliance in *Goa Sampling Employees' Association Vs. General Superintendence Co. of India Pvt. Ltd. and Others*, to contend for the position that delay in approaching the Court need not deter the High Court in granting reliefs. In that case the seniority list was prepared in 1971, but promotions were not effected on the basis of the seniority. On the basis of the seniority, promotions were effected only in 1982 and the petitioner challenged that promotion. The Court held that, even though the seniority list was prepared in 1971, the cause of action really arose to the petitioner when the impugned order of promotion was communicated in 1982. In that view of the matter, the Supreme Court held that there was no reasonable delay. This ruling has no application to the facts of the present case.

9. Reliance has also been placed in *Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others*, . The petitioner therein filed the petition under Article 32 of the Constitution challenging the promotion to the post of Deputy Collector. The order was challenged in 1969 and it was alleged that there was a delay of more than 12 to 14 years in filing the petition. There was some dispute as to which Recruitment Rules would apply to the case. The petitioner therein proceeded, as if there was no unified Rules for promotion to the post of Deputy Collector and the State Government were only making provisional promotion. Later, the Bombay High Court decided the question and held that unified rules of recruitment would apply in the matter of promotion to the post of Deputy Collector and immediately thereafter, the petitioner filed petition under Article 226. In the light of such circumstances, the Court held that there was no lapse or delay on the part of the petitioner. In the instant case, we are not confronted with such circumstances. This decision has also no application to the facts of the present case.

10. The petitioner has also placed reliance on *J. M. J. S. Alexander Gonsalves Pereira v. Administration of Goa, Daman and Diu 1983 (I) LLJ 351*. In that case, in a petition filed in the year 1981 under Article 226 of the Constitution of India,

the petitioner challenged the reversion order made in 1967. The application was opposed on the ground that there was a delay of 14 years in challenging the order. But the facts revealed that the petitioner submitted series of representations to the Government and these representations were entertained on merits and orders were passed, but the petitioner was not informed of these orders. The facts showed that the petitioner filed series of reminders also and he pursued the matter with due diligence. Under those circumstances, the Court held that there was no delay on the part of the petitioner. The facts of this case also cannot be compared with the facts averred in the present case.

11. In the result, the special civil application is dismissed. Interim relief is vacated. Notice is discharged.

12. The Counsel for the petitioner requests that the interim relief granted on January 20, 1998 and continued up to January 29, 1998 may be continued for some time more. We do not see any necessity to continue the interim relief and the request is rejected.