
(2009) 02 AHC CK 0006

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 31802 of 2006

Comptroller and Auditor General of India and others

APPELLANT

Vs

Bachcha Lal and others

RESPONDENT

Date of Decision : 26-02-2009

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21

Citation : (2009) 122 FLR 330

Hon'ble Judges : Sudhir Agarwal, J;S. Rafat Alam, J

Bench : Division Bench

Advocate : Amit Sthalekar, for the Appellant; V.P. Srivastava, B.P. Srivastava, A.K. Nigam, A.S.G., for the Respondent

Final Decision : Allowed

Judgement

S. Rafat Alam and Sudhir Agarwal, JJ.—Heard Sri Amit Sthalekar for the petitioners and Sri B.P. Srivastava, learned Counsel appearing for the private respondents (hereinafter referred to as the applicant-respondents). With the consent of learned Counsel for the parties, this petition has been heard and is being decided finally at this stage under the Rules of the Court.

2. The writ petition is directed against the judgment dated 10.10.2005 of the Central Administrative Tribunal, Allahabad Bench, Allahabad (hereinafter referred to as "Tribunal") disposing of Original Application No. 728 of 2004 directing the respondents (i.e. the petitioners before this Court) to verify the fact whether any of the private respondents before this Court with less than 206 days of service had been regularized in the past and if so, action should be taken to have the applicants' services also regularized if those good grounds are there in respect of such respondents. It further says that if not, the applicant-respondents shall be kept in job as casual labour, subject to availability of work but in such a fashion that the seniors amongst the applicant-respondents and similarly placed are given adequate days of work so as to fulfil the requirement of 206 days. Attempts should be made to see that all are able to fulfil the requirement and no new

hands shall be taken by displacing the applicant-respondents. In case any of the applicant-respondents are not functioning preference should be given to such casual labours as and when work is available.

3. Learned Counsel for the petitioner submitted that under the Government Order No. 49014/19/84-Esstt (C) dated 26.10.1984 issued by the department of Personnel and Administrative Reforms, only such persons working in Group-D posts having been employed for at least 206 days in a year and continued to be employed for two calendar years are liable to be considered for regularization against the existing vacancies. The respondents No. 1 to 21 had never been employed for 206 days in a year and, therefore, the said Government Order was not applicable thereupon. This was the admitted position. In para-4.4 of the Original Application, the respondents No. 1 to 21 have clearly stated that they had worked from 1984 to 1994 meaning thereby they were not in employment after 1994 and the Original Application was filed in 2003, yet the same was entertained by the Tribunal and the impugned judgment was passed without looking to the fact that it was beyond limitation. He lastly contended that even the directions given by the Tribunal are beyond the pleading and relief sought by the respondents and, therefore, the impugned judgment is liable to be set aside.

4. Sri Srivaslava, however, contended that since some other persons, who have not worked for 206 days yet have been regularised, hence the respondents 1 to 21 are also entitled for the same treatment and, therefore, no error has been committed by the Tribunal in granting the said relief. He further contended that even otherwise the order of the Tribunal is only to keep the names of the respondents No. 1 to 21 in the temporary labour register and to employ them against the existing vacancies since they are considered for the regularization in accordance with law and therefore, this Court may not interfere with the impugned judgment.

5. Having heard learned Counsel for the parties and perusing the record, in our view, the writ petition deserves to succeed.

6. In para 4.4 of the Original Application, the respondents No. 1 to 21 have clearly pleaded as under:

4.4 That the details given above clearly bear out that the applicants are working right from 1986 upto 1994 but they are arbitrarily kept out of service as soon as 15 days are complete.

7. The aforesaid pleading clearly shows that the period of working as claimed by respondents No. 1 to 21 was from 1986 upto 1994. It is not stated that they were employed even after 1994 and were continuously working till the date the Original Application was filed. It is also admitted and apparent from the record that the Original Application itself was preferred by the respondents No. 1 to 21 on 23.12.2003 or thereafter since the Original Application is signed on 23.12.2003. In these circumstances, having not been employed after 1994, we fail to understand as to how the Tribunal could entertain the application without

looking to the provisions pertaining to limitation prescribed u/s 21 of the Administrative Tribunals Act, 1985 (hereinafter referred to as the "Act"), which reads as under:

21. Limitation.--(1) A Tribunal shall not admit an application, --

(a) in a case where a final order such as is mentioned in Clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in Clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where--

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in Clause (a), or, as the case may be, Clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in Clause (a) or Clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

8. Even if the objection with respect to limitation was not raised by the respondents before the Tribunal, it is obligatory on the part of Tribunal to look into this aspect and entertain the original application only when it is within limitation and not otherwise. There is clear embargo provided u/s 21 of the Act that the Tribunal shall not entertain an application filed beyond the limitation prescribed therein and unless the delay is condoned by the Tribunal on an application moved by the applicant before it explaining the delay, an original application having been filed beyond period of limitation even if entertained by the Tribunal, it would be wholly without jurisdiction.

9. Besides, it is not disputed by the learned Counsel for the respondents No. 1 to 21 that the Government Order dated 26.10.1984 provides for consideration of

only such casual labours in Group-D posts, who have worked for at least 206 days in a years for two calender years. None of the respondents 1 to 21 had actually been employed for 206 days in a year and, therefore, the said Government Order was not applicable to the respondents. In the absence of any other provision enabling the respondents No. 1 to 21 to be considered for regularization, they could not claim regularization. Such a claim could not have been entertained by the Tribunal and no relief could have been granted.

10. Recently, a Constitution Bench of the Apex Court in Secretary, State of Karnataka v. Uma Devi 2006 (109) FLR 826 (SC), has held that in absence of any statutory provision authorizing the employer to consider the casual or daily or temporary employees for regularization, the question of regularization would not arise at all. It is incumbent upon the employer to fill in each and every vacancy consistent with the scheme of equal opportunity of employment enshrined under Article 16 of the Constitution, i.e., by advertising the same and giving opportunity to all eligible candidates to apply therefor.

11. Though the petitioners before us have clearly showed and pleaded that the persons whom were alleged to have been regularized having worked for less than 206 days in a year were not similarly placed since they were actually recruited on regular basis as per rules. Therefore, the plea of same treatment was not available to the respondents 1 to 21. Even otherwise we are of the view that even if in some individual cases any wrong was done by the Government of India, that could not have been claimed as a matter of parity as that does not give any handle to the parties to claim parity under Article 14 of the Constitution. Two wrongs will not make one right. Article 14 does not confer right of equality for illegal act as held by the Apex Court in Anand Buttons Ltd. Vs. State of Haryana and Others, and Kastha Niwarak Grahnmirman Sahakari Sanstha Maryadit, Indore Vs. President, Indore Development Authority,

12. Learned Counsel for the petitioners also placed reliance on Ramchander and Others Vs. Additional District Magistrate and Others, where the Apex Court with reference to U.P. Regularisation of Ad-hoc Appointments (on Posts Outside the Purview of the Public Service Commission) Rules, 1979 held that the claim for regularization could have been considered only in respect to those ad hoc employees, who were in service on the date when they were required to be considered for regularization and those persons who have already been terminated are not entitled to be considered for regularization under the said Rules. In the case in hand, from the pleadings of the respondents No. 1 to 21 it is evident that they were not in employment since 1994 and in these circumstances, their claim for regularisation by filing Original Application in 2003, by no stretch of imagination, could have been entertained by the Tribunal. It has seriously erred in law in exercising its jurisdiction by entertaining the said Original Application. The impugned judgment, thus, cannot sustain.

13. The writ petition, therefore, succeeds and is allowed. The impugned judgment dated 10.10.2005 (Annexure-1 to the writ petition) passed by

respondent No. 22 is hereby quashed.

No order as to costs.