
(1992) 09 AHC CK 0108

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 10239 of 1989

Deputy Chief Mechanical Engineer, Northern Railway	APPELLANT
Vs	
Zonal President Uttar Railway Karamchari Union and Another	RESPONDENT

Date of Decision : 14-09-1992

Acts Referred:

Administrative Tribunals Act, 1985 — Section 28
Constitution of India, 1950 — Article 14, 16

Citation : (1992) 4 AWC 563 Supp : (1992) 2 UPLBEC 1429

Hon'ble Judges : M.L. Bhat, J

Bench : Single Bench

Advocate : Lalji Sinha, for the Appellant;

Final Decision : Dismissed

Judgement

M L. Bhat, J.—This writ petition is directed against the award of the Respondent No. 2 dated 12-12-1988 by which a direction was given to the Petitioner that the services of one Raghunath Prasad, a workman of the Respondent No. 1 Union, should be regularised with effect from 8-3-1974 and he should be given the benefit of service from 9-3-1974. as Typist. The facts relevant for the decision of this writ petition are set out hereunder.

2. The workman was a member of the Respondent No. 1 Union. The Respondent No. 1 espoused his cause before the Central Government, Ministry of Labour who vide their notification dated 9-8-1987 referred the following question for decision of the Respondent No. 2 :

Whether the action of the management of Dy. C.M.E. Northern Railway in not regularising the services of Sri Raghunath Prasad, Typist and not giving him seniority w.e.f. March, 1971, is justified ? if not, to what benefits the workman concerned is entitled.

3. The workman's case was that he was appointed as a open on 27-1-1955. He is said to have been promoted to the post of English Typist on 9-3-1971 and was

being paid incentive of Rs. 20/- per month. The workman alleged that the General Manager had directed by his letter dated 17-10-1983 the Divisional Railway Manager Lucknow to regularise the services of the enquiry and Reservation clerks, who had worked on adhoc basis for three years upto 6-7-1983. It was alleged that on the same principle the services of the employees was to be regularised with effect from 9-3-1974 and the workman was to be declared senior to some other workman. The Petitioner's defence before the Labour Court was that the workman was promoted as a Typist purely on adhoc basis on a purely temporary arrangement pending proper selection by the competent authority but the post of typist was said to be a selection post. The Petitioner further stated in their defence that the workman had appeared in the speed test on 22-6-1976 but he could not qualify. He is again said to have appeared in the Hindi typing test on 11-8-1978 but he failed to qualify again. He is said to have appeared in the test for the third time on 15-11-1981 but was declared unsuccessful. A test was notified by the Divisional Railway Manager for the post of typist on 12-7-1985. The same was postponed because the workman had obtained a stay order and he was continued on adhoc basis purely under a local arrangement. The Railway Board is said to have issued a circular on 9-7-1982 that normal rules for promotion had to be followed for selection and regularisation of adhoc promotion. In 1985 again a circular was issued by the Railway Board in which it was clarified that a person, who is officiating on adhoc basis on promotion can be reverted without assigning any reasons if he fails to qualify in the selection. The departmental selection test was necessarily to be cleared and it was not sufficient to clear the examination of Hindi typing classes, which were opened by the Railways to impart training to those, who were interested in learning Hindi Typing. The workman's case before the Tribunal seems to have been that on account of his long tenure as a typist on adhoc basis, he was to be regularised. It was contended by the workman that he was deliberately failed in the test.

4. The Petitioner submits that the award was received in his office on 27-2-1989 in which it was held that in view of the letter of the General Manager dated 17-10-1983 whereby the services of Enquiry and reservation clerks, who had completed three years service on 6-7-1983 should be regularised without holding selection and they should be adjusted against the promotion quota," there is no reason as to why the same benefit should not be given to the workman, who had worked on the promoted post for at-least 17 1/2 years." The Petitioner further contended that the case of the workman was not comparable with the Reservation and Enquiry clerks. The workman was obliged to qualify in the selection for being regularised as Typist. The other set of clerks, whose services were directed to be regularised, belong to a different category and there were compelling circumstances to order regularisation of their services which was an exceptional case. A good number of people from the staff were not eligible for the said posts, therefore, because of non-availability of eligible people such an order was made. The circular dated 17-10-1983 is said to be not applicable to the workman. The letter dated 17-10-1983 is said to be not applicable to the

workman The letter dated 17-10-1983 is said to be not binding. It is the circular of the Railway Board, which is binding.

5 In his counter affidavit the workman has stated that the writ petition relates to the matter pertaining to Lucknow, therefore, the Bench of the High Court sitting at Lucknow has the jurisdiction. It is also contended that after the Central Administrative Tribunal was formed, the High Court cannot take cognizance of the writ petition of an employee because the Tribunal has the jurisdiction to hear the dispute involved in the writ petition The workman submits that he will be deemed to have been regularised as Typist w.e.f. 9-3-1974 and will be entitled to claim seniority. This is pleaded on the basis of the award of the Respondent No. 2 The circulars and letters issued by the Railway Board are said to be of no consequences as they on their true interpretation do not oppose the workman's claim. The workman has asserted his right to continue in service and claimed that he is entitled to be regularised and the action of the Petitioner is said to be against the provisions of Articles 14 and 16 of the Constitution.

6. I have heard the learned Counsel for the parties at length.

7. The learned Counsel for the Petitioner has submitted that benefit of the circular contained in Annexure 5 to the writ petition dated 17-10-1983, which says." The staff who had completed three years continuously as Enquiry and Reservation Clerk grade 330-560 (RS) on adhoc basis on 6-7-1983 may be regularised without holding selection. It is advised that they may be adjusted only against promotee quota" would not apply to the case of the workman. Mr. Gautam, appearing for the workman, has submitted that holding of test now is not required because the workman has sufficient experience and knowledge of typing. He has remained as Typist for more than 17 1/2 years, therefore, he cannot be reverted back. On the other hand, his services are required to be regularised. It is said that there is no allegation about the performance of the workman or about the inefficiency of the workman. Moreover, he was allowed to remain on the post and was not found unsatisfactory and after a long span of time his services are required to be regularised and he cannot be reverted back to the post of peon.

8. The learned Counsel for the Petitioner has relied on the case of Ashok Gulati and Others Vs. B.S. Jain and Others, . On the basis of this authority it is submitted that the service rendered on adhoc basis or by stop-gap arrangement cannot be considered. Assistant Engineers of Haryana, PWD (Irrigation Branch), who were considered as Executive Engineers on temporary and adhoc basis, cannot be given the benefit of adhoc promotion for the purposes of determining the seniority vis-a-vis direct recruits. The promotees in that case were promoted for six months on adhoc basis and they claimed seniority over the direct recruits. It was held that the period of adhoc promotion of six months would not be a factor for determining the seniority of the Petitioners in that case over the head of direct recruits. This authority further lays down that the adhoc promotees, who had not passed the departmental professional and revenue examinations

within a period of one year, would be reverted to the original post. This was held to be strictly in accordance with the rules. The condition of appearance in the test was not realisation of any rule but it was in pursuance of a different rule and the passing of test was therefore, pie-requisite for seeking promotion on adhoc basis. Mr. Lalji Sinha on the basis of this authority has submitted that the adhoc promotion of the workman would not give him any benefit unless he passes the requisite test for being selected as Typist. The post of Typist is not a post which can be equated with Enquiry or Reservation clerk. A Typist must know typing correctly and must have undergone a training and thereafter must succeed in the test held for regular appointment and if he fails in the test, he cannot claim regular appointment nor can he claim confirmation or regularisation on the post without undergoing test under rules.

9. Mr. Gautam, appearing on the other side, has relied on the case of Narender Chadha and Others Vs. Union of India and Others, , wherein it was held that the persons promoted to the posts in violation of rules, promotees continuing in such posts for more than 15 years, seniority vis-a-vis direct recruits is to be fixed by taking the entire period of officiation by promotees into consideration for the purposes of seniority

10. The question of seniority in this writ petition is only of secondary importance. The question of primary importance is whether the Petitioners are obliged to regularise the workman w.e.f. 9-3-1974 and what is the effect of the workman's no qualifying in the test, which was conducted for the said post.

11. It is an admitted case of both the parties that the workman was promoted on adhoc basis on the post of Typist (English) and he continued on the said post for more than 17 years. During the period he remained on the said post, he was not reverted or found unsuitable due to his work being not satisfactory or due to inefficiency. Even after his failing in the requisite test -in 1976, 1978 and 1981 (According to the Petitioner) he was allowed to continue on the said post and was not reverted back to the post of peon. After three years of adhoc: appointment, he was not confirmed though the practice followed by the Petitioner seems to be that after three years of adhoc appointment an employee of class III posts get regularisation in their service. The workman holds a class III post and for seeking regularisation it is enough for the workman to show that he has held the post continuously for more than 17 years and at no stage he was found unfit to hold the post or his work was found unsatisfactory ; he was not reverted to the post of peon and had discharged the functions of Typist without any complaint or blemish. In these circumstances his regularisation on class HI post cannot be left to the sweet-will of the Petitioner. By remaining on the post for more than 17 years some rights have accrued to him and those rights cannot be denied to him merely because on the papers of the Petitioner he is shown to be an adhoc promotee. A person cannot continue on adhoc promotion for 17 years. Adhoc promotion has a purpose. It is given when regular appointees for the post are not available and when there is exigency of some kind which necessitates that

the post must be manned by a qualified person for a limited period. The adhoc appointment is also known as stop-gap arrangement i.e. till regular selection is made for the post some arrangement of temporary nature is made to keep the post functional and allow it to remain operational. Due to paucity of time when it is not possible to make selection on a short notice and exigency of service requires that the post cannot be kept vacant, adhoc promotion/ appointment can be made for a limited period during which steps for holding regular selection are to be taken. If a regular selection is held and the holder of the post on adhoc basis fails to qualify and is not selected, he is to be reverted back immediately.

12. In the present case the workman has been working continuously for more than 17 years. Even if it is assumed that the Petitioner had failed three times to pass the written test for being selected as a regular candidate, he was not reverted back to the post of peon even after his successive failures in the typing test. There is no order placed on the record or averment made in the counter affidavit that after his failure in the written test on 22-6-1976 or August . 1978 or in the 1981, he was reverted back to his original post for lack of efficiency or his work was not satisfactory. The Petitioner seems to have, despite the workman's failure in the written test, allowed him to continue on the post for 17 years. Allowing a person to continue on adhoc basis for 16 years is by itself against the purpose underlying making of adhoc appointments or stop-gap arrangement. Stop-gap arrangement cannot continue for 17 years. It has to continue for a reasonable period till regular selection is made. Regular selection for the post, therefore, seems to have been considered not important or necessary because the workman was working on the said post without incurring any displeasure of the Petitioner as regards his efficiency or satisfactory conduct.

13. The learned Counsel for the workman has relied on an authority of this Court'' Ram Khilawan v. State of U.P. 1992 (2) UP LB EC 892. The High Court has observed that after putting in many years service by an employee if his services are terminated abruptly, that entails civil consequences. In Bhullar Nath Yadav v. Mayo Hall Sports Complex Allahabad, 1990 FIR 68-A Division Bench of this Court was of the view that the Daily wagers, who have been working for more than ten years, are to be regularised in their service. Paucity of funds or absence of sanctioned post would not be a ground for denying to them the benefit of regularisation. Non-regularisation for such a long period would be arbitrary and unfair. The workman has also relied on the case of Jacob M. Puthuparambil v. Kerala Water Authority (1991) 15 Administrative Tribunals Cases 697. The Supreme Court has held that the employees who are serving on the establishment for long spells and have the requisite qualifications for the job, shall have to be regularised. The Supreme Court was considering the case of regularisation of employees of Kerala Water and Waste Water Authority, who were appointed between August 4, 1986 and July 30, 1988. The employer in that case had refused to regularise their services. A direction was given to them to regularise the services of their employees. Considering the imperatives of socio-economic justice, the fundamental rights and the promises in the preamble of

the Constitution, it was held that the State must strive to attain the goals set out in the Preamble of the Constitution and the workmen appointed from 1986 were directed to be regularised.

14. The Respondent No 2 seems to have relied on the circular letter dated 17-10-1983 which had directed the regularisation of a few adhoc employees after completion of three years service. This circular is said to have been issued in 1983, therefore, it cannot operate retrospectively according to Mr. Sinha. It is true that the circular is issued in 1983 but the issuance of the circular for regularising the adhoc employees, who had completed three years service would show that regularisation could be effected on three years completion of service after 1983. The principle on which the regularisation of adhoc employees, who have completed three years continuous service after 1983 would equally apply to those adhoc employees, who had completed continuous adhoc service before 1983, which would mean that if an employee has already completed three years continuous service before 1983, he can also seek regularisation of his service. The Service Rules may have provided written test for adhoc employees also. It also appears that some basic qualification also must be possessed by such adhoc employees, who hold the post. If the workman has the basic qualification, his failure in the written test seems to have been overlooked by the Petitioner inasmuch as according to the Petitioner's own showing the workman was in service continuously. He was allowed to hold the post for over 17 years and for 17 years there is not an attempt on the part of the petitioner to revert him back or to appoint someone else, who has been selected in the test for the post. This will, therefore, show that the Petitioner has not objected to the workman continuing in service and has impliedly condoned his not having passed the requisite test in typing. As already held, the stop-gap arrangement cannot continue for 17 years. It appears that the Petitioner has not treated it as stop-gap arrangement. It does not appeal to reason that stop-gap arrangement can be continued for over than 17 years. The circular letter of the department dated 17-10-1983, though in respect of some other employees, in principle would govern the workman also because this seems to be the practice followed by the Petitioner with regard to the treatment given to the adhoc employees, who had put in continuous service for three years.

15. The learned Counsel for the workman has submitted that the writ petition is not maintainable in view of Section 28 of the Central Administrative Tribunals Act. On careful consideration of the said Section it appears that this Section does not bar the jurisdiction of the High Court to review the orders of the Administrative Tribunals or the Labour Courts. It bars the jurisdiction of the High Court initially to entertain a petition which ought to have been presented before a Tribunal. In this petition judicial review of the verdict of the Respondent No. 1 is sought. No remedy is available to the Petitioner to seek judicial review against the award of the Respondent No. 2 from the Central Administrative Tribunal. Therefore, this argument does not appear to be of any use to the workman. The second argument advanced was that the workman could approach the Lucknow

Bench of this Court because the Petitioner's office is at Lucknow. This argument also is not well-founded because judicial review of the Respondent No. 2 is sought in this petition, whose office is at Kanpur and not at Lucknow. The matter pertains to Kanpur, therefore, this Court has jurisdiction.

16. From the aforesaid discussion I am of the view that there is no infirmity or defect in the impugned award. The same is legal and no error apparent on the face of the record is found in the said award. Therefore, the writ petition deserves to be dismissed.

17. For the reasons stated above, the writ petition is hereby dismissed. However, there will be no order as to costs.