(1996) 02 SC CK 0038

In the Supreme Court Of India

Case No : Civil Appeal No''s. 5596 of 1993 and 1493 and 5903-04 of 1994

Directorate General, Doordarshan House and Another — APPELLANT

Vs

Lalit Vikram
Union of India (UOI) and Others Vs Dilip Chandra Goswami and Others
Union of India (UOI) and Others Vs Ranjana Par — RESPONDENT

Date of Decision : 29-02-1996

Acts Referred:

Citation : (1998) 8 SCC 760 : (1999) SCC(L&S) 273

Hon'ble Judges : S. C. Agrawal, J;G. T. Nanavati, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Civil Appeal No. 1493 of 1994

1. With regard to regularisation of Casual Artistes and Field Assistants employed with Doordarshan, the Central Administrative Tribunal (hereinafter referred to as "the Tribunal") had laid down certain guidelines in the order dated 8-2-1991 in OA No. 894 of 1990. Having regard to the said guidelines, a scheme was framed by the Directorate General, Doordarshan, vide office memorandum dated 9-6-1992, which received the approval of the Tribunal in order dated 14-2-1993 passed in OA No. 563 of 1986. In para 6 of the said Scheme, provision is made for relaxation of the upper age limit to the extent of service rendered by the Casual Artistes at the time of regularisation and a minimum of 120 days'' service in the aggregate, in one year, is to be treated as one year''s service rendered for this purpose. The respondent was employed as a Casual Floor Assistant during the years 1988 to 1992. His date of birth is 15-1-1964. Since he crossed the upper age limit of 25 years provided under the relevant rules on 6-6-1992, he sought relaxation in the upper age limit on the basis of para 6 of the Scheme. The authorities held that he could be given relaxation by two years and that even then he was not eligible on the ground of being overage. The application submitted by him has been allowed by the Tribunal by the impugned judgment.

The Tribunal has observed that para 6 of the Scheme is not in consonance with guideline (iii) laid down by the Tribunal in its order dated 8-2-1991. The appellants have challenged the said view of the Tribunal. It is, however, not necessary to go into the said question because during the pendency of this appeal, office memorandum dated 17-3-1994 has been issued whereby the mode of counting the days during which a person has worked as a Casual Artiste in a particular month has been laid down. The respondent has filed (as Annexure R-Z to his counter-affidavit dated 5-9-1994) the copy of a letter dated 27-5-1994 from the Senior Administrative Officer (Central Production center), Doordarshan to the Directorate General enclosing a statement containing details of the casual engagement of the respondent. The said statement shows that during the years 1989-91, the respondent had worked for more than 120 days. In accordance with the guidelines laid down by the Tribunal in the order dated 8-2-1991 as well as under the Scheme dated 9-6-1992 framed by the Directorate General, Doordarshan if relaxation for three years'' period had been given, the respondent would have been eligible for consideration for regularisation on 9-6-1992. In these circumstances, we uphold the direction given by the Tribunal in the impugned judgment for considering the respondent for regularisation under the Scheme since after giving the relaxation of three years in the matter of the upper age limit, he was eligible for such regularisation. The appeal is, therefore, dismissed. No orders as to costs.

Civil Appeals Nos. 5903-04 of 1994

2. The respondents are employed as Casual Floor Assistants/Production Assistants in the Doordarshan Kendra at Gauhati. They sought regularisation on the basis of the Scheme for regularisation framed by the Directorate General, Doordarshan vide memorandum dated 9-6-1992. A question arose whether they are eligible for regularisation under the Scheme. The Central Administrative Tribunal, Gauhati Bench (hereinafter referred to as "the Tribunal") by its judgment dated 16-12-1993, has held that the respondents were eligible for such consideration and has directed that they should be considered for such regularisation under the Scheme for regularisation. The review petition filed by the appellants against the said judgment of the Tribunal was dismissed by order dated 24-3-1994.

3. Shri A.S. Nambiar, the learned Senior Counsel appearing for the appellants, has urged that the respondents were overage and even after giving relaxation in accordance with the Scheme dated 9-6-1992, the respondents were not eligible for consideration for regularisation and that the Tribunal has erroneously held that they were eligible.

4. Shri Goswami, the learned Senior Counsel appearing for the respondents, has submitted that apart from the relaxation in the upper age limit, as permissible under para 6 of the Scheme for regularisation, the respondents are also entitled to claim the benefit of the Residents of Assam (Relaxation of Upper Age Limit) Rules, 1985, whereunder a general relaxation of 6 years in the upper age limit

has been provided in respect of persons who have ordinarily resided in the State of Assam during the period 1-1-1980 to 15-8-1985. Shri Goswami has pointed out that the respondents have also claimed the benefit of the said provision and in their petition before the Tribunal, they had referred to the advertisement published in April 1990 whereby Doordarshan Kendra, Gauhati had invited applications for regular appointment on the post of Production Assistant/ Property Assistant etc. and that in the said advertisement it has been expressly mentioned:

"The age relaxation is admissible by 5 years for SC/ST and general relaxation is admissible by 6 years for candidates residing in Assam during 1-1-1980 to 15-8-1985 after the Assam Accord Rules and up to 35 years for government servants."

5. In the impugned judgment, the Tribunal has not considered the question whether the respondents are entitled to the benefit of the general relaxation of 6 years under the Residents of Assam (Relaxation of Upper Age Limit) Rules, 1985. In case the respondents are given the benefit of the said general relaxation, they would fall within the upper age limit on 9-6-1992. Since this aspect has not been considered by the Tribunal and it requires to be considered, the matters have to be remitted to the Tribunal for such consideration. The impugned judgment of the Tribunal dated 16-12-1993 as well as the order dated 24-3-1994 are, therefore, set aside and the matters are remitted to the Tribunal for consideration in the light of the provisions contained in the Residents of Assam (Relaxation of Upper Age Limit) Rules, 1985. Since the matters relate to the year 1992, the Tribunal shall take them up for disposal expeditiously and dispose of the same within a period of six months. The appeals are disposed of accordingly. No order as to costs.

Civil Appeal No. 5596 of 1993

6. The respondent was employed as a Production Assistant (Casual Artiste) in Doordarshan Kendra at New Delhi since 11-1-1989. She sought regular) sation on the basis of the Scheme for regularisation framed by the Directorate General, Doordarshan vide memorandum dated 9-6-1992. She was not considered eligible for such regularisation for the reason that at the time of her initial appointment she was overage by two years. The application submitted by the respondent has been allowed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the Tribunal") by the impugned judgment dated 22-1-1993.

7. Shri A.S. Nambiar, the learned Senior Counsel appearing for the appellants, has submitted that the respondent was appointed as a Casual Artiste on 11-1-1989 and on that date her age was more than 27 years. As per the recruitment rules, viz., the Doordarshan Programme Technical Group C Post (Recruitment) Rules, 1987, the upper age limit prescribed for recruitment is 25 years. The submission of Shri Nambiar is that the view of the Tribunal that since

at the time of her initial appointment as a Casual Artiste the respondent had crossed the upper age limit, the bar against appointment on the ground of being overage should be deemed to have been relaxed is not correct and that there was nothing to preclude the appointment of the respondent as a Casual Artiste even though she had crossed the upper age limit at that time. We find merit in the said submission of Shri Nambiar and, in our opinion, the impugned judgment of the Tribunal holding that the upper age limit in respect of the appointment of the respondent had been impliedly relaxed at the time of her appointment as a Casual Artiste in 1989 cannot be upheld.

8. The learned counsel for the respondent has pointed out that during the pendency of this appeal, an office memorandum dated 17-3-1994 has been issued wherein the following provision is made:

"4. It has also been noticed that certain staff artistes were engaged initially when they were overage according to the Recruitment Rules. All such cases, with the number of days they worked on casual basis according to the formula laid down in para 3, should be referred to the Directorate for taking a decision on merit,"

9. The learned counsel for the respondent has urged that the case of the respondent should have been considered in accordance with para 4 of the aforesaid memorandum dated 17-3-1994 and though the cases of other persons similarly situate have been considered and dealt with vide circular dated 28-12-1994, the case of the respondent has not been so considered in view of the pendency of this appeal in this Court. In these circumstances, it must be held that the case of the respondent is required to be considered by the Directorate General, Doordarshan in accordance with para 4 of the memorandum dated 17-3-1994.

10. The appeal is, therefore, allowed, the impugned judgment of the Tribunal dated 22-1-1993 is set aside and it is directed that the case of the respondent for regularisation under the Scheme for regularisation be considered by the Directorate General, Doordarshan in accordance with para 4 of the memorandum dated 17-3-1994. The said consideration shall be done by the Directorate within a period of three months. No orders as to costs.

