
(2005) 10 DEL CK 0094

In the Delhi High Court

Case No : WP (C) No's. 17871-81 of 2005 and CM 11506 of 2005

Gurpal Singh and Others

APPELLANT

Vs

Indian Airlines Ltd. and Others

RESPONDENT

Date of Decision : 04-10-2005

Acts Referred:

Citation : (2005) 124 DLT 184

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : A.K. Srivastava and Puneet Aggarwal, for the Appellant; Lalit Bhasin and Shruti Mahenderu, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The petitioners, in this case, have been working for long periods of time, in some cases up to 10 years, with the respondents (hereafter referred to as Indian Airlines). They have been discharging the functions of Carpenter and Painter. They are aggrieved by the process initiated for recruiting personnel as Carpenters and Painters on a regular basis by the Indian Airlines.

2. The Indian Airlines issued a notification in The Employment News on 8th April 2003 inviting applications from qualified persons for various posts. 5 posts of Training Technician (Painter) and 5 posts of Training Technician (Carpenter) were advertised in this process. Eligibility prescribed for Training Technician (Painter) was a Middle class passed in the event of the candidate holding an ITI certificate, the experience prescribed was five years after the qualification and in the event of other eventualities, it was Middle class passed with seven years experience after obtaining qualification. Similar eligibility criteria were prescribed for Training Technician (Carpenter).

3. The petitioners in these cases applied for the posts in 2003. They participated in the recruitment process and were called for the Trade Test. They attended the Trade Test along with other candidates drawn from the open market/direct recruit

aspirants. The Trade Test was held on 29th May 2005; petitioners were called by separate letters on dates commencing from 12th May 2005. The Indian Airlines notified the results of the Trade Test in the end of August 2005.

4. The grievance projected in these proceedings is that Indian Airlines ought to have considered the candidature of the petitioners for regular recruitment/absorption on the basis of their having cleared the Trade Test at the stage when they were engaged as casual labourers. It is also contended that they have put in more than nine years of service and that on this count, the observations of the Supreme Court and the law laid down in *State of Haryana and others Vs. Piara Singh and others etc. etc.*, obliged the respondents to regularize them in accordance with their own policies.

5. Mr. Ashok Srivastava, learned senior counsel for the petitioner, also contended that as per the judgment of the Division Bench in *Ms. Rita and Ors. (LPA 620/2000)* decided on 13th November 2002) the petitioners were entitled to benefits of protecting their current status and also regularization. He places particular reliance on the operative directions, which are as follows :-

"However, the appellants are definitely entitled to the safeguards protecting their current status in view of their clearance of tests prior to selection, their empanelment in 1989 and employment since 1997 by virtue of being borne on the select panel of 1982.

Accordingly following direction given by the Hon"ble Supreme Court in *KPS College Stop-Gap Lecturers Association (supra)*, we direct as under :

a) that the services of the appellants who have worked for the last 5 years with the respondents shall not be terminated till their regularization as per direction (b)

b) the appellants subject to being suitable shall be regularized as and when regular vacancies arise

Any typist who would be recruited by the Advertisement dated 21st July, 2000, sought to be impugned in the writ petition obviously cannot have better and prior rights over the rights of the appellants who were empanelled as far back as in 1989 by a process of selection after clearing all the tests and interview and have been working for couple of years without a break. However, we make it clear that this will not debar the respondents from selecting and recruiting fresh typists so long as the claims and rights of the appellants as crystallized in the direction (a) above is not affected. The respondents are, Therefore, at a liberty to recruit and appoint fresh typists subject to the prior rights of continuance and regularization of the appellants. In the peculiar facts and circumstances of the case we consider it just and equitable to grant the aforesaid relief to the appellants. We had weighed the option of merely directing the respondents to allow the appellants to compete with others at the selection process initiated pursuant to notification dated July 21, 2000 and the selection committee to give due weightage to the

experience of the appellants gained while working on the jobs with the Indian Airlines Ltd."

6. Learned counsel also relied upon the judgment of the Supreme Court in Pyara Singh case, particularly Para 49 and 51 to contend that the petitioners here are entitled to be regularized without undergoing any process or screening since they had already been working and their work or functioning is satisfactory; they were engaged or employed, initially itself, a due Trade Test.

7. Mr. Bhasin, learned counsel for the respondent stated that 11 posts had been advertised in the respective trades out of which the in-house or in-service casual workers who were recruited pursuant to the trade tests were nine. It is Therefore submitted that the petitioners cannot, at least, be heard to contend that they are discriminated against. It is further contended that the petitioners willingly participated in the recruitment process which was initiated in the year 2003 and now after having been unsuccessful, they are turning around, assailing the recruitment process and contending that they were entitled to be regularized without having to undergo any form of trade test.

8. Learned counsel contended that the Indian Airlines maintained the lists of regular employees who are recruited in accordance with its policies and rules and a second list or panel of casual employees who are engaged and given employment as per the requirements. These casual employees are also given the opportunity to appear in the trade tests as and when regular vacancies are advertised. It was contended that the petitioners initial engagement cannot be termed as employment on the basis of rules and has to be viewed only as a casual and temporary arrangement; their status was never that of regular employees nor did they undergo the procedure prescribed.

9. Learned counsel relied upon the directions issued by another Division Bench in WP(C) No.2947/1997 dated 21st October 1998, where the request for regularization of a class of employees, working on casual basis was turned down. However certain directions were issued. The said directions read as follows :-

"Keeping in view that while issuing directions to the respondents to adhere to the directions made on 09.05.1997 in CW No.4113/94 (Sushil Kumar Saini v. Indian Airlines and Ors.), the petitioners and other similarly placed persons, who have continuously been engaged on casual basis, either by virtue of interim orders passed by this Court or otherwise and are still being deployed, be given an opportunity of being considered for regular appointment, at the time, when the respondent would like to fill up regular vacancies and in view of the directions, which were issued in the case of Khagesh Kumar and others Vs. Inspector General of Registration and others, and Inspector General of Registration, U.P. and Another Vs. Avdesh Kumar and Others, persons getting age barred for selection for regular appointment be given relaxation of the age limit. Ordered accordingly.

On the question of equal pay for equal work, we are not inclined to issue any

direction in these petitions in view of highly disputed questions of facts arising for determination, particularly because of the scanty material brought on record and of the stand taken by the respondents that the duties performed by casuals are not same and similar to those performed by the regularly employed persons and that the casuals are being paid wages more than the wages which have been fixed under the Minimum Wages Act."

It was also contended that four of the petitioners have been absorbed after undergoing the process and have been appointed as regular employees in the Indian Airlines.

10. The facts of this case show that the petitioners have been admittedly working for long period of time between 8-10 years. However, their initial entry was not on regular basis. They were employed or engaged on casual basis apparently on the exigencies of the Indian Airlines requirements. The Division Bench ruling in Surender Kumar's case dealt with a similar class of employees who had claimed regularization. The Court had ruled that keeping in totality the circumstances, the petitioners and other similarly placed persons who continuously had been working on casual basis, should be given an opportunity to being considered for regular appointment. The judgment in Rita's case, on the other hand, was at the behest of a class of persons who had been selected in a regular recruitment process and included in a panel formed for appointment to future vacancies. The facts and circumstances in both the cases, Therefore, are radically different. The petitioners fall in the class of employees or workers as in Surender Kumar's case.

11. I find no infirmity in the approach adopted by the Indian Airlines in proceeding with the recruitment process and trying to fill the posts on the basis of a regular appointment.

12. It cannot be loss sight of that the petitioners willingly participated in the process which was initiated in the year 2003. They cannot now Therefore contend that they have right to be regularized without having to undergo any recruitment process. Four of the petitioners have been in fact granted appointment during the pendency of these proceedings, belying the complaints regarding arbitrariness or discrimination.

13. In view of the judgment of the Division Bench in Surender Kumar's case, I am of the view that no relief can be granted in these proceedings except to reiterate the directions contained there and also record the submissions of the respondents. It would be open to the petitioners to participate in future recruitment processes for regular appointment to the vacancies. It is open to the respondents to consider the period of employment spent by the petitioners in their respective posts, for grant of due weightage in such future processes. The petitions are accordingly dismissed subject to the above observations. No costs.