
(2004) 04 GAU CK 0041
In the Gauhati High Court
Case No : Civil Rule No. 3452 of 1998

Hema Handique and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 27-04-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 3 GLR 271

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : P.J. Phukan, for the Appellant; P.K. Roy, for the Respondent

Final Decision : Dismissed

Judgement

B K Sharma, J.—According to the fact narrated in the writ petition, the petitioners were appointed as unskilled workers at Rs. 39.50 per day in the Central Workshop of the Oil & Natural Gas Commission Ltd. (ONGC) at Sitsagar w.e.f. 19.3.1996. As a taken of proof of their such engagement, the petitioners have annexed same letters by which the Labour Officer of the ONGC had requested the Assistant Commandant, Central Industrial Security Force, ONGC, Nazira to issue Gate passes in favour of the petitioners. In the said letters it was indicated that the services of the petitioners as daily basis labourer towards the house keeping jobs had been extended for the periods as mentioned in the letters. It is on that basis, the petitioners claim that they were serving under the ONGC w.e.f. 19.3.96 till 30.6.98. They were not allowed to work w.e.f. 1.7.98.

2. It is the case of the petitioners that they having rendered services for 240 days in a year, they are entitled to be considered for conversion as regular employees on the basis of the standing orders of the ONGC. According to the averments made in the writ petition, the petitioners had approached the Assistant Labour Commissioner (C), Dibrugarh with a representation dated 8-7-98 and the said Commissioner by letter dated 9.7.98 while forwarding a copy of the representation submitted by the petitioners requested the Regional Director,

ONGC to offer his comments within 10 days. The petitioners assert that even after expiry of the said period of 10 days, no response was shown by the ONGC authorities. However, nothing has been stated as to what transpired thereafter.

3. It is in the above back drop, the petitioners have approached this Court by filing the instant writ petition making a prayer for issuance of a writ in the nature of mandamus to the ONGC authorities to regularise the services of the petitioners from the dates of their joining the services of the ONGC with all consequential benefits and to allow them to continue their services under the said respondent. It will be pertinent to mention here that apart from making the ONGC authorities as party-respondent, the petitioners have also made the State of Assam represented by the Secretary, Labour and Employment Department and the Assistant Labour Commissioner (Central), Dibrugarh as party-respondents. Nothing has been mentioned as to what reliefs they have sought for against these two respondents and as to what for they have been made party-respondents.

4. The ONGC authorities have entered appearance in the case by filing their affidavit. In the affidavit, the stand taken by the ONGC is that the petitioners were self-employed persons and they did their job of clearing dirt and debris from door to door and from each place of work they used to collect their contractual amount for the particular job rendered by them. While denying the averments made in the writ petition, that the petitioners had been rendering their services w.e.f. 19.3.96 at the rate of at Rs. 39.50 per day, the ONGC in their affidavit asserted that the petitioners did not work against any post or service under ONGC in any manner at any point of time. As regards the issuance of the Gate passes to the petitioners, it is the stand of the ONGC that such Gate passes are issued to all outsiders, the entire zone of ONGC being a highly protected zone. Referring to the Gate passes issued to the regular employees of the ONGC and to other outsiders and their distinctive features, the ONGC in their affidavit asserted that under no circumstances, the petitioners could be said to be engaged by the ONGC and that the Gate passes were issued to them they being outsiders seeking self-employment within ONGC zone. It is on that basis the ONGC has denied that the petitioners have rendered more than 240 days of services entitling them to be considered for regular absorption as per the standing orders of ONGC. A specific plea has been raised regarding maintainability of the writ petition on the grounds of disputed question of fact being involved-and the petitioners having already approached the appropriate forum under the Industrial Disputes Act, 1947. According to the respondents, it is the Industrial Tribunal which alone can decide the issue and that writ Court will not usurp the jurisdiction of the Industrial Tribunal.

5. I have heard the learned counsel for the parties.

Mr. P.J. Phukan, learned counsel appearing for the petitioners are entitled to be considered for regular absorption under the prevalent standing orders. According to him, the petitioners were entitled to notice before they could be disengaged

from service as contemplated u/s 25-F of the Industrial Disputes Act 1947. He also submitted that the petitioners being Workmen within the definition of the said Act, they were also entitled to retrenchment compensation which were admittedly not paid to them and thus the entire action on the part of the ONGC authorities were illegal and liable to be interfered with.

6. On the other hand Mr. P.K. Roy, learned counsel appearing for the ONGC submitted that the writ petition itself is not maintainable, firstly, on account of involvement of disputed question of fact and secondly, the petitioners having already approached the appropriate forum under the provisions of the Industrial Disputes Act, 1947, they could not have approached this Court without awaiting the results of the same. Referring to the affidavit-in-opposition Mr. Roy, learned counsel for the ONGC submitted that the petitioners were never engaged by the NGC and the petitioners were only self-employed persons rendering their services inside the ONGC campus and they used to get their wages for the services rendered and such wages were never paid by the ONGC. Referring to the averments made in the writ petition and the documents annexed thereto, Mr. Roy submitted that the petitioners have miserably failed to establish their case that they were engaged by the ONGC and that they continued with the ONGC for a continuous period of 240 days in a year entitling them to be considered for regular absorption. As regards the argument of violation of the provision of Section 25-F of the Act, Mr. Roy submitted in reference to the provisions of Section 2(o)(bb) that the petitioners even if held to be under the employment of the ONGC their contract of employment having expired resulting in their disengagement with the non-renewal of the contract of employment, the petitioners are not entitled to any retrenchment compensation.

7. Number of decisions have been cited by the learned counsel for the parties. Mr. P.J. Phukan, learned counsel for the petitioner referring to the decisions as reported in Delhi Cloth and General Mills Ltd. Vs. Shambhu Nath Mukherji and Others, ; and Mohan Lal Vs. Management of Bharat Electronics Ltd., submitted that there being violation of the provisions of the Section 25-F of the aforesaid Act, the petitioners are entitled of the reliefs sought for in the writ petition. He also referred to the decision as reported in State of Haryana and others Vs. Piara Singh and others etc. etc., to bring home his point that the petitioners having rendered their services for a considerable length of time, they are entitled to be considered for regularisation of their services. He also referred to the decision as reported in Radha Raman Samanta Vs. Bank of India and Others, in which the Apex Court held that the High Court issued appropriate direction in exercises of its power under Article 226 of the Constitution of India for enforcement of a right other than fundamental right. In that case a Badli Workmen claimed regular appointment by filing a writ petition as per the Bipartite Settlement of the Bank. Rejecting the objection raised on behalf of the respondent-bank that the writ petition was not maintainable, the Apex Court in that case held that having regard to the earlier proceeding initiated by and between the same parties, the writ petition was maintainable.

8. On the other hand Mr. P.K. Roy, learned counsel appearing for the respondent relied upon the decisions as reported in :

(i) Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others,

(ii) Madhyamik Siksha Parishad, U.P. Vs. Anil Kumar Mishra and others etc.,

(iii) State of U.P. and Others Vs. Ajay Kumar,

(iv) Escorts Limited v. Presiding Officer, (1997) 11 SCC 521

In the case of Delhi Administration (supra), the persons employed under a scheme claimed regularisation on the ground of having completed 240 days of service. The Apex Court after noticing that the persons were engaged under a particular scheme which was meant for the rural peer held the said persons not to be entitled for regularisation. In the case of Madhyamik Siksha Parishad (supra), the Apex Court having noticed that the persons working against non-sanctioned post held that no right of regularisation exist for such employees set aside the direction of the High Court for regularisation of service of all such employees. The Apex Court held that attributing status of Workmen under Industrial Disputes Act to persons completing 240 days of work not proper and that such duration of work does not create right to regularisation. In the case of Ajoy Kumar (supra), the Apex Court holding the direction of the High Court to regularise the services of the employee as and when vacancy would arise and to continue him till then to be illegal pointed out that there must be exist a post and either administrative instruction or statutory rules must be in operation to appoint a person to the post. The daily wage appointment will obviously be in relation of contingent established in which there cannot exist any post and it continues so long as the work exists. In the case of Escorts Ltd. (supra) referring to the provision of Clause (bb) of Section 2(oo) of the Industrial Disputes Act 1947 rejected the plea of retrenchment of the workmen, it was held that since the services of the workmen were terminated as per the terms of the contract of employment it does not amount to retrenchment u/s 2(oo) of the aforesaid Act.

Accordingly, the award of the Labour Court in favour of the workmen which was upheld by the High Court was set aside. Mr. P.K. Roy has also referred to a Division Bench decision of the Allahabad High Court as reported in 1994 I LLJ 606 (Zakir Hussain v. Engineer-in-Chief, Irrigation Department) wherein the Allahabad High Court held that regularisation of persons appointed on daily wages cannot be made as a "rule of thumb" merely on the basis of his completion of certain years of service. In that case the alleged retrenchment was challenged on ground of the violation of the provision of Section 25-F of the said Act. It was held that the question as to whether the services of the employees were terminated in violation of Section 25-F cannot be decided by High Court and for resolving such a controversy, the employee should approach the Labour Court by getting a reference made to it by Government, In the said decision it was also held that when an alternative remedy is available, the person concerned

should first exhaust the said remedy unless it is proved that such a remedy is not efficacious.

9. From the materials on record, it cannot be said conclusively that the petitioners rendered 240 days of service in a year and that too under the direct employment of the ONGC authorities. The documents relied upon on behalf of the petitioners are only in respect of issuance of Gate passes to the petitioners. Although by the said documents/letters while making a request to the Security Officer-in-Charge to issue Gate passes in favour of the petitioners in the ground that further continuation of their services for house keeping jobs were required, there is no conclusive that such employment of the petitioners were under direct control of the ONGC authorities. It is the plea of the respondents in their affidavit that such Gate passes were issued to the petitioners as required under the prevalent system, the ONGC campus being a protective zone. They have also indicated the different type of Gate passes issued for regular employees of the ONGC and for outsiders. The petitioners were given the Gate passes as outsiders and not as employee of the ONGC Apart from the fact that there is no direct evidence that the petitioners were under the direct control and engagement of the ONGC, there is also no evidence to conclusively establish that they had rendered 240 days of service entitling them to get the benefits of the particular provision of the standing orders under which they are entitled to be considered for regular absorption. Coupled with these factors, there is also no explanation on the part of the petitioners as to why they had abandoned the proceeding they had initiated under the provisions of the Industrial Disputes Act, 1947. They have not given any explanation in the writ petition as to what they did after the alleged refusal on the part of the ONGC authorities to respond to the notice issued to them by the Assistant Labour Commissioner (C), Dibrugarh.

10. In the decisions referred and relied upon on behalf of the petitioners, the Apex Court in the given facts situation held the workmen to be entitled to retrenchment compensation as contemplated u/s 25-F of the aforesaid Act of 1947. However, in the instant case, in view of the provisions of the Clause (66) of Section 2(oo) of the industrial Disputes Act, 1947, in my considered opinion such a claim on the part of the petitioners is not sustainable. As per their own assertion made in the writ petition, the petitioners were engaged w.e.f. 19-3-96 and they were disengaged and were not allowed to work w.e.f. 1-7-98. The documents annexed to the writ petition to show their continuous employment with the ONGC are only in respect of issuance of Gate passes to the petitioners for certain period. As soon as the period came to an end on account of non-renewal of their employment which the respondents claim to be self-employment, their services automatically stood terminated and this will be an exception to the term retrenchment as defined u/s 2(oo) and shall include the exception as defined in Clause (bb) of Section 2(oo).

11. In the decision referred to by Mr. P.K. Roy, learned counsel appearing for the respondents, the Apex Court has deprecated the mechanical approach to order

regularisation of services of the workmen merely on completion of 240 days of service. It has also been held that the daily wagers are not entitled to automatic regularisation in absence of any vacancy. In absence of any sanctioned post it has been held to be difficult to envisage for the workmen, their status on the analogy of the provisions of Industrial Disputes Act, 1947, importing the incident of completion of 240 days work. While expressing a note of caution, the Apex Court has held that it is not appropriate to import and apply that analogy, in an extended or enlarged form. In the case of Radha Raman Samanta (*supra*) which has been relied upon to by the learned counsel for the petitioners, the Apex Court held the writ to be maintainable in the background of that case and no general proposition as such has been laid down. In that case earlier there was a writ proceeding before the learned single Judge as well as before the Division Bench. The Division Bench had occasion to remand back the matter to the learned Single Judge who once again decided the issue in favour of the workmen. The Division Bench interfered with the same holding that the claim of the workmen could not have been enforced by filing a writ application. It was in that context the Apex Court interfered with the judgment of the Division Bench and up-held the direction of the learned Single Judge. Needless to say that ratio of a decision will have to be understood in the background of that case. In the said case, the Apex Court considering the fact that there was earlier a proceeding under writ jurisdiction, held the view of the Division Bench that the claim of the workmen could not be enforced by filing a writ application to be erroneous.

12. In the instant case disputed question of facts are involved such as, as to whether the petitioners were under the direct control and engagement of the ONGC authorities and as to whether they in fact have rendered 240 days of service in a year entitling them to the benefit of the standing orders of the ONGC under which their cases are required to be considered for regular absorption. There is also no explanation on the part of the petitioners as to why they have abandoned proceeding, they had initiated before the Assistant Labour Commissioner (G), Dibrugarh by invoking the provisions of Industrial Disputes Act, 1947. Situated thus it is difficult in exercise of writ jurisdiction to come to a definite conclusion that the petitioners are entitled to regularisation of their services in terms of the standing orders of ONGC. There is no material disclosures on the part of the petitioners regarding their alleged engagement directly under the ONGC authorities except making a statement that they were engaged w.e.f. 19-3-96 and were disengaged w.e.f. 1.7.98. In support of their claim they have referred to certain letters addressed to the security personal to issue Gate passes in favour of the petitioners which by itself cannot conclusively establish that the petitioners were engaged by the ONGC to perform the jobs pertaining to ONGC. It is the specific plea of the ONGC in their affidavit that the petitioners were self-employed and had performed their job inside the ONGC campus and it was only for that purpose, the Gate passes were issued to them. Needless to say that the writ Court in exercise of its power of judicial review under Article 226 of the Constitution of India will not embark upon such disputed

questions of fact. There is also no explanation as noticed above as to what was the outcome of the proceeding initiated by the petitioners themselves invoking the provisions of the Industrial Disputes Act, 1947.

13. In view of the foregoing discussions and in consideration of the materials on record and the arguments advanced by the learned counsel for the parties and also on perusal of the cases relied upon on behalf of the respective parties, I am constrained to hold that the present writ proceeding is not maintainable and consequently the writ petition is liable to be dismissed which I accordingly do.

14. Such dismissal of the writ petition will not preclude the petitioners from pursuing their remedy elsewhere or under the provisions of the Industrial Disputes Act, 1947. In case of their approach to the authorities under the Industrial Disputes Act, 1947, it is expected that the said authorities will proceed in the matter in accordance with the law to arrive at a just and proper decision as expeditiously as possible more particularly in view of the fact that the matter relates to the persons belonging to the lower stratum of the society.

15. Subject to the above observations and directions the writ petition stand dismissed.

16. No order as to cost.