

(2009) 07 CAL CK 0019
In the Calcutta High Court
Case No : W.P.C.T. 164 of 2009

In Re : Nakul Mondal and Another

Date of Decision : 20-07-2009

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 19

Citation : (2009) 07 CAL CK 0019

Hon'ble Judges : Pratap Kumar Ray, J; Mrinal Kanti Sinha, J

Bench : Division Bench

Advocate : Lal Mohan Hajra and Mr. Somesh Panja, for the Appellant;
Sanghamitra Nandy for the Respondent Railways, for the Respondent

Final Decision : Dismissed

Judgement

Pratap Kumar Ray, J.—Heard the learned Advocates appearing for the parties.

2. Assailing the order dated 20th December, 2004 passed by learned Central Administrative Tribunal, Calcutta Bench in O A No 1149 of 1995, this writ application has been filed in the year 2009 before this Court.

3. It appears that the writ petitioners moved the Patna High Court in CWJC No. 18981 of 2008 assailing the said order and the application was allowed to be withdrawn with liberty to move to the appropriate Court. There is no explanation as to why after the order dated 20th December, 2004 and prior to the filing of the application to the Patna High Court, the writ petitioners did not approach this High Court. On reading of the impugned order it appears that the writ petitioners along with other 117 applicants moved the original application seeking regularisation of service on the alleged ground that during the period from 1966 to 1981 they worked beyond 240 days as casual labourers (Gangmen). Learned Tribunal rejected the application on the ground that out of 119 only 15 persons had worked more than 240 days in a year and as such "the joint application by all the applicants was not maintainable. Besides such, learned Tribunal held that they were not entitled even to maintain their names in the Live Register following the Full Bench judgment of the Tribunal as referred to.

The impugned order reads such:

"119 applicants in the present OA seek direction to respondents to absorb them in the Railway Service from the list of Dormant Casual Labourers with all consequential benefits.

2. The facts as stated are that the applicants were engaged as casual labourers (Gangmen) by the PWI/ Suri, Eastern Railway during the period from 1966 to 1981 and all of them worked beyond 240 days. They were disengaged from the casual employment on diverse dates during the years 1979 to 1985 for their re-engagement as casual labourers but the concerned authorities did not take any steps. Senior Divisional Engineer (1), Asansol, Eastern Railway issued memorandum dated 13.12.85 for finalisation of list of Dormant Casual Labourers by the Screening Committee. Some of the applicants were shown in the list prepared by such screening committee but their working days were not shown correctly. Similarly circumstanced employee, namely, Nagina Singh filed OA No.827/1993 for seeking regularisation which was allowed vide order dated 1.2.94. Based on the aforesaid order dated 1.2.94, applicants submitted joint representation dated 5.7.95 seeking extension of benefit of the said judgment but the same did not yield any positive result. Hence, the present application. It was contended that inaction on the part of the respondents violated Article 14 & 21 of the Constitution of India.

3. The respondents contested the OA on the ground of limitation, estoppel, waiver, acquiescence besides on merits. It was denied that all the applicants worked as casual labourers and completed 240 days as alleged. The respondents also stated that representations submitted by them were incomplete in all respects. In fact, no such representation appears to have been received by the administration. The dormant list of casual labourers were prepared after checking the same at various stages and the number of working days shown against their name was correct. For correcting alleged discrepancy in number of working days, authentic documents in support of their claim should have been submitted by the applicants. It was contended that the case of Nagina Singh had no relevance in the present OA and as such the said judgment and order cannot be made applicable.

4. We heard both sides and perused the pleadings carefully.

5. On perusal of annexure-A which is the service particulars of the applicants, we find that out of 119 applicants, only 15 of them alleged to have worked for 240 days or more days as casual labourers. Even the period during which they worked in the said capacity is not mentioned in the said annexure. Who prepared the said annexure is not known to us nor it has been explained to us. It bears no signature. Except the first page, which also did not show either the name of or designation of the person who seems to have put an initial on the first page of the said annexure, no other page carried either signature or initial or any stamp/ seal was affixed. For what purpose the said annexure was prepared also

remained unexplained to us. If the applicants were engaged during the period 1966 to 1981 and they were disengaged on diverse dates as stated in paragraph 4(b) and also 4(c) of the OA respectively, why they submitted representations during the year from 1979-1985 for their re-engagement also remains a mystery. If we believe the applicants' version that they were engaged till the year 1981, what prompted to file their representation prior to the said year and that too for the subject of re-engagement is somewhat a mystery. As we have already noticed out of 119 applicants, only 155 alleged to have worked for 240 and beyond, how they could claim to be similarly situated and be allowed to file one joint OA under rule 4(5) of the CAT (Procedure) Rules, 1987 not been explained to us. We may note that a joint applicant under the aforesaid provisions can be filed only when the applicants have a "common interest" in the matter besides the "cause and the nature of relief prayed for". Since out of 119 applicants, 104 were belonging to one category, the present joint applicant cannot be entertained & accepted.

6. Shri S.K. Dutta, learned counsel appearing for the applicants strongly relied upon CAT Full Bench judgments 1997-2001, Mahabir & Others v. Union of India, Full Bench. Principal Bench, page 99, to contend that those casual labourers who had been discharged from service on account of non-availability of work have the legal right to have their names placed in the Live Casual Labour Register in terms of Railway Board Circular dated 25.4.86 and Northern Railway Circular dated 28.8.87. The reliance was also placed on 2002(1) ATJ 634 Ram Mohan v. Union of India, single Bench Judgment, Allahabad Bench. We have carefully perused the aforesaid judgments and are of the considered view that the said judgments have no application in the facts & circumstances of the present case in as much as the facts in the present case are at variance with the facts of the aforesaid cases. Moreover, the Full Bench judgment in para 1 specifically noticed that the circular reiterated that names of those casual labourers discharged prior to 1.1.81 and who had not worked for two years, their names should be deleted except such casual labourers who had made special representation in terms of PS Nos. 9191 and 9195 (to be executed upto 31.3.87) and considered eligible; further all casual labourers discharged after 1.1.81, the names are to be continued on the Live Casual Labour Register indefinitely. In the present case, the applicants have not pointed out their precise date of disengagement and made a bald statement that they were engaged during the period from: "1996 to 1981 and all of them worked beyond 240 days as casual labourers."

The aforementioned statement, in our considered view is contrary to the subsequent statement made in paragraph 4(d) of the OA wherein it has been stated that the "applicants made representation to the authorities concerned on diverse date during the year 1979 to 1985 for their re-engagement as casual labourers".

Unless and until, the precise date of disengagement is specified, the benefit of Full Bench judgment cannot be extended to the applicants.

7. In view of the facts as noticed hereinabove, the reliance placed on the aforementioned judgment is misplaced and have no application and in the circumstances of the present OA. We further find that there is no justification in the applicants' contention that they were similarly placed as of one Nagina Singh. Therefore, finding no similarity in the said judgments, we hold that judgment of Nagina Singh as well as Full Bench are not applicable in the facts & circumstances of the present case.

8. In view of the discussion made hereinabove, the OA is bereft of any merits and accordingly the same is dismissed. No costs."

4. The writ petitioners two in numbers out of those 119, have prayed for quashing of the impugned order and a writ of Mandamus directing to consider their representation in accordance with law for regularisation. At the motion stage this application could be disposed of in view of the settled legal position. In the writ application as well as the original application there is no specific averment made giving the details of the working period to identify the case that the writ petitioners worked more than 240 days in a year. From paragraph 3 of the writ application it appears that they have worked more than 240 days within the span of time, namely, during the year 1966 to 1981, that is, for 15 years span. Paragraphs 3 reads such:

3. That the petitioners were engaged as casual labourers (Gangman) by the P.W.1/Suri, Eastern Railway during the period from 1966 to 1981 and all of them worked beyond 240 days.

5. The mere working for 240 days, even we assume in a year but still it cannot be a ground for regularisation of service of casual appointee. Even working for 240 days in a year cannot ipso facto a ground for regularisation.

6. It is now settled legal proposition of law that regularisation of service is not the mode of appointment. It is a settled legal proposition of law that the appointment in an organisation which is an authority under Article 12 of the Constitution of India, must be in compliance with the constitutional provision of Articles 14, 16 and 19 of the Constitution of India. In violation of the constitutional scheme and without following the due process of selection procedures for appointment of a candidate in a particular post, a casual appointee has not right to be absorbed. It is also a settled legal proposition as held in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, that no regularisation of service could be made in violation of the recruitment rules or procedures for appointment. There is a recruitment rule issued by the Railway authority wherein no provision exists that casual appointee may claim such regularisation by dint of their casual service. Furthermore, their casual service has not been identified categorically which is the findings of the learned Tribunal below and on that vague pleading there is no scope to pass any order of regularisation. It is also a settled legal position of law that unless a post is sanctioned, there is no scope of ad-hoc and/or temporary appointee to be

reinstated in that post. Reliance is placed to the judgment passed in the case of State of U.P. Vs. Neeraj Awasthi and Others, . The circular of Railway Board for regularisation and its effect thereof, whether satisfied constitutional provision of law, has been considered in the case of Pinaki Chatterjee and Others Vs. Central Administrative Tribunal and Others, wherein the Court held that the Railway Board circular for appointment of Group-C employee, who worked as casual appointee since did not take note of mandatory provision of recruitment rules and the constitutional provision of Articles 14 and 19, the said Railway " Board circular being No.E(NG)/11 84/CL/58 of 20th December, 1985 had no applicability for regularisation and thereby the Court rejected the regularisation prayer. In the instant case, identical situation is there. Some persons claiming work as casual Gangman at a time long back in the year 1981 have prayed regularisation in service. The writ petitioners accordingly have no legal right to claim for regularisation in service as the post of Gangman in the Railway is filled up by a selection process in terms of the recruitment rules as prevalent.

7. Considering the legal position of law, we are of the view that the prayer of the writ petitioners directing to consider their representation for regularisation in the nature of mandamus cannot be allowed as the respondent Railway authority legally is not entitled to consider the representation for "regularisation of the writ petitioners" service in the angle of the constitutional provisions and the settled law as discussed. In that view, the writ application stands dismissed.

8. There will, however, be no order as to costs.

Let urgent xerox certified copy of this order, if applied for, be given to the learned advocates appearing for the parties expeditiously.

Mrinal Kanti Sinha, J.

9. I agree.