

(2014) 01 PAT CK 0071

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1201 of 1994

Indian Airlines

APPELLANT

Vs

Central Govt. Industrial Tribunal and Others

RESPONDENT

Date of Decision : 15-01-2014

Acts Referred:

Air Corporations Act, 1953 — Section 3, 45(2)(b)
Constitution of India, 1950 — Article 12, 14, 16, 226
Industrial Disputes Act, 1947 — Section 2(k), 25F, 29, 2A

Citation : (2014) 141 FLR 519 : (2014) LabIC 1250 : (2014) 1 LLJ 312 : (2014) LLR 433 : (2015) 1 PLJR 361

Hon'ble Judges : Ramesh Kumar Datta, J

Bench : Single Bench

Advocate : R.N. Majumdar and Mr. Anil Kumar Sinha, for the Appellant;

Final Decision : Allowed

Judgement

Ramesh Kumar Datta, J.—Heard learned counsel for the petitioner. No one appeared for the respondents although earlier the respondents had entered appearance in the matter. The writ application has been filed for quashing the award dated 17.5.1993 made by the Central Government Industrial Tribunal Dhanbad (No. 2), Dhanbad by which the management of the petitioner - Indian Airlines has been directed to reinstate the respondent Nos. 2 to 4 as casual loaders within two months from the date of publication of the award and has been further directed to regularize the services of the said respondents if and when the vacancy occurs after the date of the said award. The further prayer made is to quash the order dated 12.1.1994 passed by the respondent No. 6, Assistant Labour Commissioner (Central) Patna-II by which the petitioner has been directed to show cause within 15 days as to why legal action should not be taken for non-implementation of the impugned award u/s 29 of the Industrial Disputes Act, 1947.

2. The brief facts of the case may be noted. The respondent Nos. 2, 3 and 4 were

engaged by the petitioner - Airlines as casual loaders from time to time. The respondent No. 2 Mahesh Prasad Gupta claimed to have joined the petitioner-Corporation which is a Public Sector Undertaking of the Central Government in December, 1979 as Loader and his services were terminated with effect from 28.3.1989. Similarly, the respondent No. 3, Chandrika Prasad claimed to have joined the services of the petitioner- Airlines in 1980 as a canteen boy and thereafter from June, 1983 he was orally appointed as Loader in the City Office of the Indian Airlines where he served till 1988 and subsequently transferred to Patna Airport where he served till his services were terminated with effect from 4.5.1989. The respondent No. 4, Naresh Kumar claimed to have joined as Casual Loader on 12.2.1980 and he was stopped from working as such from 1.3.1987. Aggrieved by the same they raised disputes before the Conciliation authority of the Ministry of Labour, Government of India on the ground that they have been refused to be employed any further by the petitioner-Corporation and the conciliation having failed, the Government of India, Ministry of Labour by three orders dated 25.4.1990, July, 1990 and 27.12.1990 made reference in identical terms which in the case of respondent No. 2 is quoted below.

Whether the action of the management of Indian Airlines, Patna in terminating the service of Mahesh Prasad Gupta, ex-casual Loader with effect from 28.3.1989 is justified. If not, what relief the workman is entitled to?

3. The three references were registered as Reference Case Nos. 12/1990, 17/1990 and 31/1991 before the Central Government Industrial Tribunal, Dhanbad which heard all the three matters together and disposed them of by the common impugned award dated 17.5.1993.

4. The stand of the petitioner-management before the Industrial Tribunal was that the employer Corporation is a statutory corporation established u/s 3 of the Air Corporation Act, 1953 with the function to provide safe, efficient, adequate, economically and properly coordinated air transport services to the best advantage of the people and Section 45(2)(b) of the said Act provides that the employer Corporation may make regulation relating to the terms and conditions of the Officers and other employees of the Corporation. Pursuant to the same three sets of service regulations were framed by the Corporation after obtaining necessary permission from the Central Government with respect to its Flying Crew, Aircraft Engineering Department and Employees other than Flying Crew and those in the Aircraft Engineering Department. Further in terms of the said regulations the Corporation framed the Indian Airlines Recruitment and Promotion Rules, Rule 9 of which provided that all posts available for direct recruitment shall be given the widest possible publicity including advertisement incorporating the minimum qualifications and experience necessary for all posts except those in Grade I and II which shall be inserted in such of the leading newspapers as may appear necessary and all applications received at Headquarters and Regions were to be registered in the Administrative Personnel Branch and a record of the same maintained by a classification into occupational

groups and further the local Employment Exchange may be approached in case of recruitment to Grades I and II and other cases also with a view to suggesting suitable candidates; a public notice indicating the existence of vacancies shall be put up on the Notice Board at local offices of the Indian Airlines and its workshops and those candidates in the employment of the Corporation were entitled to apply for any of the posts subject to eligibility.

5. It was the further stand of the Corporation that none of the respondents were issued any appointment letter and as such there was no question of termination of their services. The further stand was that they were never appointed orally or in writing in any other capacity and the only admission made was that the concerned workmen were engaged on Casual/daily rated/part-time basis intermittently during the year 1986, 1987, 1988 and 1989. It was also the stand that they were paid according to the number of hours put in by them and that they were also permitted to participate in interview for the post of Loader in which they were not successful and thus not empanelled. It was the stand of the petitioner-Corporation that although the Corporation appoints Loaders on a permanent basis but Aviation being a sophisticated industry and being dependent upon many external factors of diverse nature, it is not possible to adhere to strict time scheduled of operation due to variation in weather, temperature, availability of aircraft, etc. The number of passengers are not uniform all around the year and accordingly, depending upon the load of passengers, flights are increased or decreased which at times leads to increase in normal work load by reason of clashing of flights and it is not possible to ascertain the actual number of persons required to be deployed, as a result of which, to meet such exigencies for the purpose of loading, off loading as also cleaning of aircraft, the petitioner-Corporation has time and again engaged part-time/daily rated/casual/badlies as also on account of leave replacement. Such engagement of casual nature is done for a specified and mostly predetermined period which is well within the knowledge of the persons whose services are hired on casual basis. The respondent Nos. 2 to 4 were engaged intermittently for the said casual work and they cannot claim, as a matter of right, to continue in the employment. The Tribunal also noted the denial by the management that the concerned workmen were stopped by the management and noted the case of the management that the concerned workmen were at liberty to work as casual labour as before. The respondent Nos. 2 to 4 in their written statement had also prayed for their regularization which was opposed by the petitioner-management.

6. The Tribunal came to the conclusion that there was nothing to show that any vacancy was existing or not. It also found that the names were not sponsored from the Employment Exchange but definitely they were interviewed for the post of Loader but they were not selected. It also found that for the post of Loader no specific qualification is needed and the respondents had been working as Loader for the last several years and now they were expected to have attained proficiency in their work. The Tribunal also relied upon the judgment of the Apex Court in the case of State of Haryana and others Vs. Piara Singh and others etc.

etc., in which it has been held that the State should not exploit its employees nor should it take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be, and the State must be model employer and further that the person should not be kept in temporary or ad hoc status for long and where temporary appointment is continued for long the Court presumes that there is need for regular post and accordingly directs regularization. On the basis of the same the Tribunal having come to the conclusion that the concerned workmen had been working as casual loaders for several years completing 240 days in a calendar year but definitely as there was no paper to show that any vacancy was in existence or not, therefore, it was of the view that the action of the management of the Indian Airlines in terminating the services of the concerned workmen was not justified and the management was directed to reinstate as casual loaders within two months from the date of publication of the Award but without any order for back wages and was further directed to regularize the services of the concerned workmen if and when the vacancy occurs after the date of the award. Aggrieved by the same, specially the direction to regularize if and when the vacancy occurs, the petitioner has come to this Court.

7. Learned counsel for the petitioner has, before me, argued essentially against the direction to regularize on any vacancy after the date of the award. In view of the stand of the management before the Tribunal itself that the concerned workmen were at liberty to come and work as casual loader as before, the petitioner, in fact, cannot be permitted to challenge the direction to reinstate the respondent Nos. 2 to 4 as casual loaders.

8. Learned counsel for the petitioner has made three submissions in the matter. It is first submitted by him that from a consideration of the order of reference itself it is evident that the direction to regularize is beyond the scope of the reference. Secondly, it is submitted by him that the present matter not being a dispute espoused by the Trade Union or by a large number of workmen, does not come within the purview of a industrial dispute u/s 2(k) of the Industrial Disputes Act, 1947 and, therefore, no regularization at all could have been ordered at the instance of the individual workman in a dispute raised u/s 2A of the Act, as any such direction to regularize can only be at the instance of the Union of workmen or a large number of workmen. It is lastly submitted by learned counsel that the respondents being casual workmen, have no guaranteed right of employment and no constitutional scheme was followed while appointing them as casual/badli/part-time loader and, therefore, the appointments are illegal and not irregular; hence, they cannot be directed to be regularized.

9. In support of the aforesaid propositions, learned counsel for the petitioner relies firstly upon the decision of the Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, of the said decision are quoted below:-

26. With respect, why should the State be allowed to depart from the normal rule

and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent the distinction between regularization and making permanent, was not emphasized here can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect, the direction made in para 50 (of SCC) of *State of Haryana and others Vs. Piara Singh and others etc. etc.*, is to some extent inconsistent with the conclusion in para 45 (of SCC) therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent.

43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if

ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.

10. Learned counsel also relies upon a decision of the Supreme Court in the case of *Municipal Corporation, Jabalpur Vs. Om Prakash Dubey*, of which it has been held as follows:

11. The question which, thus, arises for consideration, would be: Is there any distinction between "irregular appointment" and "illegal appointment"? The distinction between the two terms is apparent. In the event the appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, which is State within the meaning of Article 12 of the Constitution of India, the recruitment would be an illegal one; whereas there may be cases where, although, substantial compliance with the constitutional scheme as also the rules has been made, the appointment may be irregular in the sense that some provisions of the rules might not have been strictly adhered to.

11. Learned counsel also cites decision of the Supreme Court in the case of *Post Master General, Kolkata and Others Vs. Tutu Das (Dutta)*, of which it has been held as follows:-

16. The short order which was the subject-matter of decision of this Court in Union of India (UOI) and Others Vs. Debika Guha and Others, also stood overruled in Secretary, State of Karnataka and Others Vs. Umadevi and Others, . We may at this stage also notice that the concept of 240 days to be the cut-off mark for the purpose of regularization of services came up for consideration of this Court in Madhyamik Siksha Parishad, U.P. Vs. Anil Kumar Mishra and others etc., wherein it was clearly laid down that the completion of 240 days of continuous service in a year would be attracted only in a case where retrenchment has been effected without complying with the provisions contained in Section 25F of the Industrial Disputes Act, but would not be relevant for regularization of service.

12. Learned counsel also relies upon a decision of the Supreme Court in the case of U.P. Power Corporation Ltd. and Another Vs. Bijli Mazdoor Sangh and Others, of which it has been held as follows:-

6. It is true as contended by learned counsel for the respondent that the question as regards the effect of the industrial adjudicators' powers was not directly in issue in Secretary, State of Karnataka and Others Vs. Umadevi and Others, . But the foundational logic in Umadevi (3) case is based on Article 14 of the Constitution of India. Though the industrial adjudicator can vary the terms of the contract of the employment, it cannot do something which is violative of Article 14. If the case is one which is covered by the concept of regularization, the same cannot be viewed differently.

7. The plea of learned counsel for the respondent that at the time the High Court decided the matter, decision in Umadevi (3) case was not rendered is really of no consequence. There cannot be a case for regularization without there being employee-employer relationship. As noted above the concept of regularization is clearly linked with Article 14 of the Constitution. However, if in a case the fact situation is covered by what is stated in para 45 of Umadevi (3) case the industrial adjudicator can modify the relief, but that does not dilute the observations made by this Court in Umadevi (3) case about the regularization.

13. I have considered the submission of learned counsel for the petitioner and considering the facts as found by the Tribunal in the light of the propositions laid down in the case of Uma Devi (supra) and the other cases cited above, I am of the view that the direction for regularization on the arising of vacancies after the award cannot be supported in the facts and circumstances of the case. I may here point out that the Tribunal while issuing such direction had relied upon the directions made by the Apex Court in Piara Singh's case which has been held in Uma Devi's case to run counter to the constitutional scheme of employment.

14. It is further evident that the respondents cannot claim to have been irregularly employed as their employment did not follow the constitutional scheme of right to equality in the matter of public employment. They are evidently backdoor entrants. They cannot even claim that the findings recorded

by the Tribunal come within the purview of para-53 of the directions contained in Uma Devi's case (supra) as none of them even claims to have continued to work for 10 years or more, much less on any duly sanctioned post and thus even as a one time measure their cases cannot be considered for regularization. In the said circumstances, the order of re-instatement in their cases can only mean a permission to continue to work as casual labour as per the exigencies of work. In this regard, the observation of the Apex Court in Tutu Das (Dutta) case (supra) is also quite clear that mere completion of 240 days continuous service in a year would not be relevant for regularization of service.

15. I am also in agreement with the submission of learned counsel for the petitioner that, as a matter of fact, the direction to regularize was beyond the scope of reference as the reference merely related to the justifiability of the action of the management in terminating the services of respondent Nos. 2 to 4 and in case it was found to be not justified then what relief the workmen were entitled to. It is no part of the reference nor could it have been so ordered in a reference which was clearly u/s 2A of the Industrial Disputes Act at the instance of individual workman and not of the Union of workmen or a large number of workmen. Thus, in the light of the aforesaid discussions, the writ application is allowed. The impugned award dated 17.5.1993 is quashed, in so far as it directs the petitioner- Indian Airlines to regularize the services of respondent Nos. 2 to 4, if and when vacancy occurs after the date of the award. Consequently, the order dated 12.1.1999 passed by the Assistant Labour Commissioner (Central) Patna-II is also quashed.