
(2013) 07 DEL CK 0589

In the Delhi High Court

Case No : Writ Petition (C) No. 7886 of 2011

Kamlesh Kumar Singh and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 15-07-2013

Acts Referred:

Citation : (2013) 07 DEL CK 0589

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : C. Hari Shankar and Mr. S. Panda, for the Appellant; Sumeet Pushkarna, CGSC for Respondent No. 1, Mr. G. Tushar Rao, D.V. Venkata Krishnaje, Advocates for Respondent No. 2 and Mr. Sahil Bhalaik, Advocate for Respondent Nos. 4 and 5, for the Respondent

Final Decision : Allowed

Judgement

Valmiki J Mehta, J.—By this writ petition, the petitioners seek the relief of being granted all monetary benefits including the arrears pleading that they should be treated as regular employees from the dates of their initial appointments viz. 4.5.1994 (petitioner No. 1) and 9.5.1994 (petitioner No. 2). At the outset, I must note a detailed order which is passed by the Chairman of the respondent No. 2/ National Commission for Backward Classes i.e. the employer on 1.8.1996 and the same reads as under:-

Trikoot-I, Bhikaji Cama Place

New Delhi-110066

1st August, 1996

ORDER OF APPOINTMENT OF DRIVERS

Whereas the National Commission for Backward Classes was constituted by Govt. of India's Notification No. 12011/34/BCC/Pt. I dated 14th August, 1993

AND

Whereas by Govt. of India, Ministry of Welfare's Notification No. 12011/6/93-BCC (C) dated the March, 1994 besides some other posts, 5 posts of Drivers for the official Cars to be provided to the Chairman and other Members were sanctioned

AND

Whereas intimation to the NCBC about the 5 Ambassador Cars purchased by the NCBC in accordance with the sanction of the Govt. of India was received from the dealer under letter dated 14th March, 1994 and it was a matter of extreme urgency for the NCBC to employ the 5 Drivers whose posts had been sanctioned by the Govt. of India as aforesaid

AND

Whereas the appointments to all posts in the NCBC sanctioned by the Govt. of India except those of Joint Secretary and Deputy Secretary is to be made by the Commission itself as stated in Parliament by the then Hon"ble Welfare Minister Shri Sita Ram Kesari in reply to Rajya Sabha Unstirred Question No. 3435 of August, 1994 and also stated in Memorandum No. 12011/66/93-BCC dated 18th March, 1996 sent by Shri M.S. Ahmed, Joint Secretary, Ministry of Welfare to the Department of Personal and Training.

AND

Whereas in accordance with the rules of the Govt. of India requests were sent as per letter No. NCBC/9/7/93 dated 17.3.1994 to

- (1) The Directorate Central of Re-settlement of the Ministry of Defence
- (2) To the Surplus Cell of the Department of Personnel and Training of the Central Govt.
- (3) All the Ministries/Departments

for forwarding to the NCBC a panel of names of suitable persons for appointment as Drivers in the NCBC on the sanctioned

AND

Whereas to meet the contingency of suitable names not being forwarded by the above Agencies, request was also sent under the same letter number to the Employment Exchange to furnish a list of names for appointment to the posts of Drivers, of suitable person fulfilling the following requirements:

- (i) Possession of a valid driving licence for motor vehicles.
- (ii) Knowledge of motor mechanism (candidates should be able to remove minor defects in the vehicles)

(iii) Experience of driving for atleast 3 years.

(iv) Pass in the VIIIth Standard (desirable)

AND

Whereas in accordance with the rules of the Govt. of India a Selection Committee for selection for appointment to the posts of Drivers either from panel of names from the aforesaid Agencies or from the list of names provided by the Employment Exchange, was constituted consisting of the following persons:

(1) Shri S.P. Biswas (Supreme Court), Joint Secretary, NCBC

(2) Shri R. Bharadwaja, SAO, NCBC

(3) Shri Kanta Prasad, SO in SC/ST Commission

AND

Whereas no names were received from the Agencies as mentioned above in due time and a list of names were forwarded only by the Employment Exchange of persons who were duly registered therein but the list did not show that any ST candidate was available and in view of the urgency viz. that the Cars had already arrived with the dealer and the latter was pressing for the delivery and further it was also urgently necessary to have the Drivers so that they could go and duly check the Cars prior to the delivery

The Selection Committee in its meeting on 29.4.94 made selection, in order of merit, of the following persons for appointment to the posts of drivers

1. Shri Kamlesh Kumar Singh (General)

2. Shri Zakir Hussain (OBC)

3. Shri Rajesh Kumar (SC)

4. Shri Sanjay Kumar Yadav (OBC)

AND

Whereas in accordance with the selection, on the basis of merit, the four viz. (1) Shri Kamlesh Kumar Singh (2) Shri Zakir Hussain (3) Shri Rajesh Kumar (4) Shri Sanjay Kumar Yadav were appointed on the post of Drivers besides Shri Suresh Kumar (SC) who was on "deployment to the SC/ST Commission on withdrawal from there was sent on "re-deployment" as driver in the NCBC by Ministry of Welfare (vide Order No. A15017/1/92-Estt. dated 18.3.1994 of Ministry of Welfare)

AND

Whereas in view of the above while Shri Suresh Kumar was employed to work as Driver in the NCBC on regular salary basis the other four persons were appointed to work as drivers on daily wage basis and they joined on-dates noted below:-

Sh. Kamlesh Kumar Singh (General) - 04.05.1994

Sh. Zakhir Hussain (OBC) - 09.05.1994

Sh. Rajesh Kumar (SC) - 09.05.1994

Sh. Sanjay Kumar Yadav (OBC) - 09.05.1994

AND

Whereas error crept in by oversight in the aforesaid order of appointment of the four drivers on daily wage basis as according to the rules of the Govt. of India, no appointment of drivers class III can be done on daily wage basis and as such at the very initial stage, in accordance with the rules of the Govt. of India the appointment ought to have been on regular salary basis

AND

Whereas the Hon''ble Members with whose official cars these drivers have been attached are fully satisfied with their performance and have also expressed that keeping in view the point of security and safety of the Members as well as their family members particularly when they are required to go out in evening are at night to Airport, Railway Stations, Hospitals etc. it is necessary that these five drivers should continue to be employed by the NCBC.

AND

Whereas it is not proper that the erroneous situation in respect of four drivers appointed on daily wage basis should continue any further and

it is extremely necessary to rectify it without any further delay by regularising the initial appointment on salary basis.

AND

Whereas Shri Suresh Kumar and Shri Rajesh Kumar belong to the Supreme Court community and Shri Zakir Hussain and Shri Sanjay Kumar Yadav belong to the OBC community and among the five Shri kamlesh Kumar Singh is the only General candidate (and as already mentioned no ST candidate has been forthcoming).

Accordingly it is hereby

ORDERED

That the four daily wage drivers are hereby appointed from the initial date of their joining as drivers on regular salary basis in the NCBC, while Shri Suresh Kumar who has already been working on regular salary basis from the very initial stage i.e. 21.3.1994 continues on that basis.

However the absorption of Shri Suresh Kumar under "redeployment" from the Ministry of Welfare is dependent on the consent of the ministry to the transfer of

his services to the NCBC and as regards Shri Rajesh Kumar it is dependent on medical clearance which is still pending and in case he is not able to get the medical clearance he will have to be replaced by another driver by fresh selection.

This order shall take effect immediately. Office to take necessary steps without delay.

A copy of this order be given to each of the concerned five drivers.

(JUSTICE R.N. PRASAD)

2. A reference to the aforesaid order shows that the petitioners have wrongly been denied regular appointments although there existed the necessary number of sanctioned and vacant posts of Drivers.

3. During the course of hearing, learned counsel for the petitioners has also pointed out to me the letter dated 20.1.1994 of the Union of India and which shows creation of five posts of Staff Car Drivers for the employer-respondent No.

2. This order reads as under:-

Shastri Bhavan, New Delhi-110001

Dated the 20-1-1994.

To

The Member Secretary,

National Commission for Backward Classes,

Ministry of Welfare,

West Block 1,

R.K. Puram,

New Delhi.

Subject: Sanction for creation of additional posts of Staff Car Drivers for NCBC

Sir,

I am directed to convey the sanction to the President for creation of 5 posts of Staff-Car-Drivers in the scale of Rs. 950-1500 with immediate effect and upto 28th Feb. 1994.

2. The expenditure involved will be debitable to Major Head "2225", Sub head C-3 Welfare of Backward Classes, C.3(1) Directions and Administration, C.3(1) (1) NCBC (non-plan) for the year 1993-94.

3. This issues with the concurrence of CS No. 151/94 dated 20.1.1994.

Yours faithfully,

(Manjula Krishnan)

Director BCC (C)

Copy to:

1. The Pay & Accounts Officer, M/o. Welfare
2. A.O., Finance, Department of Expenditure,
3. Estt.
4. L.F. Wing,
- 5.
6. Sanction Folder.
7. Guard File.

(Manjula Krishnan)

Director BCC (C)

4. The aforesaid facts show that there were sanctioned posts of Drivers, there were vacancy in the sanctioned posts, petitioners and other persons were called through the employment exchange i.e. the normal method of recruitment. In view of the above facts, and therefore, the Chairman of the respondent No. 2 had passed an order on 1.8.1996 directing the petitioners to get benefits of regular employment from the dates of their initial employment. I may note that though the order of regularization was passed by the Chairman on 1.8.1996 i.e. much before the Constitution Bench judgment of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, was passed, however, the present case in fact satisfies all the requirements of the ratio of judgment in the case of Umadevi (supra) because there were sanctioned posts, there were vacancies in the sanctioned posts and petitioners were appointed through a regular recruitment process inasmuch as their names were sent through the employment exchange.

5. The only issue which is canvassed on behalf of respondent No. 1 (Union of India) and respondent Nos. 4 and 5 being the subsequent appointees on 5.1.1999 and 19.5.1999, is that there were no recruitment rules and therefore the appointment of the petitioners cannot be said to be regular appointment. In the counter affidavit of the Union of India/respondent No. 1 it is also mentioned that the appointment is from open market and therefore not legal.

The argument which is urged on behalf of respondent Nos. 1, 4 and 5 of the appointment of the petitioners being not legal does not carry any weight at all because it cannot be that in the absence of recruitment rules there cannot be any regular appointments. If there are no recruitment rules, the governing body of the respondent No. 2 will decide the criteria for appointment, however, in the absence of the recruitment rules once the appointments are regular appointments against sanctioned posts having vacancies, it cannot be that

appointments are not regular appointments. This argument of respondent nos. 1, 4 and 5, if accepted would be a gross travesty of justice because the petitioners would be denied benefits which they otherwise are entitled to as regular employees of the respondent No. 2. I may also note that the contention of the respondent No. 1 that appointment of the petitioners was through the market process is ambivalent to say the least because the order of the Justice R.N. Prasad, the Chairman of respondent No. 2 in fact shows that the appointment of the petitioners was by calling of their names through the employment exchange viz. the regular recruitment process.

In view of the above, the writ petition is allowed. Petitioners are granted all monetary benefits as also seniority taking their appointment to be regular appointments from the dates of their initial appointments i.e. 4.5.1994 and 9.5.1994. Arrears be paid by the respondent No. 2 to the petitioners within a period of eight weeks from today. In case, arrears are not paid in the aforesaid period, the petitioners thereafter will be entitled to interest @ 7 1/2 % per annum simple till actual payment. Parties are left to bear their own costs.