

(2011) 08 CAL CK 0182
In the Calcutta High Court

Case No : W.P.C.T. No. 161 of 2010 and W.P.C.T. No. 227 of 2009

Kesto Mukherjee

APPELLANT

Vs

Union of India
 Sukhen Tunga Vs Controller and
Auditor General of India

RESPONDENT

Date of Decision : 12-08-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2012) 3 CHN 32

Hon'ble Judges : Mrinal Kanti Chaudhuri, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Sagar Bandyopadhyay, Nitindra Mohan Mukherjee, A.D. Mukherjee, Sanjoy Ghosh in WPCT No. 161 of 2010, Siddhartha Chaudhury and Srikanta Dutta in WPCT No. 229 of 2009, for the Appellant; B. Debnath in WPCT No. 161 of 2010, Subrata Ghosh and Arati Ghosh in WPCT No. 227 of 2009, for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Banerjee, J.—Petitioners in both the matters claimed to have been engaged by the authority as casual workers. They approached the Tribunal for their regularization. Tribunal rejected their prayer. Hence, this application. The case of the petitioners before the Tribunal as well as before us was as follows:-

- i) They were engaged against regular vacancy in terms of Government Order dated 7th June, 1988 appearing at pages 126-127 of the petition.
- ii) They were similarly circumstanced with one Saktipada Das, Rekha Kundu and Bablu Bagni who were regularized and absorbed in regular post.
- iii) There was no specified mode of appointment in respect of Group-D employees. Once they continuously worked for years together they were entitled to absorption and/or regularization.
- iv) Following paragraph 53 of the Apex Court decision in the case of State of

Karnataka vs. Uma Devi reported in 2006 Volume IV Supreme Court Cases Page 1 their regular appointments could be regularized. Since, the petitioners were engaged in regular vacancy they were entitled to be absorbed in such vacant post.

2. In the case of Sukhen (O.A. 153 of 2003) vide judgment and order dated June 19,2009 the Tribunal considered the factual matrix and held that the applicants were engaged on no-work no-pay basis. On an average Sukhen worked 136 days in a year. Similar was the case of Kesto. As per the D.O.P.T. instruction they were neither entitled to the temporary status nor entitled to regularization. Their claim could not be considered in view of the Apex Court decision in the case of State of Karnataka (Supra). The Tribunal also held that there was no reason to hold it otherwise as was held earlier. Pertinent to note, in case of Sukhen, Tribunal earlier dismissed application vide judgment and order dated September 19, 2003. Sukhen approached this Court by filing Tribunal's application being WPCT 713 of 2004. This Court vide order dated April 29,2008 directed the order of the Tribunal to be kept in abeyance and remanded the matter back to the Tribunal for fresh CHN 2012(3) 1/3 hearing keeping in view the documents furnished by the applicants before the High Court. The Tribunal at the time of re-hearing considered the documents and came to the same conclusion.

3. The decision in the case of Sukhen was applied in the case of Kesto as Kesto was similarly circumstanced. The Tribunal vide judgment and order dated July 20,2009 in the case of Kesto Mukherjee (O.A. 161 of 2003) observed that identical prayer was considered by the Tribunal in O.A. No. 153 of 2003 (Sukhen Tunga) and the case of Kesto being common should also be dismissed.

4. Being aggrieved Kesto and Sukhen filed the above two applications which were heard by us on the above mentioned dates.

5. Mr. Sagar Bandhyopadhyay, learned counsel appearing for kesto urged the following issue:-

i) Kesto and Saktipada were similarly circumstanced. Saktipada was absorbed on a regular basis. Hence, there was no justification in denying the identical relief to Kesto.

ii) The initial engagement of Kesto and Saktipada were against regular vacancy permitted by Government Order Dated June 7,1988 appearing at pages 126-127 of the petition. They acquired temporary status by continuously working in the said post. When Saktipada got the benefit of regularization in terms of the order of the Tribunal in O.A. No. 187 of 2002 the Tribunal could not have held 2003 filed by Kesto.

iii) There being no specified mode for appointment in Group-D category. The authority was obliged to give them a temporary status and then absorb them in regular vacancy in view of the Government Order dated 7th June, 1988 referred to above.

iv) Even if the appointment given to Kesto was found to be irregular such appointment could be regularized considering the length of service, he rendered as a casual staff.

6. Mr. Siddhardha Chaudhury, learned counsel appearing for Sukhen adopted the argument made by Mr. Bandopadhyay. In addition, he referred to pages 44,50 and 54 of his petition. In page 44 proposal was mooted to appoint six casual labours, three against vacant post of Farash and three against vacant post of Safaiwala. Page 50 was the notification relied upon by Mr. Bondopadhyay referred to above whereas page 54 relates to another note where the authority asked for sanction of the Accountant General for engagement of four casual labours.

7. Opposing the application Mr. B. Debnath, learned advocate appearing for Union of India contended as follows:-

i) Both the petitioners were part time workers paid out of the contingency fund.

ii) They did not work beyond 163 days a year.

iii) Their appointment was illegal, as it was not done through a regular recruitment process. The authority was also not sure about their eligibility and qualification while engaging them as a part time casual labour.

iv) They were engaged on occasional and/or seasonal basis and were allowed to work 14 days a month that did not give any permanent status.

v) They were disengaged with effect from March 1, 2000. They were all considered in a regular recruitment process in 2002 where both of them became unsuccessful.

vi) After four years of their disengagement they filed writ petition without any explanation as to the delay.

vii) They were not engaged in any sanctioned vacant posts and as such did not have any vested right to claim regularization.

8. Mr. Debnath while elaborating his submissions, contended that both Rekha and Bablu participated in a regular recruitment process as would appear from paragraph 16 in the affidavit-in-opposition filed by the Union of India. With regard to Shaktipada, Mr. Debnath contended that the Tribunal passed an order directing appointment to be given to him. SLP from the said order was dismissed. Hence, the authority was compelled to give him appointment. Such compulsion could not give any right to the present petitioners to claim identical benefits.

9. While replying Mr. Bandopadhyay submitted that Kesto was not a casual labour. He was engaged as a temporary worker working in regular vacant posts and as such was entitled to the benefit of the Government Order referred to above. He categorically disputed the contention of Mr. Debnath that Rekha and Bablu were selected through a regular recruitment process. He also contended

that in 2002 regular recruitment process both Sakhtipada and Kesto were called for interview. Both of them became unsuccessful. Saktipada was however given the benefit of regularization in terms of the order of the Tribunal that was denied in case of Kesto.

10. Mr. Srikanta Dutta, learned counsel appearing for Sukhen while replying, referred to the Circular dated June 7, 1988 and contended that Sukhen continuously served the authority for three and half years. Hence, he was entitled to the benefit of regularization.

11. Mr. Bandhyopadhyay cited the following cases :-

- i) 2006 Volume-IV Supreme Court Cases Page-415 (State of Karnataka vs. Uma Devi)
- ii) 2008 Volume-I Calcutta Law Journal (Supreme Court) Page-109 (UP. State Electricity Board vs. Poonam Chandra Pandey)
- iii) 2008 Volume-X Supreme Court Cases Page-1 (Official Liquidator vs. Dayanand)
- iv) 2008 Volume-DC Supreme Court Cases Page-24 (Maharajkrishnan Bhatt vs. State of Jammu & Kashmir)
- v) 2010 Volume-1 Calcutta High Court Notes Page-242 (ICAR & Ors. vs. Taramoni II & Ors.)
- vi) 2010 Volume-IV Calcutta High Court Notes Page-438 (State of West Bengal vs. Husna Bano & Ors)

12. Mr. Debnath cited the following authorities:-

- i) 1998 Supreme Court Cases (L & S) Page 229 (Ramchander & Ors. vs. Additional District Magistrate and Ors.)
- ii) 2007 Volume-II Supreme Court Cases (L & S) Page-179 (Post Master General, Kolkata & Ors. vs. Tutu Das (Dutta)
- iii) 2007 Volume-I Supreme Court Cases Page-408 (Indian Drugs & Pharmaceuticals Ltd. Workmen, Indian Drugs & Pharmaceuticals Ltd.)

13. The decision in the case of Uma Devi (Supra) completely closed the floodgate of regularization. Paragraph 53 that was taken recourse to by the applicants, in our view, would not be applicable. Assuming Mr. Bandopadhyay was correct to say that Rekha and Bablu being similarly circumstanced were given the benefit of regularization, we are unhesitatingly of the opinion that such process did not have the legal support and we cannot ask the State to extend the identical benefit to Kesto and Sukhen which would be amounting to repetition of illegality. Lot was said on the Government order dated June 7, 1988. If we look at the same appearing at page 126, we would find that it was nothing but an attempt to engage casual workers on daily wages. It might be on a substantive post,

however, such attempt was made only to have a stopgap arrangement.

14. The matter may be viewed from another angle. If it is construed that such circular would give them an unfettered right to claim regularization, such circular would ultra virus the constitution as it would amount to violation of Articles 14 and 16 of the Constitution of India. This type of circular was deprecated by the Apex Court in the case of Uma Devi (Supra) as it would violate the basic mandate of the Constitution.

15. The Tribunal rightly rejected the prayer of the petitioners by observing that it would be contrary to the decision in the case of Uma Devi (Supra) as their engagement was made de hors the rules.

16. The Tribunal applications, thus, fail and are hereby dismissed.

17. There would be no order as to costs.

18. Urgent Photostat copy will be given to the parties, if applied for.

Dr. Mrinal Kanti Chaudhuri, J.

I agree.