
(2008) 08 CAL CK 0079
In the Calcutta High Court
Case No : W.P.C.T. No. 66 of 2007

Madan Mohan Patra and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-08-2008

Acts Referred:

Citation : (2008) 08 CAL CK 0079

Hon'ble Judges : Prasenjit Mandal, J; Kalyan Jyoti Sengupta, J

Bench : Division Bench

Advocate : Achintya Banerjee, for the Appellant; P.K. Mallick and Mr. Udayan Dutta for Respondents in WPCT 66 of 2007, Mr. Uttam Kumar Mazumdar for Respondents in WPCT 67 of 2007, for the Respondent

Judgement

K.J. Sengupta, J.—Both the applications have assailed the judgment and order dated 21st December, 2006 passed by the learned Central Administrative Tribunal, Calcutta Bench. There are 18 petitioners in case of the first application and 15 petitioners in case of the second one who approached the learned Tribunal with separate applications forming two groups. The fact of the case leading to filing of applications before the Tribunal and before us is briefly set out hereunder:

These applicants had been engaged since 1983 and onwards by the co-operative bodies as contract labourers and they worked at the Printing and Stationary Department at Fairly Place, Kolkata, of the Eastern Railway, the respondent, as khalasi on daily wages basis. Different contractors were engaged for supplying the labourers as above and all these petitioners were engaged by different contractors. According to those applicants they were entitled to be regularised in Group-D post though they have been working through contractor. In or about 1995 a group of workers likewise the petitioners viz. Subir Mukherjee and others approached the learned Tribunal praying for regularisation of service in Group-D post and the applications were disposed of on 27th February, 1997 with a direction upon the respondent to absorb the petitioners as regular Group-D

employees. The aforesaid matter was taken to the Hon"ble Supreme Court by the railway authorities and related SLP was dismissed by a judgment of the Hon"ble Supreme Court reported in Union of India and Others Vs. Subir Mukharji and Others, The judgment and order of the learned Tribunal passed in that matter was not interfered with. In paragraph 9 of the said judgment it is observed as follows:

".....Therefore, there was already a Society of which the respondents happened to be members and being the members M/s. Bandel Handling Porters" Cooperative Society Ltd., the contractor supplied them for doing the work of Eastern Railway. As indicated earlier there is no denial on the part of appellants 1 to 5 that the work which the respondents have been doing is of perennial nature. Even otherwise the directions issued by the CAT in its order dated 13.3.1997 have given enough discretion to the Eastern Railway to absorb them as regular Group D employees bearing in mind the quantum of work available on perennial basis and subject to their fitness."

2. In paragraph 10 it is observed by the Apex Court that this order was passed in peculiar facts and circumstances of this case, and question of law was kept open.

3. Present applicants, drawing inspiration from the aforesaid judgment and order, had filed application earlier in the Tribunal claiming that they were similarly circumstanced or placed like Sri Subir Mukherjee and others and they were asking for the same reliefs. The said application was disposed of earlier by the learned Administrative Tribunal dated 7th September, 2000 being O.A. No. 518 of 1997 by the following orders:

".....In view of the above, we direct the respondents to consider the representation of the applicants in the light of the aforesaid judgment of the Hon"ble Apex Court reported in AT 1998(3) SC 540 (Union of India v. Subir Mukherjee & Ors.) within three months from the date of communication of this order....."

4. Direction was given to the respondents to scrutinise the genuinity of the applicants in accordance with the rules.

5. Immediately after passing of the said order on or about 26th October, 2000 the petitioners were disengaged by the respondent rightly or wrongly on the plea that there was no work and no necessity of their engagement. Appropriate officials thereafter in terms of the said direction of the learned Tribunal considered the matter and passed a speaking order on 27th April, 2001. By the speaking order their claim was rejected observing that there is no necessity of the applicants as there has been no work. It was mentioned therein that, the policy has been taken to downsize the working force.

6. The aforesaid impugned order was challenged by filing two separate applications before the Tribunal on or about 2002 on which the impugned judgment and order was passed. Both the applications were contested by the

respondent. The learned Tribunal while going through the entire fact and also the speaking order held that the speaking order was passed rightly and lawfully and they could not be regularised de hors the Recruitment Rules and particularly when there is no continuity of the work for absorption by reason of the fact that they have been disengaged.

7. Mr. Achintya Kumar Banerjee, learned counsel, appearing for the applicants, submits that it is an admitted position that the applicants here were similarly placed and circumstanced as in the case of Subir Mukherjee and others who were successful in getting order from the learned Tribunal as affirmed by the Supreme Court in the matter of regularisation. They were also engaged through the contractors and as such they had also discharged their duties as khalasi in various departments of the Printing and Stationery likewise applicants. It is a gross discrimination meted out by the respondents by passing impugned speaking order and not absorbing the applicants though there is need of the work and as such they have advertised in the newspaper for recruitment of staff. According to him, the respondents and each of them should have treated the applicants equally with the said Subir Mukherjee & Ors. and in support of the submission he has relied on the decision of Shivdeo Singh and Others Vs. State of Punjab and Others, on the concept of equality.

8. He further submits that the disengagement of the applicants by the respondent authorities was absolutely mala fide and the same was done immediately after the first order of the Tribunal had been passed considering the applicants' case in the light of the judgment rendered in Subir Mukherjee's case. Therefore, the plea was taken by the respondents that they were disengaged and as such regularisation is not tenable under the law. The learned Tribunal, therefore, committed error in law while rejecting the applications and the aforesaid plea. He further submits that it is not the case of regularisation de hors the Recruitment Rules, rather based on the said earlier judgment of the Supreme Court on the question of equality.

9. Mr. P.K. Mallick learned counsel, appearing with Mr. Udayan Dutta and Mr. Uttam Kumar Mazumdar, learned counsels for the respondents in both the matters, submits that the applicants' case was examined by the appropriate authority in terms of the direction of the learned Tribunal and in the light of the decision of Subir Mukherjee's case. They drew our attention to paragraphs 9 and 10 of the said judgment and submit that the applicants cannot get relief of regularisation automatically. The Hon'ble Supreme Court judgment nowhere says the moment the applicant satisfies the similarity in status of Subir Mukherjee and others will get relief of absorption. The Supreme Court left the entire thing to decide by the railway authority having regard to the facts and circumstances of the case and also in accordance with law. They contend that Subrata Mukherjee's case was decided in 1995 and at that point of time there was necessity of working force in Group-D post and as such they were absorbed in 2000. The railway authority gradually took decision for downsizing the working

force in Group-D category. Therefore, the casual labourers engaged by the contractors were disengaged and the applicants are no more in the employment. The Hon''ble Supreme Court has clearly allowed them to examine the question of necessity and continuity of the job. Therefore, at the present moment, question of appointment in Group-D post either by absorption or otherwise does not and cannot arise as the same would be de hors the Recruitment Rules and they have also cited the decision of Uma Devi's case relied on by the learned Tribunal in the impugned judgment and order.

10. We have heard the learned counsels. Precise the issue in this case is whether the applicants are entitled to be absorbed on the facts narrated above in the light of the judgment of the Hon''ble Supreme Court in the aforesaid Subir Mukherjee's case. The contention of the learned counsel of the respondents is that at the present moment the applicants cannot be absorbed de hors the Recruitment Rules and this has been settled in Uma Devi's Case as relied on by the learned Tribunal in its judgment. But we find that the applicants' grievance in the case is whether they are to be treated similarly with Subir Mukherjee and others. In other words, whether the respondents failed to consider the applicants' case of absorption following judgment of the Hon''ble Supreme Court in Subir Mukherjee's case.

11. Paragraphs 9 and 10 of the aforesaid judgment are relevant for rendering decision in this case. When the judgment was rendered in Subir Mukherjee's case the Hon''ble Supreme Court found that there was no denial of the fact that there was necessity of the works and the job rendered by Subir Mukherjee and others were perennial in nature. So, on fact the said judgment of the Tribunal in Subir Mukherjee's case was affirmed. In paragraph 10 it is specifically made clear that the said judgment was not intended to be used as a precedent and it was passed in the peculiar facts and circumstances of the case and question of law was kept open. Even if the ratio of the said judgment was applied there emerge two things:

- 1) Whether the applicants are still in employment or not?
- 2) Whether works that had hitherto been performed, were perennial in nature or not?

12. Admittedly, in this case, applicants were disengaged immediately after earlier order of Tribunal had been passed rightly or wrongly. In the speaking order it is said that there was no necessity to keep the applicants who were engaged by contractors so their services were terminated as they were working through them. The applicants did not challenge the said decision of disengagement and till today they remain disengaged. It is contended by Mr. Achintya Banerjee, learned advocate for the petitioner, that such disengagement was mala fide, but it is difficult to accept this submission at this stage as no material worth could be produced to refute or disbelieve the contention of the respondent officials as recorded in the speaking order. Therefore, the first condition for regularisation is

not fulfilled. The second condition is that whether it is perennial in nature or not. The fact of disengagement shows that it is not perennial in nature. Accordingly, we hold that present applicants are not similarly circumstanced with Subir Mukherjee and others. The decisions cited by Mr. Banerjee on the question of discrimination are therefore not applicable. We do not find any reason to interfere with the judgment and order of the learned Tribunal.

13. However, we find that those applicants discharged their duty for a long time through contractor and a group of employees were absorbed in Group-D post in terms of the Supreme Court decision. We feel that these applicants should be considered in future sympathetically, should at any point of time any requirement is felt by the respondents for engagement on casual basis.

14. With the aforesaid observation this application is disposed of.

15. Learned counsel for the petitioner prays for stay of operation of the judgment and order. We feel it is an absurd prayer because the learned Tribunal had not granted any relief. Moreover, we do not find, the applicant is affected in any manner as they have already been disengaged. Hence, prayer for stay is refused.

Urgent xerox certified copy, if applied for, be supplied to the parties on priority basis.

Prasenjit Mandal, J.

16. I agree.