
(2008) 07 DEL CK 0160
In the Delhi High Court
Case No : Writ Petition (C) 305 of 1996

M.S. Patwal

APPELLANT

Vs

School of Planning and Arch. and Another

RESPONDENT

Date of Decision : 23-07-2008

Acts Referred:

Citation : (2008) 8 ILR Delhi 160

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : B.K. Pal, for the Appellant; R.K. Singh and Deepa Rai, for the Respondent

Judgement

Pradeep Nandrajog, J.—Heard learned Counsel for the parties. Short issue arises for consideration in both the writ petitions.

2. On 5.4.1987 petitioner, M.S. Patwal was appointed under the first respondent on daily wage basis as a peon.

3. Petitioner Ram Singh Bani was appointed under the first respondent on daily wage basis on 2.5.1986 as a cleaner.

4. A DOPT circular notifying a scheme called "Casual Labourers - Grant of Temporary Status and Regularization 1993" was floated. It came into force on 1.9.1993.

5. The scheme, inter alia, directed that employees working as casual employees relatable to Group-D posts would be entitled to the benefit under the scheme provided they had served for at least 240 days as of 1.9.1993.

6. The scheme, inter alia, required a temporary status to be granted to such employees with further right to be considered for regular selection.

7. Relevant part of the scheme reads as under:

Temporary status

(i) Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this O.M. and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days a week).

(ii) Such conferment of temporary status would be without reference to the creation/availability of regular Group "D" posts.

(iii) Conferment of temporary status on a casual labourer would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on need basis. He may be deployed anywhere within the recruitment unit/territorial circle on the basis of availability of work.

(iv) Such casual labourers who acquire temporary status will not however, be brought on to the permanent establishment unless they are selected through regular selection process for Group "D" posts.

8. It is not in dispute that the first respondent proceeded to confer benefit upon the petitioners under the scheme and accorded temporary status to both and in terms of the temporary status gave the benefits which had to be given to the petitioners under the scheme.

9. Subsequently, services of both the petitioners were taken on permanent basis i.e. as regular employees. Petitioner M.S. Patwal was taken on the rolls as a permanent employee on 12.6.1998. Petitioner Ram Singh Bani was likewise taken on the regular rolls as a permanent employee on 10.3.1997.

10. The 2 writ petitions which were filed in the year 1996 prayed to this Court that services of the petitioners be regularized with consequential benefits. The basis of the claim in the 2 writ petitions is the continued employment of the petitioners under the first respondent since the year 1986 and 1987 respectively and the Casual Labour Grant of Temporary Status and Regularization Scheme 1993.

11. As noted above, during the pendency of the 2 writ petitions the petitioners were granted benefit of temporary status as per the scheme followed by permanent employment.

12. Thus, the only issue which needs to be decided today is whether the petitioners would be entitled to the benefit of past service on being treated as regular employees.

13. I need not discuss much on the issue for the reason the scheme in question itself provides for the consequential benefits, in that, vide para 5 of the scheme it records that when temporary status is accorded to a casual employee and he is subsequently regularized, 50% of the service rendered under the temporary status would be accounted for the purposes of retirement benefits. Sub-para vi of para 5 records that after rendering 3 years continuous service after confirmation

of temporary status, the casual labourers would be treated at par with group-D employees for the purposes of contribution to the general provident fund and would be entitled to festival allowance etc. Paras 5 v and 5 vi of the scheme read as under:

5. Temporary status would entitle the casual labourers the following benefits:

(i)

(ii)

(iii)

(iv)

(v) 50% of the service rendered under Temporary Status would be counted for the purpose of retirement benefits after their regularization.

(vi) After rendering three years" continuous service after conferment of temporary status, the casual labourers would be treated on par with temporary Group D employees for the purpose of contribution to the General Provident Fund, and would also further be eligible for the grant of Festival Advance/Flood Advance on the same conditions as are applicable to temporary Group D employees, provided they furnish two sureties from permanent Govt. servants of their Department.

14. Thus, the petitioners would be entitled to consequential benefits as above on acquiring temporary status under the scheme in question.

15. Needless to state, on being permanently absorbed the benefit of the temporary service has to be continued for the reason the scheme in question states that 50% of service rendered under temporary service has to be reckoned for the purposes of retirement benefits.

16. The petitioners would thus not be entitled to benefits with effect from the date they joined service as casual labourers under the first respondent. Petitioners would certainly be entitled to the benefits which flow to them under the Casual Labourers Grant of Temporary Status and Regularization Scheme 1993.

17. Learned Counsel for the petitioner cites a decision of the Division Bench of the Punjab and Haryana High Court reported as 2003 (4) SLR 771 Maninder Kaur and Ors. v. State of Punjab.

18. I am afraid, said decision does not help the petitioner for the reason the decision has followed the principle of equal pay for equal work. The said decision is based on the fact that petitioners who had performed varying works for periods ranging from 7 years to 16 years were entitled to have their services regularized.

19. It be noted that prior to the year 2006 there was a divergence of judicial

opinion on claims of regularizations. Certain decisions had taken the view that the state was expected to be a modern employer and could not indulge in unfair labour practices by engaging, for long period of time, casual workmen when admittedly job requirement was perennial in nature. The other view taken in certain decisions was that creation of a post is in the domain of the executive and that no mandamus would be issued by any Court to create a post and regularize existing casual worker against the said post.

20. All these decisions were re-visited by the Constitutional Bench of the Supreme Court in the decision reported as Secretary, State of Karnataka and Others Vs. Umadevi and Others,

21. The final view which emerged was that the Courts cannot direct regularization in that cannot direct creation of posts and permanent absorption of daily wage employees.

22. All earlier decisions of the Hon''ble Supreme Court and various High Courts were considered by the Constitutional Bench.

23. I note that the Division Bench of the Punjab and Haryana High Court has relied upon various decisions of the Hon''ble Supreme Court which had taken the view that when people have rendered continuous employment on daily wage basis they would be entitled to regularization.

24. Thus, the Division Bench judgment of the Punjab and Haryana High Court relied upon by learned Counsel for the petitioner will not apply. The view taken therein stands overruled by the view taken by the Hon''ble Supreme Court in Umadevi's case (supra).

25. I therefore dispose of the petitions noting that during the pendency of the petitions the petitioners acquired status of temporary employees followed by the petitioners being regularized i.e. taken as permanent employees.

26. I note that the Temporary Status Scheme itself mandates that as and when permanent vacancy arose the process of selection has to be followed to fill up the vacant post. I note that the petitioners undertook the process of regular selection and on being selected were granted permanent employment. I thus declare that for the purposes of consequential benefits the respondent would give the benefit of the Temporary Status Regularization Scheme which I note grants certain consequential benefits to casual labourers granted temporary status followed by regular service.

27. No costs.