

(1991) 10 RAJ CK 0011

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3727 of 1991

Nagar Vikas Pradhikaran Kamgar Sangh

APPELLANT

Vs

Jaipur Development Authority

RESPONDENT

Date of Decision : 10-10-1991

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (1991) 2 RLW 537 : (1991) 2 WLN 63

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—A short question which arise for determination in his writ petition is as to whether the Jaipur Development Authority (for short "JDA") is entitled to withhold grant of semi permanent status to its employees who have rendered over two years satisfactory service in the work charge establishment.

2. The petitioner is registered trade union and is representing the work charge employees of the JDA. It has filed this writ petition on behalf of 24 of its members who are working as Beldars in the service of the respondent JDA since April, 1983 to September, 1988. The case of the petitioner is that employees named in Schedule-A appended to the writ petition are in continuous employment of JDA for three to eight years. They are all working as Beldars and are being paid wages at the rate of Rs. 22/- per day. No payment is made available for Sundays and holidays. Their service were terminated by the respondent JDA in 1985. 22 of them filed their claim under the Industrial Disputes Act and the other two approached the Rajasthan High Court. They all alleged that the termination has been brought about in violation of Section 25F of the Industrial Disputes Act, 1947, all these matters were taken up before the Lok Addalat and the parties entered into a compromise. On that basis orders were passed by the Court declaring the termination of the service of the petitioners as illegal and they were ordered to be reinstated with consequential

benefits. Thus all the petitioners are continuing in service without any interruption. The petitioner has asserted that in the past the respondent JDA had declared some Munshis and Beldars as semi permanent under Rule 3(3) of the Rajasthan Public Works Department (B & R) including Garden, Irrigation, Water Works and Ayurvedic Department Work Charge Employees Rule, 1964 (hereinafter referred as to "1964 Rules"). A copy of order dated 20-11-1987 passed by respondent JDA has been placed on record as Ex. 4. The petitioner has also asserted that by virtue of Clause 3 of standing order No. 15 dated 30-5-1983 of JDA, 1964 Rules have been made applicable to the work charged employees of JDA. The petitioner has claimed that the respondent JDA has no justification whatsoever of not granting the semi permanent status to the 24 employees named in Scheduled-A. The petitioner has claimed that the action of the JDA in denying status of semi permanent employees to all the persons who have completed two years service is patently arbitrary and discriminatory.

3. In its reply, the respondent has in the first instance, stated that in the absence of the certificate of registration the claim of the petitioner about its being a registered trade union cannot be accepted. It has then stated that joint writ petition cannot be filed on behalf of 24 persons. It has then stated the various persons employed in the service of the JDA and whose names have been given in the Schedule-A have not been appointed on the dates given by the petitioner. It has been stated, by the JDA in its reply that persons named in Schedule-A are engaged on daily wage basis and they are being paid minimum wages. It has admitted the facts relating to termination of service but it has stated that employees had entered into a separate agreements by way of compromise and there was no stipulation in these agreements that the employees will be declared as semi permanent. It was simply agreed that immediate action shall be taken to give semi permanent status to the employees. The respondent did its best and Executive Committee of the JDA in its 46th meeting held on 18-8-1990 constituted a committee of four persons to examine the question of availability of permanent post of work charged labour and also examine the man power requirements in the existing working load. The committee submitted its report/recommendations in its meeting held on 18-8-1990. The committee gave certain recommendation vide Annexure R-1/5. The committee recommended that no work charge (semi permanent) posts be created; The petitioner's union made demands and they have been considered in the meeting held between the office bearers of the petitioners union and the officers of the JDA on 14-8-1990 and 26-8-1991 and the matter is still under consideration. Without creation of the semi permanent posts such status cannot be conferred on the employees. Only after creation of the posts, the semi permanent status can be given to the employees. So far as order Annexure-4 is concerned, it has been stated that at that time posts were available and therefore, semi permanent status was given to the employees.

4. Shri R.C. Joshi, learned Counsel for the petitioner has argued that once the employees have completed two years service and their work is satisfactory, there

can be no justification for denying them the status of semi permanent employees. A legal right has come to vest in favour of the members of the petitioners union to be declared semi permanent. The very fact that the employees are working over last three to eight years shows that their performance is satisfactory. According to Shri Joshi, Rule 3(3) of 1964 Rules do not leave a discretion with the employer to withhold grant of semi permanent status to the employees who have completed two years satisfactory service.

5. Shri R.D. Rastogi, learned Counsel for the respondents, on the other hand urged that unless posts are sanctioned by the competent authority, the JDA is not in a position to give semi permanent status to the employees named in Schedule-A.

6. By standing order No. 15 dated 13-5-1983 the respondent JDA has adopted 1964 Rules, Clause-3 of the standing order No. 15 reads as under:

The work charged employees are governed by the work charge service Rules of the State Government. All the service matters relating to the work charge employees would be dealt with by Director (Engineering) as per the provisions of the said Rules. For this purpose, the staff dealing with work charge establishment would be transferred under the control of Director (Engineering) alongwith the relevant records. Director (Engineering) would be treated as the Appointing Authority for such employees. The disposal of this entire work would however, be disposal of subject to the general control and supervision of the personnel wing of the Authority.

7. Rule 3(3) of 1964 Rules also deserves to be quoted below:

Categorisation (1) Work charged employees (including the regular Technical Staff of Water Works Department) for the purpose of these rules, shall be divided into the following three categories:

- (i) Permanent status.
- (ii) Semi Permanent status, and (Hi) Casual.

Provided however, that nothing in these rules shall entitle any work charged employees categorised permanent or semi-permanent to claim the status or benefit of permanency or semi permanency to which a regular Government employee is entitled under the Rajasthan Service Rules.

(2) Employees, who have been in service for ten years or more, shall be eligible for the status of permanent work charged employees provided their record of service in the opinion of the competent authority, is satisfactory.

(3) Employees in continuous service for two years or more, except those covered by Sub-rule (1), shall be eligible for the status of semi permanent regular technical staff, provided their record of service, in the opinion of the competent authority, is satisfactory.

(4) No employee shall acquire the status specified in sub Rules (2) and (3) without the prior sanction of the Competent Authority, as may be notified by the Head of the Department from time to time.

8. A perusal of the standing order along with provision contained in Rule 3 clearly goes to show that once an employee has completed two years service he becomes eligible to be given the status of semi permanent employee. It is the obligation of the competent authority to take action for grant of status of semi permanency to such employee. Can it be said that merely because the competent authority has failed to take an action within a reasonable time, after completion of two years service by employee, for grant of semi permanent status to him, the employee concerned can be deprived of this right. If this interpretation advanced by the learned Counsel for the non-petitioner was to be accepted it will lead to anomalous results and will leave it to the absolute discretion of the employer to grant semi permanent status to an employee or not to grant such status to him. It will then be left to the unpredictable and uncertain discretion of the employer to take action. One Head of the Department may be prompt in taking decision while other may not be so prompt or may for any extraneous reason delay the passing of order. Every statute has to be interpreted in a manner so that anomalous results are avoided. This is one of the fundamental rules of interpretation of statutes. In my opinion on a proper interpretation of Rule 3 it has to be held once an employee complete two years satisfactory service he not only becomes eligible but acquires a right to be declared semi permanent and the employer is under an obligation to pass appropriate order for this purpose.

9. The provisions of Rule 3 has been interpreted in *Vinod Kumar v. State WLR 1991 Raj. 192* and *Om Prakash Meghwal and Ors., v. State of Rajasthan and Ors. WLR 1991 Raj. 299*. In *Vinod Kumar's* case a learned single Judge held as under:

Having gone through the rival submissions made in this regard, it appears from the scheme of the Rules that the categorisation of permanent and semi permanent or permanent status and semipermanent status and the casual workers has been made in the scheme of the Rules and it had been provided in the scheme of the Rules itself that those who have continuous service for two years or more and whose record of service in the opinion of the competent authority is satisfactory are to be conferred the semi permanent status, the employees who have been in service for 10 years or more are eligible for the status of permanent work charged employees provided their record of service in the opinion of the competent authority is satisfactory. Thus it is very clear in the scheme of the Rule itself that in the workcharge services all employees enter as a casual workers and once an employee completes two years period he is eligible for the status of semi permanent and on completion of 10 years service he is eligible for permanent status as workcharge employee. The only embargo provided under Sub-rules (2) and (3) is that the record of service in the opinion of the competent authority must be satisfactory, therefore, all those persons

appointed as work charged employees on completion of two years are entitled for semi permanent status subject to the only condition that their record of service in the opinion of the competent authority is satisfactory and similarly all those employees who have completed ten years of service are entitled for the permanent status in case their record of service in the opinion of the competent authority is satisfactory. The conferment of semi permanent and/or permanent status as a workcharge employee has, therefore, no concern whatsoever with the number of sanctioned posts because the posts are already sanctioned against which the persons are continuing. It is absolutely erroneous and wholly irrelevant consideration to say that merely because a person is working as a casual worker, in case semi permanent status/permanent status is to be conferred upon them there must be further sanction of that very post against which he is to be continued with semi permanent/permanent status.

10. In Om Prakash Meghwal's case Hon''ble Mr. A.K. Mathur, J. reviewed the various cases and then observed as under:

It is true that the Apex Court was conscious of the human agony of these daily rated/wages bread earners who have continued in service for considerably long time and they are still on the paltry sum with out any security of the job. The Hon''ble Supreme Court was also conscious of the financial constraints of the State Government therefore, they gave a phased direction. But after the issuance of this circular dated 1-11-1985 the State Government remained silent and no further orders in this regard have been issued redressing the agony of these daily rated employees. If the Government was conscious enough then perhaps it would have issued the order in line issued on 1-11-1985. I am also conscious of the financial constraints of the State Government, but at the same time I cannot ignore the impact of Chapter IV of the Constitution and the decision delivered by their Lordships of the Supreme Court referred to above. The provision of Rule 3(2) has already been interpreted by the Division Bench at the Jaipur Bench of this Court but this clarification which has been given below the rule was not brought to the notice of the Hon''ble Judge constituting the Division Bench. Even if it is clarification had been brought to the notice of Division Bench the interpretation would not have been different as the clarification which has been issued by the authorities in exercise of their administrative power would not override statutory Rules. According to the view taken by the Division Bench it is clear that the incumbents after having completing 10 years of service and their work being found satisfactory are entitled to be treated as permanent and like wise those incumbents who have completed two years of service with satisfactory record of service and entitled to be treated as semi permanent. It is true that under Sub-rule (4) of Rule 3 a positive order has to be passed by the competent authority and if the competent authority has been conscious enough and has realised the aspirations of these lowly paid employees then perhaps they would have issued the further circular in line with circular issued on 1-11-1985. But no such realisation has been down upon the Government and this anguish has been ventilated before this Court.

11. Therefore, in this view of the matter I hold that the incumbents who have completed 10 years service or more till this date may be declared permanent if their record is satisfactory and those incumbents who have completed two years service or more and their record is satisfactory, may also be given the semi permanent status and other incumbents, who have completed less than two years of service may be progressively regularised.

12. I am in full agreement that the views expressed by the two learned single Judges and I am clearly of the opinion that once an employee complete two years satisfactory service, he acquires right to be declared a semi permanent and the employer is an obligation to pass appropriate order for conferring this status on the work charge employee. Keeping a work charge employee on daily wage basis for indefinite period can by no stretch of imagination be justified. He cannot be deprived of various benefits under the work charge service Rules on account of failure of the employer to pass appropriate order. The respondent JDA in the present case has acted without any legal justification for denying semi permanent status to the 24 persons/employees, namely, in Schedule-A.

13. The writ petition is, therefore, allowed. The respondent JDA is directed to pass appropriate order within two months of the date of presentation the copy of this order for declaring the 24 employees as semi permanent and for giving them all consequential benefits. The JDA is also directed to grant similar relief to other work charged employees. The semi permanent status should be given to the employees along with consequential benefits from the date of completion two year's service. Parties are left to bear their own costs.