
(2007) 05 GAU CK 0005
In the Gauhati High Court
Case No : Civil Rule No. 184 of 1998

Narayan Sarkar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 22-05-2007

Acts Referred:

Citation : (2007) 4 GLR 72

Hon'ble Judges : U.B.Saha, J

Bench : Single Bench

Advocate : A.Nandi, D.Chakraborty, P.K.Biswas, Advocates appearing for Parties

Judgement

1. The present writ petition is filed by the petitioner for a direction to the respondents to departmentalize the services of the petitioner in view of the minutes dated 17.5.1985 adopted by the authority of the Food Corporation of India ("the FCF) and the representatives of the Shramik Union with effect from the date on which other 15 direct payment system labourers of the said Union were departmentalized and also for back wages with effect from the date on which other 15 direct payment system labourers were departmentalized including the arrear wages for the work done by him since 7.2.1995 under the respondents.

2. Heard Mr. D. Chakraborty, learned counsel appearing for the petitioner and Mr. A. Nandi, learned counsel for the respondents 2 to 4 as well as Mr. P.K. Biswas, Assistant Solicitor General of the Union of India for the respondent No. 1.

3. The pleaded case of the petitioner, in short, is that the petitioner initially joined as a gang labour in 1971 under the respondent No. 4 on contract basis and he was posted at A.D. Nagar Godown and thereafter he was engaged as gang labour under the direct payment system since 1985 on no work no pay basis and the petitioner served in the same capacity till last part of 1987 and thereafter he left the organisation, i.e., the office of the respondent No. 4 and joined in Home Guard Organisation of the Govt. of Tripura and worked there till

7.2.1995 and thereafter he again joined under the respondent No. 4 as gang labour and worked there upto July 1995 and he became entitled to get the wages for that period, but the same was denied to him. As the respondent No. 4 did not make any payment for the said period as well as denied to departmentalize his service, the petitioner approached this court by filing the present writ petition.

4. The respondents 2 to 4, resisted the prayer of the petitioner contending, inter alia, that the petitioner is not entitled to be departmentalized, as because he was absent from the organisation at the time when the other 15 direct payment system labourers were departmentalized and joined Home Guard organization from his own and thereafter in 1995 he again started to work with the help of Labour Sardar, namely, Sanjit Sarkar, without any prior sanction or permission of the respondent No. 4. In the counter affidavit filed by the respondents, it is contended that the other 15 persons were departmentalized in view of the award of the National Industrial Tribunal while the petitioner was absent from the organization of the FCI though his name was in the selection list for departmentalization along with 15 direct payment system labourers. The respondents also deny the other contentions made by the petitioner in the writ petition.

5. In support of the prayer of the petitioner in the writ petition, Mr. D. Chakraborty, learned advocate submits that the petitioner's name was included in the list for departmentalization along with other 15 persons, who were subsequently departmentalized under the departmental payment system and denial of the petitioner for departmentalization is nothing but a clear discrimination and violation of the article 14 of the Constitution. As confronted by this court, Mr. Chakraborty, also submits that the list for departmentalization was prepared on 17.5.1985, wherein petitioner's name found place at SI. 16, clearly proves that upto May 1985 the petitioner was very much in the organization of FCI and was working in the said organization under the respondent No. 4. Hence, the contention of the respondent that the petitioner left the organization on and from 1.1.1985 is totally false and fabricated one. As the petitioner was getting meagre amount as a direct payment labour from the respondents, he thought it fit to join in Home Guard Organisation for his better future. But when he was working in the Home Guard organization as a volunteer, he changed his mind and decided to join again as direct payment system labour under the respondent No. 4 and accordingly he was allowed by the Labour Sardar, namely, Sanjit Sarkar. Mr. Chakraborty, further, submits that the respondent FCI is bound to comply with the agreement made between the Management and the Trade Union Organisation, namely, CITU as mentioned in the minutes dated 17.5.1985 (Annexure 4 to the writ petition). He also submits that the list of the selected labourers for departmentalization is available in Annexure 5 to the writ petition. Hence, once a person is selected the authority is bound to departmentalize him as other similarly situated 15 persons were also departmentalized.

6. Per contra, the learned advocate for the respondents 2 to 4 Mr. A. Nandi

submits that mere inclusion of a person in a list prepared for departmentalization does not create any right in favour of the petitioner as no engagement/appointment letter is issued in favour of the petitioner for departmentalization. Though the respondents considered the case of the petitioner for departmentalization by way of inclusion of his name in the selection list, it is the petitioner, who himself remained absent from the organization and joined in the Home Guard organization for his better future. And, according to him after lapse of about 10 (ten) years from the date of selection, he started working again unauthorisedly for regaining his earlier position and also to be departmentalized in the organization, which is not permissible. He further urges that the petitioner also does not acquire any right to be departmentalized under the policy of the FCI at the time of the award passed by the National Industrial Tribunal, i.e., the award dated 1.4.1991, wherein, it is stated that the workers covered under the award of the National Industrial Tribunal shall be departmentalized w.e.f. 1.1.1994. A person can be departmentalised in an organization when he renders service to the said organization for a continuous period without any break. In the instant case, the petitioner himself left the organization and as such he is not entitled to be departmentalized and there is also no violation of the provisions of article 14 of the Constitution of India as alleged, as because at the time when the other 15 persons were departmentalized, he was no longer the worker of the Corporation. He further submits that after hearing the news of the departmentalization of the other 15 persons on the basis of the award of National Industrial Tribunal, the petitioner again tried to join in the organization with help of Labour Sardar to get the same benefit, which is not permissible as because he was no longer the worker under the Corporation at the time of passing of the award. He finally submits that as none of the petitioner's right is affected by the action of the respondents and while the petitioner is not clear about his claim, the writ petition requires to be dismissed.

7. This court has given an anxious consideration to the rival submissions of the learned counsel of the parties and the contentions made in the writ petition as well as of the counter affidavit, this court is of the considered opinion that writ court is not entitled to direct the respondent Corporation to departmentalize the petitioner as a matter of right contrary to the policy of the Corporation after about 10 years from the date of selection. This court is also of the considered opinion that mere inclusion of one's name in the select list of departmentalization of the gang labourers under the direct payment system does not give him a right to be departmentalized under the Corporation. It is also an admitted position that the petitioner left the Corporation for joining in the Home Guard Organisation from his own and ultimately joined there and worked till 26.11.1996, which will be evident from Annexure 6 to the writ petition. Though the petitioner claims that he again joined in the Corporation as a labour on direct payment system on and from 9.2.1995, which is contrary to the date mentioned in annexure 6 to the writ petition, it is not clear to this court how can a person, who has been released by the authority on 26.11.1996 from the Home Guard

Organisation, joined in the Corporation on and from 9,2.1995. When a person left the organization on his own sweet will, he cannot be permitted to join again in the organization against the will of the employer. In the instant case, it is evident from annexure 3 to the writ petition that the Labour Sardar, Sanjit Sarkar, was asked to show cause by the authority for allowing the petitioner to join again in the Corporation without prior permission of the authority. The said action of the authority shows that petitioner was allowed to work by the labour Sardar without the knowledge of the employerrespondents and it is also admitted position that the petitioner was not working as a labour under direct payment system under the Corporation at the time of the award passed by the National Industrial Tribunal, i.e., on 1.4.1991. Hence, the said award does not cover the case of the petitioner, whereas the other 15 persons were departmentalized in view of the award of the National Industrial Tribunal. Therefore, the action of the respondents, so far the nondepartmentalization of the petitioner, even after, departmentalization of the 15 other labourers under the direct payment system, is not discriminatory. Hence, question of violation of the provisions of article 14 of the Constitution does not arise at all.

8. The Identity Card annexed in the writ petition also does not show any particular date of entry of the petitioner into the said Corporation. There is no mention about the date in the Identity Card when it was issued by the concerned authority. As confronted by this court, both the learned counsel appearing for the parties submit that they are not in a position to inform the court on which date the other 15 persons were departmentalized. In this situation, it is difficult for this court to arrive at a definite conclusion regarding the date of departmentalization of others. However, from the records available, court is satisfied that no case is made out by the petitioner for issuance of writ as prayed for.

9. For the aforesaid facts and reasons given hereinabove, the writ petition is dismissed as devoid of merit. No order as to costs.