
(2013) 09 GAU CK 0010
In the Gauhati High Court
Case No : W.P. (C) No. 1961 of 2010

Padma Rani Mudai Hazarika

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 10-09-2013

Acts Referred:

Citation : (2014) 1 GLD 243

Hon'ble Judges : Iqbal Ahmed Ansari, J; Indira Shah, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Iqbal Ahmed Ansari, J.—With the help of this writ petition, made, under Article 226 of the Constitution of India, the petitioner has put to challenge the order, dated 18.12.2009, passed, in Original Application (in short, "OA") No. 239/2008, by the learned Central Administrative Tribunal (in short, "the Tribunal"), Guwahati Bench, dismissing the OA and refusing thereby to interfere with the order, dated 01.10.2008, whereby the respondents herein had refused to grant to the writ petitioner temporary status in terms of the "Casual labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993" (hereinafter referred to as the "1993 Scheme"). We have heard Mr. B.C. Das, learned senior counsel, appearing for the writ petitioner, and Ms. D. Sinha, learned Central Government Counsel, appearing for the respondents.

2. The material facts, giving rise to the present writ petition, may, in brief, be set out, as under:

(i) The petitioner herein was appointed, on 14.07.1993, in the office of the Archaeological Survey of India, Guwahati, as a casual worker and attached to the Library Section. By Office Memorandum, dated 10.09.1993, issued by the Department of Personnel and Training, Government of India, the Union Government published the 1993 Scheme embodying therein the conditions subject to which temporary status could be conferred on the casual workers.

(ii) Although Archaeological Survey of India, New Delhi, directed, on 10.03.1998, all concerned officials to take, in the light of the Office Memorandum, dated 10.09.1993, aforementioned, immediate action for granting of temporary status to casual workers, the petitioner herein was not granted temporary status, while many other casual employees of Archaeological Survey of India were granted temporary status in terms of the 1993 Scheme. Aggrieved by the fact that she had not been granted temporary status, in terms of the 1993 Scheme, the petitioner filed an Original Application (in short, "the "OA") No. 245/2002.

(iii) Having considered the 1993 Scheme, in the light of the decision of the Supreme Court, in Union of India (UOI) and Another Vs. Mohan Pal, etc. etc., , the learned Central Administrative Tribunal, Guwahati Bench, took, in its order, dated 12.08.2003, the view that if a person was functioning as a casual worker, on 10.09.1993, i.e., the date on which the 1993 Scheme had come into force, he would be entitled to conferment of temporary status as and when he happened to complete, in a given year, continuous service for a period of 240 days or 206 days, as the case may be, 206 days being relevant in the case of offices observing 5 working days a week. Having so observed, the learned Tribunal held to the effect that since the applicant (i.e., the writ petitioner) was a casual worker on 10.09.1993, she would be entitled to conferment of temporary status whenever she completed the minimum required period of engagement of 240 days or 206 days, as the case may be. With the conclusion, so reached, the learned Tribunal directed the respondents/authorities concerned to consider the present writ petitioner's case for conferment of temporary status.

(iv) Having examined and considered the case of the present petitioner, the respondents/authorities concerned were of the view that the applicant (i.e., the writ petitioner) was not entitled to conferment of temporary status, and, hence, the request of the applicant (i.e., the writ petitioner) for conferment of the temporary status was accordingly turned down by the respondents/authorities concerned by an order made, in this regard, on 27.01.2004.

(v) Aggrieved by the refusal to grant temporary status by the respondents/authorities concerned, the writ petitioner made a second application to the learned Tribunal, which came to be registered as Original Application (in short, "OA") No. 32/2004.

(vi) By its order, dated 29.03.2005, the learned Tribunal interfered with, and quashed, the order, dated 27.01.2004, as illegal, arbitrary and unjustified on the ground that the learned Tribunal's earlier order, dated 12.08.2003, passed, in Original Application (in short, "OA") No. 245/2002, having not been challenged, the same had attained finality and since the learned Tribunal, in its said earlier order, dated 12.08.2003, had clearly stated that it was not necessary for a person to fulfil both the conditions stipulated in the 1993 Scheme, it logically followed that it was enough if a person was in employment, as a casual labourer, on 10.09.93 and that such a person would be entitled to conferment of temporary status if he had completed, at any future point of time, continuous

engagement, in a given year, for a period of 240 days, or 206 days, as the case may be. The learned Tribunal, therefore, while disposing of the OA No. 32/2004, by its order, dated 29.03.2005, directed that the respondents shall pass an order conferring temporary status on the applicant (i.e. the writ petitioner) within a period of six weeks from the date of receipt of the order. The relevant part of the order, dated 29.03.2005, aforementioned, passed by the learned Tribunal, read as under:

4. I have considered the rival submission, I do not find any merit in the submission of Mr. A.K. Chudhury, learned Addl. C.G. S.C. for the reason that this issue is already concluded by the decision of this Tribunal in O.A. 245 of 2002 (vide Annexure-XI). It is an admitted position that the respondents have not challenged the said order of the Tribunal before the higher forums and thus the order has become final. This order clearly states that it is not necessary for the applicant to fulfil the later condition, namely, completion of 210 days or 206 days, as the case may be continuously as on the date of the scheme, i.e., on 10.09.1993 and that it is sufficient that the applicant is having continuous service for 240 days or 206 days, as the case may be even subsequent to the date of the scheme. In this view of the matter the impugned order dated 27.01.2004 is illegal, arbitrary and unjustified. The said order is accordingly quashed and the respondents are directed to verify as to whether the applicant had completed 240 days or 206 days in a five days week continuously even after the date of the scheme, respondents will immediately pass an order conferring "temporary status" to the applicant and the same will be communicated to her. This exercise will be done at any rate within a period of six weeks from the date of receipt of the order.

(vii) Though the respondents herein put to challenge the learned Tribunal's decision, dated 29.03.2005, passed, in the OA No. 32/2004, by filing a writ petition, under Article 226, which gave rise to W.P. (C) No. 4521/2005, this Court, on 01.11.2006, refused to interfere with the order, dated 29.03.2005, aforementioned, by observing that the said order did not call for any interference. The High Court's order, dated 01.11.2006, read as under:--

On close perusal of the impugned judgment and order dated 29.03.2005 passed by the Central Administrative Tribunal, Guwahati Bench in Original Application being O.A. No. 32/2004 by which the Tribunal relying upon the judgment and order dated 12.08.2003 passed earlier by the said Tribunal in O.A. No. 245/2002 that attained finality on not being challenged before the higher forum, directed the respondents/petitioners to verify as to whether the applicant/respondent had completed 240 days or 206 days in a five days a week continuously and if so, the respondents would immediately pass order conferring "temporary status" to the applicant/respondent in the light of the scheme underlined in the Office Memorandum dated 10th September, 1993 floated by the Ministry of Personnel, P.G. and Pensions, Department of Personnel and Training, Govt. of India and upon hearing the learned counsel for the parties, we do not find any compelling

or convincing reasons to disturb the impugned judgment.

(viii) However, by a speaking order, made, on 05.01.2007, the respondents/authorities concerned declined, once again, to confer temporary status on the present petitioner and this made the writ petitioner carry its 3rd round of litigation to the learned Tribunal by way of Original Application (in short, "OA") No. 14/2007. The learned Tribunal allowed the OA No. 14/2007 by its order, dated 08.07.2008, by pointing out that if a person was in employment on 10.09.1993, i.e., when the 1993 Scheme came into force, he would be entitled to conferment of temporary status, whenever he happened to complete, within one calendar year, the requisite service for a period of 240 days or 206 days, as the case may be. With the conclusion, so arrived at, the learned Tribunal directed the respondents/authorities concerned to undertake necessary exercise for determining the question whether the present petitioner had put in the requisite working days of 206 days in a year's time or not and, then, to pass appropriate order in accordance with law.

(ix) Since the respondents have, as in the past, declined to confer the temporary status on the petitioner, the petitioner made its 4th journey to the learned Tribunal by making Original Application (in short, "OA") No. 239/2008. By its order, dated 18.12.2009, the learned Tribunal has, now, taken the view that the decision of the Supreme Court, in the case of Mohan Pal (supra), had clearly laid down that in order to be entitled to conferment of temporary status, the person must not only be in employment, on 10.09.1993, but he must have also completed, on the day of coming into force of the 1993 Scheme, 240 days of work or 206 days, as the case may be. The learned Tribunal has, therefore, observed in its order, dated 18.12.2009, aforementioned, that in the light of the Supreme Court's decision, in Mohan Pal (supra), the learned Tribunal's earlier decisions, given in OA No. 245/2002, OA No. 32/2004 and OA No. 14/2007, decided on 12.08.2003, 29.03.2005 and 08.07.2008, respectively, were per incurium and ought to have been treated as void.

(x) On the basis of the conclusions, so reached, as indicated above, the learned Tribunal has, now, observed, in its order, dated 18.12.2009, that though the applicant (i.e., the writ petitioner) was a casual employee on 10.09.1993, when 1993 Scheme came into force, yet she, having not rendered, on 10.09.1993, service, within a period of one year, for a continuous period of 240 days or 206 days, as the case may be, she was not entitled to be conferred temporary status. With the reasons, so assigned, the learned Tribunal has dismissed the OA No. 239/2008. Aggrieved by the dismissal of her OA No. 239/2008, the petitioner is before us with the present writ petition made under Article 226 of the Constitution of India.

3. While considering the present writ petition, it needs to be noted that in order to confer temporary status, the Department of Personnel and Training, Government of India, formulated, by Office Memorandum, dated 10.09.1993, a scheme, namely, "Casual labourers (Grant of Temporary status and

Regularisation) Scheme of Government of India, 1993" (which is being referred to by us as the "1993 Scheme"). What is pertinent to note is that the 1993 Scheme came into effect from the date of issuance of the said Office Memorandum, i.e., 10.09.1993. Clause 4(1) of the Scheme read as under:

Temporary status.--(1) "Temporary" status would be conferred on all casual labourers who are in employment on the date of issue of this OM 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" week).

4. Clause 4(1) of the 1993 Scheme, which deals with granting of temporary status, fell for interpretation in the case of Mohan Paul and others (supra) and, having considered the Scheme, in question, the Supreme Court observed and held, at paragraph 6, as under:

6. Clause 4 of the Scheme is very clear that the conferment of "temporary" status is to be given to the casual labourers who were in employment as on the date of commencement of the Scheme. Some of the Central Administrative Tribunals took the view that this is an ongoing scheme and as and when casual labourers complete 240 days of work in a year or 206 days (in case of offices observing 5 days a week), they are entitled to get "temporary" status. We do not think that clause 4 of the Scheme envisages it as an ongoing scheme. In order to acquire "temporary" status, the casual labourer should have been in employment as on the date of commencement of the Scheme and he should have also rendered a continuous service of at least one year which means that he should have been engaged for a period of at least 240 days in a year or 206 days in case of offices observing 5 days a week. From clause 4 of the Scheme, it does not appear to be a general guideline to be applied for the purpose of giving "temporary" status to all the casual workers, as and when they complete one year's continuous service. Of course, it is up to the Union Government to formulate any scheme as and when it is found necessary that the casual labourers are to be given "temporary" status and later they are to be absorbed in Group "D" posts.

5. From a bare reading of the above observations made, and the conclusions reached, by the Supreme Court, in Mohan Pal (supra), it becomes clear that, in order to receive temporary status, a casual labourer is required to satisfy two conditions, namely, (i) that he was in the employment, as a casual labourer, on the date of the issuance of the Office Memorandum, i.e., 10.09.1993; and (ii) that he had also rendered, on 10.09.1993, continuous service of, at least, one year, which means that he must have been engaged for a period of, at least, 240 days or 206 days, where the office observes 5 working days in a week.

6. Unless, therefore, the two conditions aforementioned were satisfied, a casual labourer was not, in the light of the decision, in Mohan Pal (supra), entitled to conferment of temporary status. In other words, engagement of a person, as a

casual labourer, on 10.09.1993, and his having rendered continuous service of, at least, one year, which means that he must have been engaged for a period of, at least, 240 days or 206 days, in the case of offices, which observes 5 working days in a week, were sine qua non for conferment of temporary status.

7. Consequently, if a casual labourer was either not in employment on 10.09.1993 or had not, on 10.09.1993, rendered continuous service for, at least, one year, which meant that he had not been engaged for a period of, at least, 240 days, or 206 days (in the case of offices observing 5 working days a week), he would not be entitled to conferment of temporary status.

8. The learned Tribunal is, therefore, not wrong in taking the view that, in the light of the decision, in Mohan Pal's case (supra), which was rendered on 29.04.2002, the learned Tribunal's earlier decisions, rendered in OA Nos. 245/2002, 32/2004 and 14/2007, on 12.08.2003, 29.03.2005 and 08.07.2008, respectively, were void and ought to be considered as decisions rendered per incurium inasmuch as the Supreme Court's interpretation, in Mohan Pal's case (supra), of the conditions subject to which conferment of temporary status, on a casual labourer, under the 1993 Scheme, was permissible, must be treated as a declaration of law under Article 141 of the Constitution of India and has had been binding on all the Courts including the Central Administrative Tribunal.

9. With the reasonings, so reached, the learned Tribunal has, now, concluded that though the present writ petitioner was, as a casual labourer, in employment of the Archeological Survey of India, on 01.09.1993, she had not rendered continuous service, in the said Department, for one year and was, therefore, having not satisfied the twin conditions, subject to which conferment of temporary status was permissible, must be held to be not entitled to conferment of temporary status.

10. Having perused carefully the observations, which have been made by the learned Tribunal, in the present case, we do not find that its conclusions suffer from any infirmity, legal or factual. When the learned Tribunal has noticed that its earlier directions had not been in conformity with law, it was duty bound to give effect to the correct position of law and that is precisely what the learned Tribunal has done. We do not, therefore, find that the petitioner has been able to make out any case calling for interference by this Court, in exercise of this Court's extra-ordinary jurisdiction under Article 226 of the Constitution of India, with the impugned order, dated 18.12.2009, aforementioned.

11. The learned amicus curiae, Dr. Saraf, has submitted, we find with great justification, that when an order is made contrary to a decision of the Supreme Court, such an order would be non est, without jurisdiction and violative of Article 141 of the Constitution of India and an order of this nature? even if not set aside? would be void and have got to be completely ignored as if no such order was ever passed or existed. The reference, made, in this regard, by Dr. Saraf, to the case of Sri Krishna Singh Vs. Mathura Ahir and Others, , is not

wholly misplaced, wherein the Supreme Court observed and held as under:

18. It was contended by Mr. Asthana that Order XXI, Rule 29 was amended by Section 72 of Act 104 of 1976 which introduced the following words: "or of a decree which is being executed by such Court". The amendment is of no avail to Sri Krishna Singh because the words "such Court" appear in the amendment also. Furthermore, the execution in the instant case was first filed before the City Munsiff who alone had the jurisdiction to proceed under Order XXI, Rule 29. As the execution case was transferred to the Civil Judge, he ceased to have any jurisdiction in the matter. Thus, on this ground also the Order of the Civil Judge and as affirmed by the District Judge in revision is a nullity. Moreover, the judgment of the Civil Judge in view of the circumstances detailed above appears to us to be an order passed in defiance of and in disobedience to the clear directions given by us and the decree passed by us in CA No. 1802 of 1971 and therefore would be non est and absolutely without jurisdiction and violative of Article 141 of the Constitution of India.

19. It was submitted by Mr. Sorabjee that even if the Order of the Civil Judge, which was upheld in revision by the District Judge, was legally erroneous it had to be formally set aside by bringing the matter before this Court in special leave. Where an order is absolutely non est and non-existent, it need not be set aside but would have to be completely ignored as if no such order was ever passed or existed.

12. In the light of the decision, in Sri Krishna Singh (supra), we are, contrary to submissions made by Mr. B.C. Das, learned Senior counsel, appearing for the petitioner, unable to persuade ourselves to hold that until the time a decision--even if rendered in violation of the declaration of law made by the Supreme Court under Article 141 of the Constitution of India--is set aside, the decision would remain binding. Referring to the decision, in S.I. Rooplal and Another Vs. Lt. Governor Through Chief Secretary, Delhi and Others, , Mr. B.C. Das, learned senior counsel, has submitted that since the learned Tribunal had already held that the petitioner was covered by the 1993 Scheme even though such a conclusion was reached on a wrong understanding of the law, the learned Tribunal could not have overridden its earlier decisions by the presently impugned order.

13. Considering the fact that a void order is non est in law, the present one is not a case, where a Co-ordinate Bench can be said to have given a decision contrary to a decision of another Co-ordinate Bench inasmuch as both the decisions have been rendered by the same Tribunal in the same case. This apart, when the earlier order of the learned Tribunal is ex facie void, the same being in violation of, or contrary to, the Supreme Court's declaration of law, made under Article 141 of the Constitution of India, such a void order must be treated as non-existent and cannot, therefore, be said to be binding.

14. In the case of Sub-Inspector Rooplal (supra), which Mr. B.C. Das relies upon,

there was a decision of a Co-ordinate Bench and also a decision of the Supreme Court; but, overriding these decisions, the Tribunal took a decision, which was held by the Supreme Court to be setting a bad precedent.

15. In the case at hand, the earlier decisions of the Tribunal were ex facie void, non-existent and contrary to the law laid down by the Supreme Court in Mohan Paul's case (supra). This apart, as already indicated above, the decision has been rendered by the Tribunal, in the present case, in the fourth round of litigation between the same parties arising out of the same litigation.

16. For the reasons, which we have mentioned above, we do not find that the decision, rendered in Sub-Inspector Rooplal's case (supra), can be of any help to, or advance the case of, the petitioner.

17. Because of what have been discussed and pointed out above, this writ petition fails and the same shall accordingly stand dismissed. No order as to costs.