
(2019) 03 CAT CK 0155

In the Central Administrative Tribunal

Case No : Original Application No. 3061 Of 2013

Pradeep Kumar S/o Shri Krishan Dutta And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 19-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 136

Citation : (2019) 03 CAT CK 0155

Hon'ble Judges : V. Ajay Kumar, J;Aradhana Johri, J

Bench : Division Bench

Advocate : S.M. Garg, Amit Yadav

Final Decision : Allowed

Judgement

1. The applicants, 4 in number, earlier filed O.A. No. 256/1998 along with some others seeking a declaration that they are performing the work of a perennial nature, the respondents cannot resort to the contract labour system and that accordingly, the respondents should engage the applicants on a regular basis with all consequential benefits. The said OA was disposed of by an order dated 28.07.1998 (Annexure P-1) and the relevant paragraphs read as under:-

"3. I have heard the counsel for the parties. The question to be decided is whether the applicants are contractors who had been engaged by the respondents for job specific work which has since been completed or whether they were engaged essentially as casual workers on works which are of perennial nature. The learned counsel for the applicant seeks supports from the judgement of the Hon'ble Supreme Court in Union of India & Ors. Vs. Subir Mukharji and Ors. (JT 1998 (3) S. C. 540). In that case the applicants therein filled an OA No. 1045/95 before the Calcutta Bench of this Tribunal claiming that they had been working as labourers since 1988 continuously and uninterruptedly in the Railway Printing Press at Calcutta having been engaged through a Contractor. On this basis they claimed that they acquired temporary status and were entitled to be absorbed in Group 'D' posts. The Railways, on the other hand, denied this claim

on the ground that the applicants were employees of a Society and therefore the Railways were not liable either to absorb or to regularize them. The Tribunal in its order dated 14.3.1997 upheld the claim of the applicants and issued a direction to absorb such of the applicants who may be required to do the quantum of work which may be available on a perennial basis. The respondents Railways thereafter went in Special Leave Petition, before the Supreme Court and the Hon'ble Supreme Court distinguished its earlier decision in Civil Appeal No. 1350 of 1986 Biswanath Saha and others vs. Union of India and observed as follows:

"There is a distinguishing feature in the case before us. In the present case admittedly the respondents who were labourers of M/s. Bandel Handling Porters Cooperative Society Ltd., were given the work under agreement No. S/489/B1/CONTRACT/HANDLING/NH/94 dated 22.11.1994. Therefore, there was already a society of which the respondents happened to be members and being the members and 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 the appellant Nos. 1 to 5 that the work which respondents have been doing is of perennial nature. Even otherwise the directions issued by the CAT in its order dated 13.3.1997 have been given enough discretion to the Eastern Railways to absorb them as regular Group D employees bearing in mind the quantum of work available on perennial basis and subject to their fitness. In our opinion the directions contained in order dated 13.3.1997 passed by the CAT are quite fair in the facts and circumstances of the case and it is for this reason we are not inclined to interfere with the impugned order in exercise of our jurisdiction under Article 136 of the Constitution."

4. I find that the applicants before me are in a more or less similar position. The respondents themselves had admitted that they had engaged the applicants as contractors for 4-5 years. They have not come through a Society but have been engaged as a contractor individually for doing a specific job. That specific job has entailed continuous engagement for 4-5 years. There is no claim on the part of the respondents that they had undertaken that the applicants will be paid such and such amount on completion of the specific contract; on the contrary it would appear that the payments have been made to the applicants on a daily rate basis. Therefore, whatever may have been the nomenclature, the status of the applicants is that of casual labourer on daily rate basis. In that capacity they are entitled to be considered for re-engagement for grant of temporary status and regularisation in accordance with the DOP&T Scheme applicable to the CPWD.

5. In the light of the above discussion, I dispose of the OA with the direction that the respondents will reconsider the applicants for re-engagement, if work is available giving them preference on the basis of the service already rendered by them over their juniors and outsiders. After such re-engagement they will reconsider the case of the applicant for grant of temporary status and regularisation in accordance with the Scheme applicable to the casual workers in the CPWD.

There will be no order as to costs".

2. The Writ Petition (C) No.294/1999 filed against the aforesaid order was dismissed on 09.07.2004 (Annexure P-2) by the Hon'ble High Court of Delhi as under:-

"CM No.8095/03

This is an application for recalling the order dismissing the writ petition on 1.4.2003. Counsel for the respondent has not filed any reply to the application. For the reasons stated in the application, we allow the application and restore the petition to its original number. The application stands disposed of.

W.P. (C) No.294/99

The writ petition in our considered opinion is totally misconceived as the learned Central Administrative Tribunal has disposed of the OA with the direction to the petitioner to consider the respondents to re-engagement, if work is available giving them preference on the basis of the service already rendered by them over their junior and outsiders.

Dismissed".

3. When the respondents have not complied with the aforesaid orders, the applicants filed C.P. No.494/2004 in O.A. No.256/1998 and during the pendency of the said C.P., the respondents vide Office Order dated 21.06.2005 passed the following orders:-

"The Hon'ble CAT, PB, New Delhi vide its order dated 18.05.2005 in above case has directed the respondents as under:

"...the respondents ought to have re-engaged the applicants and considered them for according temporary status and thereafter considered for regularisation."

In compliance of the Hon'ble CAT, PB New Delhi judgement dated 18.05.2005 in CP No. 494/2004, case of the petitioner was considered in terms and conditions as laid down in recruitment rules. The services of the petitioners in above CP would be considered for regularisation as and when their turn mature and requisite vacancy occurs, provided they fulfil all the requirements of recruitments rules. However, no timeframe in this regard can be anticipated at this stage as there are other candidates who were engaged prior to the applicant who are on the waiting list.

S. No.

Name (S/Shri)

Father Name (S/Shri)

Designation

Date of engagement

Sl. No. in seniority list

1.

Pradeep Kumar

Kishan Dutt

Wireman

27/02/1993

25

2.

Sunil Kumar

Ishwar Chandra

Wireman

24/12/1992

24

3.

Laxman Prasad

Raghuvir Singh

Khallasi

07/10/1992

28a

4.

Ramesh Chandra

Jai Narayan

Khallasi

07/12/1992

28b

5.

Rajendra Kumar

Jai Prakash

Pump Operator

19/10/1992

17

4. Thereafter, the C.P. No.494/2004 in O.A. No. 256/1998 was disposed of by an order dated 17.08.2005 of this Tribunal (Annexure P-5) as under:-

"5. Respondent No. 2 Shri Vijinder Kumar, Executive Engineer (Electrical), Yamuna Bridge Project was directed to explain why Tribunal's directions had not been complied with. The records relating to engagement of casual labour and availability of work since July 2004 were also requisitioned.

6. Through their additional affidavit dated 28.6.2005, respondents have stated that they have included the name of one of the applicants of OA namely Shri Bijay Narain Mishra in the list of daily rated employees (Motor Lorry Driver) being maintained separately at Sl. No. 89 vide office order of Superintending Engineer (E) Corrd. Circle (Elect), CPWD issued vide letter dated 14.12.2004 (Annexure R-1). It is further stated that respondents have included the names of the remaining 5 applicants in the seniority list maintained by CPWD vide office order dated 21.6.2005 (Annexure R 2 to 6). These applicants have been re-engaged on the work orders as causal workers and their names have been included in the seniority list of daily rated workers. Learned counsel of respondents stated that these applicants shall be granted temporary status and regularisation in accordance with the Scheme applicable to the causal workers in the CPWD as per their respective seniority and shall be continued to be engaged as such.

8. In view of the engagement of the applicants as causal workers and inclusion of their names in the seniority list of daily rated workers and also the assurance that they shall be continued as such and accorded temporary status and regularisation in accordance with their respective seniority and the Scheme applicable to the casual workers in the CPWD, the present CP is dropped and notices to the respondents are discharged".

5. However, when the respondents vide Annexure P-9 proceedings dated 11.03.2011 while considering the cases for regularisation of Muster Roll/Hand Receipt casual labourers, as a one time measure, in pursuance of para 44 of the judgment dated 10.04.2006 in the matter of State of Karnataka Vs. Uma Devi and Others, 2006 (4) SCC 1 of the Hon'ble Apex Court and the DOP&T OM dated 11.12.2006, not included the names of the applicants in the list of candidates for consideration, the applicants filed OA No.3753/2011 seeking the following reliefs:-

"(a) call for the records of the case;

(b) pass an order declaring the action of the respondents in not including the names of the applicants in the list circulated with communication dated 11.03.2011 is bad in law;

(c) pass an order directing respondents to consider the applicants for

regularization as a onetime measure as per their seniority in the seniority list dated 13.07.2006 and assurance given to this Hon'ble Court in C.P.No.494/2004, like the persons whose names have been included in the list circulated with communication dated 11.03.2011;

(d) pass such other order(s) which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case".

6. The said OA was disposed of by this Tribunal on 19.10.2011 (Annexure P-10) as under:-

"2. The grievance of the applicants in this OA is that their cases for regularization have not been considered by the respondents in the light of the decision of the Apex Court in Secretary, State of Karnataka & others v. Umadevi & others, (2006) 4 SCC 1 and also the decision taken by them in the light of the communication dated 11.3.2011 (Annexure-A).

3. We have given due consideration to the submissions made by the learned counsel for applicants and without going into the merits of the matter, we are of the view that the present OA can be disposed of admission stage with a direction to the respondents to consider the case of the applicants in the light of the communication dated 11.3.2011 and pass an appropriate speaking and reasoned order.

4. Accordingly, the present OA is disposed of at the admission stage with a direction to respondent No.3 - Superintending Engineer (Coordination), CPWD, New Delhi to decide the claim of the applicants in the light of communication dated 11.3.2011 (Annexure-A) within a period of three months from the date of receipt of a copy of this order by passing speaking and reasoned order. In case the applicants are still aggrieved by the order to be passed by respondent No.3, it will be open for them to file substantive OA for the same cause of action".

7. In compliance of the aforesaid orders, the respondents passed the Annexure A-1 impugned order dated 18.01.2012 whereunder they have rejected the claim of the applicants mainly on the ground "that the applicants are not engaged on Muster Roll/Hand Receipt, i.e. they are not directly paid by the Department or on the direct rolls of the department. Hence, there is no employer-employee relationship exists between the Department and the applicants". Aggrieved with the said order, the applicants filed the instant OA.

8. Heard Shri S.M. Garg, the learned counsel for the applicants and Shri Amit Yadav, the learned counsel for the respondents and perused the pleadings on record.

9. Shri S.M. Garg, the learned counsel appearing for the applicants while drawing our attention to the various orders passed in respect of the applicants and which were extensively narrated as above, submits that this Tribunal has already given a finding that the status of the applicants is that of "casual labourer on daily rate basis" and now the respondents cannot deny their claim for regularisation, on the

very same ground which was already contested by them and lost and the said orders have already attained finality. Though Shri Amit Yadav, the learned counsel for the respondents tried to persuade us that no such finding was given by this Tribunal or by the Hon'ble High Court in the earlier litigation between the applicants and the respondents, but we are not impressed with the same in view of the specific findings given by this Tribunal in the earlier litigation between the parties. Hence, we fully agree with the submission of the applicants that the action of the respondents in rejecting their claim on the ground that they were not casual employees and that there was no employer and employee relationship between them is unsustainable and untenable.

10. However, it is seen that the respondents while passing the impugned order have not considered the claims of the applicants in terms of the judgment of the Hon'ble Apex Court in Uma Devi (supra), as they have rejected the claim of the applicants on the sole ground of no relationship of employer-employee between them.

11. In the circumstances and for the reasons mentioned above, the OA is allowed. The impugned order Annexure-A dated 18.01.2012 is set aside and the respondents are directed to reconsider the cases of the applicants along with other Casual/Muster Roll/Hand Receipt employees, in terms of the judgment of the Hon'ble Apex Court in Uma Devi (supra) and also in terms of Annexure P-9 letter dated 11.03.2011 and to pass fresh speaking and reasoned orders within 90 days from the date of receipt of a copy of this order. No costs.