
(2005) 08 DEL CK 0019

In the Delhi High Court

Case No : Writ Petition (Civil) No. 8129 of 2002 and CM No. 8405 of 2003

Prem Singh Rawat and Another

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 30-08-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2

Citation : (2005) 124 DLT 171 : (2005) 84 DRJ 568

Hon'ble Judges : Sanjiv Khanna, J;Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : Raman Oberoi, for the Appellant; Jyoti Singh, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, J.

1.The Original Application filed by the petitioners before the learned Central Administrative Tribunal as against the order dated 19th December, 1992 disposing of the representation of one of the petitioners and also the order dated 22nd June, 1992 directing regular appointment of the petitioners in the posts of Lower Division Assistant effective only from 9th April, 1992, was dismissed. The said order of the learned Tribunal is under challenge in this writ petition.

2.The petitioners herein were initially appointed in the Ministry of Urban Development in Group "D" category post. However, since there were vacancies in the post of LDC, the petitioners herein were promoted on ad hoc basis to the said post of LDC in the year 1981-82 in which post they continued in the same capacity for about seven years. As the petitioners continued to remain in those posts on ad hoc capacity, they filed OA No.668/1988, 914/1988, 985/1988 and 1010/1988. The said Original Applications were heard together and they were disposed of by a common judgment and order in the following manner:

"16. Keeping the above trend of the judicial decisions of the apex court, the applications are disposed of with the following orders and directions:-

(1) The respondents are directed to take immediate steps to regularize the services of the applicants as LDCs in consultation with the Staff Selection Commission. While doing so, they shall, if necessary, relax the upper age limit for appointment as LDCs. Their regularization should be on the basis of the evaluation of their work and conduct based on the annual confidential reports, as was directed by the Supreme Court in Dr. A.K. Jain's case.

(2) Till the applicants are so regularized, they shall not be reverted from the post of LDCs to their substantive posts in Group "D" category.

(3) The applicants would be entitled to the protection of pay and allowances, including increments in the post of LDC and other benefits admissible to a regular employee.

(4) The respondents shall comply with the above directions within a period of three months from the date of receipt of this order."

3. An office order was issued on 22nd June, 1992 by the respondents whereby ad hoc Lower Division Clerks including the petitioners were appointed on regular basis to the said posts of LDCs in the cadre of Central Secretariat Clerical Service Cadre and the said regularisation was given effect from 9th April, 1992. The petitioners were aggrieved by their regularisation against the post of LDCs only with effect from 9th April, 1992 and not with effect from 29th April, 1981, which is the initial date of their appointment on ad hoc basis to the aforesaid post of LDCs. They submitted a representation which was considered and the respondents rejected the same turning down their request for regularisation with effect from the date of their ad hoc officiation i.e. 29th April, 1981. The petitioners filed Original Application which was registered as OA No.2699/1993 before the learned Central Administrative Tribunal challenging the order of their regularisation from a prospective date and not giving retrospective effect thereto. On 20th July, 1999 the aforesaid Original Application was dismissed by the learned Central Administrative Tribunal rejecting the claim of the petitioners.

4. Thereafter the petitioners filed a fresh Original Application No.1524/2002 which was filed on 4th June, 2002 before the learned Central Administrative Tribunal with similar prayer contending, inter alia, that since the Delhi High Court has pronounced a judgment in favor of the similarly situated persons like the petitioners, Therefore, a new cause of action has arisen in their case also. Reference was made by the petitioners before the learned Central Administrative Tribunal to the judgment of this court in CWP No.2469/1997 in the case of Ramji Lal and Ors. v. N.I.H.F.W. and Ors. . The petitioners also contended before the learned Tribunal that they are entitled to the benefit of the judgment of the Supreme Court in the case of The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others, .

5. The said contentions were taken notice of by the learned Tribunal and then after it was held that bar of res judicata would clearly apply to the facts of the case as the earlier petition filed by the petitioners and registered as OA

No.2699/1993 was dismissed. It was also held that principles of res judicata will have definite precedence over the judgment rendered by the Division Bench of this court in CWP No.2469/1997.

6. Ms. Raman Oberoi, appearing for the petitioners, vehemently submitted that since the petitioners were promoted earlier as LDCs as against the permanent posts although on ad hoc capacity and since they have been regularised subsequently in their service in the post of LDCs by order dated 9th April, 1992 without there being a single day break in service, they are entitled to the benefit of their past ad hoc service rendered in the capacity of ad hoc LDCs. It was also submitted that principles of res judicata would not apply to the facts of the said case as a fresh cause of action for the petitioners had arisen after the aforesaid judgment, which was delivered by the Division Bench of the Delhi High Court. It was sought to be contended that the issues raised in this petition are not finally decided in the earlier petition since scope and ambit of Rule 12 of the Rules was not considered by the learned Tribunal. Reliance was also sought to be placed on the notification issued by the Department of Personnel and Administrative Reforms on 13th February, 1979 wherein the decision of the Government was communicated to the effect that wherever vacancies in the grade of LDC of the CSCS arise, they are to be filled up on ad hoc basis provided they are not long term and that also after getting them temporarily excluded from the service with the concurrence of the Department of Personnel and Administrative Reforms.

7. The aforesaid contentions of the petitioners were refuted by the counsel for the respondents by contending that the aforesaid contentions were not applicable at all as not only the petition filed by the petitioners before the learned Central Administrative Tribunal is barred by principles of res judicata but, it was also pointed out that even the provisions of Order II Rule 2 CPC, which is made applicable to a writ proceeding also is applicable to the facts and circumstances of this case. It was also submitted that on merits, the petitioners have no case as the initial appointments of the petitioners on ad hoc basis to the post of LDCs were de hors the rules and, Therefore, even though they have been regularised subsequently under the orders of Delhi High Court, there was no order at that stage that the petitioners would be entitled to their seniority and other benefits rendered as ad hoc employees even in that judgment also. The said judgment of this court only directed the petitioners to be considered immediately for regularisation of their services in terms of the recruitment rules and, Therefore, they will be entitled to the benefit of seniority and other such like benefits only from the date of their regularisation.

8. In the light of the aforesaid submissions of the counsel for the parties, we have not only looked into the pleadings filed before the learned Central Administrative Tribunal but also to the other records, which were placed before us and in the light of the said records, we propose to deal with the contentions raised before us.

9. Even otherwise, the decision of the learned Tribunal that the Original

Application filed before it is barred by the principles of res judicata appears to us to be reasonable, for we are of the considered opinion that the same issues which are involved in the present case were raised by the petitioners in the earlier petition, which was dismissed on merit. The principle reliefs, which were sought for by the petitioners at that stage before the learned Tribunal in OA No.2699/1993 are materially the same in the Original Application filed from which the present writ petition arises. Even if certain issues were not raised by the petitioners at that stage or the same were not decided, the said issues would be barred under the provisions of Order II Rule 2 CPC, which is held to be applicable even to a writ proceeding in the decision of the Supreme Court in Executive Engineer ZP Engg. Divn. and Another Vs. Digambara Rao etc. etc., .

10. On the aforesaid grounds, the Original Application filed by the petitioner as against which the present writ petition arises was not maintainable in law and, Therefore, the same was rightly rejected by the learned Tribunal.

11. The petitioners were promoted to the post of LDCs as there was number of vacancies at that stage by order dated 29th April, 1981 and some others in 1982. It is, however, an admitted position that the aforesaid promotion to the post of LDC is guided by the relevant rules, which extensively lays down the procedure for such promotion to the post of LDCs. While making the aforesaid promotion on ad hoc basis by excluding said posts from the Central Secretariat Clerical Service, in terms of the aforesaid circular dated 13th February, 1979, Staff Selection Commission (for short "SSC") was not involved. The procedure for making regular appointment to the post of LDC is to be made through the Staff Selection Commission and the candidates intending to be so appointed have to go through the process of selection laid down for the purpose. In the instant case, the said procedure was not followed while giving promotion to the petitioners to the post of LDC on ad hoc basis against the posts excluded from Central Secretariat Clerical Service. Subsequently, Staff Selection Commission held regular selections in accordance with the provisions of the rules and nomination was made by the Staff Selection Commission of the candidates selected by them and at that stage when the petitioners were being reverted, they filed these Original Applications before the learned Central Administrative Tribunal being OA Nos. 668/1988, 914/1988, 985/1988 and 1010/1988.

12. The reliefs which were sought for in those petitions were partially accepted and in compliance of the judgment so rendered the petitioners were appointed on regular basis to the post of LDC in the Central Secretariat Clerical Service cadre of the Ministry by order dated 22nd June, 1992 but by giving the effect of their appointment from 9th April, 1992 i.e. the date on which meeting of the Staff Selection Commission was held. The petitioners not being satisfied with the same filed the subsequent Original Application being OA No.2699/1993 challenging the order of the prospective regularisation as well as rejection of their representation by the respondents. The said petition was dismissed as stated herein before. It is thus established from the records that the initial

appointment of the petitioners to the post of LDCs was de hors the rules and they were appointed to such post of LDC which were temporarily excluded from the Central Secretariat Clerical Service in terms of the office memorandum dated 13th February, 1979. When they were to be appointed on regular basis to the post belonging to the cadre of the service, they were to go through the process of selection as modified by the judgment, which they had undergone and, Therefore, the petitioners are not entitled to the benefit of the decision of the Supreme Court in Direct Recruit Class II Engineering Officers" Associations and Ors. v. State of Maharashtra and Ors. (supra). There are number of decisions of the Supreme Court laying down the aforesaid law, which we respectfully follow while arriving at the aforesaid conclusions which are State of Gujarat Vs. C.G. Raiyani, ; Dr. Anuradha Bodi and Ors. etc. etc. v. Municipal Corporation of Delhi and Ors. [1998 (4) SLR 359]; R.K. Trivedi and Others Vs. Union of India (UOI) and Others, ; Syed Khalid Rizvi and Others and Ramesh Prasad Singh and Others Vs. Union of India (UOI) and Others, ; D.N. Agrawal and another Vs. State of Madhya Pradesh and others, ; State of W.B. and Others Vs. Aghore Nath Dey and Others, ; Chief of Naval Staff and another Vs. G. Gopalakrishna Pillai and others, ; Direct Recruit Class II Engineering Officers" Association v. State of Maharashtra and Ors. (1990) 13 ATC 348; State of Himachal Pradesh Vs. Suresh Kumar Verma and another, ; Committee of Management, Vasanta College for Women v. Tribhuwan Nath Tripathi and Ors. 1997 SCC (L&S) 678 and Rajbir Singh and Ors. v. Union of India and Ors. (1992) 19 A C 315

13. In paragraph 12 of the judgment of Anuradha Bodi (supra), the Supreme Court has held that appointment of the petitioners therein was not made in accordance with the recruitment rules and that they were ad hoc and made as a stop gap arrangement. It was also held that since they are bound to pass the UPSC examination in normal course in the direct competition, Therefore, they cannot be ordered to be regularised from the date of their ad hoc appointment. It was held that period of continues officiation thereto to the date of inclusion of the candidate in the select list would be treated as fortuitous and not countable.

14. The decisions which are relied on by the counsel for the petitioners in Rajbir Singh & Others v. Union of India and Ors. reported in (1992) 19 A T C 315 and Santosh Kumar and Others Vs. G.R. Chawla and Others, have also been carefully scrutinised by us. However, we are of the considered opinion that the said decisions would not be applicable to the facts of the present case.

15. Consequently, we find no merit in this writ petition and the same is dismissed.