

(1998) 08 GAU CK 0038
In the Gauhati High Court
Case No : Civil Rule No. 5 (SH) of 1997

Raby Roy

APPELLANT

Vs

Commissioner Custom and Central Excise and Another

RESPONDENT

Date of Decision : 25-08-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1999) 2 GLT 484

Hon'ble Judges : N. Surjamani Singh, J

Bench : Single Bench

Advocate : G. Bhattacharjee, for the Appellant; H. Ahmed, for the Respondent

Judgement

N. Surjamani Singh, J.—Heard Mr G. Bhattacharjee, learned Counsel for the Petitioner and also Mr H. Ahmed, learned Counsel for the Respondents.

2. In this writ petition, a prayer has been made by the writ Petitioner for quashing the impugned termination order dated 12.8.97 as in Annexure IV to the writ petition coupled with a prayer for a direction to the Respondents to regularise the services of the writ Petitioner by contending inter-alia that, he was initially appointed as "Farash" casual worker in the office of the Custom and Central Excise, Shillong, since November, 1991, on daily wage basis though the salary was debitabe monthly and he had been serving continuously and uninterruptedly without any break of service to the satisfaction of the concerned authority till the impugned termination order was issued.

3. According to Mr Bhattachaijee, learned Counsel appearing for the Petitioner, the Govt. of India Ministry of Personnel, Public Grievances and Pensions, Dept. of Personnel and Training, New Delhi, vide their office memorandum dated 7.6.88 reviewed the policy pf recruitment of casual worker and persons on daily wage basis consequent upon a related judgment of the Supreme Court of India and, as per related office memorandum, all eligible casual workers are adjusted against regular posts to the extent such posts are justified and the rest of the casual

workers not covered by the first category of workers and whose retention is concerned absolutely necessary and is in accordance with the guidelines are paid emoluments strictly, and these conditions were subsequently reviewed under a related office memorandum dated 10.9.93 thus formulating fresh guidelines regarding the grant of temporary status and regularisation of casual worker consequent upon the decision of the Central Administrative Tribunal Principal Bench, New Delhi, as reflected and seen in the document marked Annexure II to the writ petition.

4. It is also argued by Mr Bhattacharjee, that the Respondents ought to have granted a temporary status and regularised the services of the writ Petitioner by following the aforementioned related office memorandum dated 10.9.93 but it was not done so and, as such, the actions of the Respondents are violative of Articles 14 and 16 of the Constitution of India. Instead of affording temporary service status or regularising the services of the writ Petitioner, the Petitioner was terminated from his services under the related impugned order of 12.8.97 informing the Petitioner that his work was found unsatisfactory by the competent authority.

5. According to Mr Bhattacharjee, it is a punishment and imposition of penalty to the writ Petitioner without affording any reasonable opportunity of being heard or say, and, as such, it is violative of the principles of natural justice.

6. At the hearing, Mr H. Ahmed, learned Counsel appearing for the Respondents contended that, the Respondents always reviewed the service conditions of the casual workers/labourers every year and the Respondents also examined as to whether the works of the casual workers concerned are satisfactory or not, and if any worker is found unsatisfactory, then he is discharged from service. The learned Counsel also argued that, there is a break of service for a day before any worker is allowed to continue in the service. According to Mr Ahmed, the case of the Petitioner was reviewed and his work was found unsatisfactory by the competent authority and, accordingly, he was terminated from his services.

7. Now, this Court is to see and examine as to whether the present writ Petitioner has an enforceable legal right or not in the instant case.

It is an admitted position that the Petitioner is a "Farash" casual worker and he had been serving since November, 1991, till the date of passing of the impugned termination order but, by virtue of an interim order passed by this Court, he has been allowed to continue in the service and still he is continuing in service. Though, there is a one day break in his service at intervals, it is an admitted fact that he had rendered his services for about 6 years on the date of passing of the impugned termination order.

8. In daily rated casual labour employed under PNT department through Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others, the Apex Court held, that keeping the casual employees for a long period without regularisation of their services is not a wise policy. The Apex

Court further directed the Respondents to prepare a scheme on rational basis for absorbing so far as possible, the casual labourers who have been continuously working for more than one year in the Post and Telegraph Department. In another case namely, *Niadar and Anr. v. Delhi Administration and Anr.*, (1992) 4 SCC 112 the Apex Court directed the Respondents/Delhi Administration, to prepare a scheme for absorption of the casual labourers who have worked for one year and more in the Soil Conservation Department as regular employees. Likewise, in a case between *State of Haryana and Ors., etc. etc. Appellants v. Pira Singh and Ors., etc, etc, Respondents*, the Apex Court made the following observations:

So far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell-say two or three years-a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court, security of tenure is necessary for an employee to give his best to the job. In this behalf, we do commend the orders of the Government of Haryana (contained in its letter dated 6.4.90 referred to hereinbefore) both in relation to workcharged employees as well as casual labour.

We must also say that the orders issued by the Government of Punjab and Haryana providing for regularisation of ad-hoc/temporary employees who have put in two years/one year of service are quite generous and leave no room for any legitimate grievance by any one.

These are but a few observations which we thought it necessary to make, impelled by the facts of this case, and the spate of litigation by such employees. They are not exhaustive nor can they be understood as immutable. Each Government or authority has to devise its own criteria or principles for regularisation having regard to all the relevant circumstances, but while doing so, it should bear in mind the observations made herein.

9. It is also well settled, that right of the citizen to employment and his entitlement for employment to the labourer would all harmoniously be blended to serve larger social interest and public purpose. This principle of law finds its place in a case between *Air India Statutory Corporation, Appellant v. United Labour Union and Ors.*, Respondents, reported in 1997(2) Sc 165 wherein, the Apex Court held thus:

that all essential facilities and opportunities to the poor people are fundamental means to development, to live with minimum comforts, food, shelter, clothing and health. Due to economic constraints, though right to work was not declared

as a fundamental right, right to work of workman, lower class, middle class and poor people is means to development and source to earn livelihood. Though, right to employment Cannot, as a right, be claimed but after the appointment to a post or an office, be it under the State, its agency instrumentality, jurisdic person or private entrepreneur it is required to be dealt with as per public element and to act in public interest assuring equality, which is a genus of Article 14 and all other concomitant rights emanating therefrom are species to make their right to life and dignity of person real and meaningful. In a socialist democracy governed by the rule of law, private property right of the citizen for development and his right to employment and his entitlement for employment to the labour, would all harmoniously be blended to serve larger social interest and public purpose.

10. So far the arguments advanced by Mr H. Ahmed that, there is a break of service for a day at intervals though the Petitioner had been serving for a long period, and as such, his services cannot be regularised and rather, his case was reviewed by the competent authority and thereafter, his work was found unsatisfactory and as such, he has no right for regularisation of his services. At this stage, I hereby recall the three decisions of the Apex Court rendered in Sri Rabinarayan Mohapartra Vs. State of Orissa and others, ; Karnataka State Private College Stop-Gap Lecturers Association Vs. State of Karnataka and Others, and Banaras Hindu University, Varanasi and another Vs. Dr. Indra Pratap Singh, wherein, the Apex Court held in the first case, that the practice of giving appointment of 89 days basis within one day break and allowing the employees to continue having such one day break of service is discriminatory; in the second case, the Supreme Court struck down the related provisions in Clause 5 of Order of one day's break in service and it was declared ultra vires. In the third case, the Supreme Court held thus:

The interval may be of a day, a week or a month. What is relevant is not the length of the interval of break, as it may be called, but its nature. It cannot be said that length of such interval is totally irrelevant, however, what is meant is that one must take into consideration the reason for which break or the circumstances in which such break has occurred. Another factor to be taken into consideration in understanding and construing the said expression is the object underlying the said requirement. The object is to ensure eight years" teaching experience.

11. Applying all these established principles of law laid down by the Apex Court, the Respondents ought to have ignored this one day break in service of the writ Petitioner and they ought to have considered the case of the writ Petitioner alongwith other casual labourers/workers who are similarly situated with the Petitioner, by formulating a scheme on rational basis and, instead of doing so, on fine morning, the Respondents issued the impugned termination order. That is also in hand-writing with one sentence, thus terminating the Petitioner from service on the ground that his work was found unsatisfactory. In my considered

view, this action of the Respondents while passing the impugned termination order is violative of all these enshrined principles of law laid down by the Apex Court mentioned above and the same is also violative of Articles 14 and 16 of the Constitution of India. Accordingly, the impugned termination order is hereby quashed.

12. Considering all these existing facts and circumstances of the case and after proper application of my mind in this matter, I hereby dispose of this writ petition with the following order and direction. This Court direct the Respondents to prepare a scheme on rational basis for absorbing and for regularisation of the services of the writ Petitioner, taking into account of his length of service with the vacancy position of the related post/posts which may be created by the Respondents for smooth functioning of the department concerned as well as, for ventilating the grivences of the writ Petitioner, keeping in mind all these established principles of law laid down by the Apex Court as well as the related office memorandum dated 10.9.93 as in Annexure II to the writ petition on the subject relating to the grant of temporary status and regularisation of casual labourers/workers and formulation of a scheme in pursuance of the CAT Principal Bench, New Delhi, and the related judgment dated 16.2.90 in the case of Shri Raj Kamal and Ors. v. U.O.I. as early as possible, preferably, within a period of 6 months from the date of receipt of this judgment and order. It is made clear, that while considering the case of the writ Petitioner, the Respondents shall also consider the case of all those casual workers/labourers/Farash who are similarly situated with the writ Petitioner and, this Court hope and thrust that the Respondents shall do the needful to the poor casual worker from their good end so that casual workers may not feel that injustice had been done to them. No cost.