

(2001) 02 CAL CK 0033

In the Calcutta High Court

Case No : Miscellaneous Appeal Tender No. 1547 of 1998 and First Miscellaneous Appeal Tender No. 2694 of 1994

Raj Kr. Mohtolia

APPELLANT

Vs

Mritunjoy Mondal

RESPONDENT

Date of Decision : 02-02-2001

Acts Referred:

Citation : (2001) 2 ILR (Cal) 110

Hon'ble Judges : Ashok Kumar Mathur, C.J.; Girish Chandra Gupta, J

Bench : Division Bench

Advocate : P.R. Mondal and Bandana Das, for the Appellant; Asish Sanyal and Uttam Majumder, for the Respondent

Final Decision : Allowed

Judgement

Ashok Kumar Mathur, C.J.—Both these Appeals are connected with each other, therefore they are disposed of by a common order.

2. Appeal No. 2694 of 1994 arises against the Order passed by the Learned Single Judge Sri G.R. Bhattacharjee dated July 4, 1994. Appeal No. MAT 1547 of 1998 arises out of an Order passed by Sri G.R. Bhattacharjee on April 16, 1998 in a Contempt Matter.

3. This Case has a little chequered history. Earlier first writ petition was filed by these Petitioners which came to be registered as Civil Order No. 12337 (W) of 1987 which was disposed of by an Order passed by Learned Judge Mahitosh Majumder on November 21, 1988. It was contended that these Petitioners should be absorbed in regular salaried establishment for having rendered continuously long services as casual laborers for more than three years in pursuance of the circular No. 1700-EMP/3C-26/78 dated August 3, 1979 of the Labour Department, Govt, of West Bengal. Therefore they sought a Writ of Mandamus for regularisation in terms of the Circular No. 1700-EMP/3C-26/78 dated August 3, 1979. Nobody appeared on behalf of the Respondents. Therefore the learned

Single Judge passed the order directing the Respondent to prepare a Scheme forthwith for gradual absorption of the Petitioners in a phased manner. It was further directed to make payment of their salaries for the months of January, February and March. No action was taken by the Respondent in pursuance of the aforesaid order. Therefore a contempt petition was moved before this Court and this contempt petition came to be disposed of by Hon''ble Justice Samaresh Banerjee on February 25, 1994. It was contended by Respondent Condemners that all these Petitioners were engaged as casual workers in different offices in Nadia, Murshidabad division from 1982 as Social Security Workers under the RLEGP Scheme for plantation. It was submitted in the reply to this contempt petition that they have partly complied with the order and paid the Petitioners three months salary i.e. for the months of January and February 1988 but it is impossible for them to comply with the rest of order of preparing a scheme for phased absorption of the writ Petitioners and payment of the regular salary. It was pointed out that all these writ Petitioners were employed as casual workers in plantation and nursery on the basis of a Rural Landless Employment Generation Programme Scheme (for short RLEGP) introduced by the Government of India and fully financed by the Government of India. It was pointed out that the State Government was only an employing agency and all finances were received from the Government of India and since the Scheme was discontinued by the Government of India with effect from April 1, 1987 therefore it was not possible for the State to give employment to the Petitioners. Learned single Judge after hearing the argument from both the sides and considering the decision given by the Apex Court came to the conclusion that since the Petitioners were employed under the RLEGP Scheme sponsored and financed by Central Government and the same having been discontinued from April 1, 1987 therefore after discontinuation of such a scheme the condemners cannot prepare a Scheme for absorption of these Petitioners. Therefore it was held by the learned single Judge that inability of the State Govt, to frame a Scheme and absorb them cannot be made a ground for a contempt as the Scheme under which these Petitioners were employed was not the State Scheme and it was Centrally Sponsored Scheme. Therefore the Learned single Judge found that there is no willful or deliberate violation of the Order passed by this Court. However, the learned Single Judge concluded by observing that it will be open for the Petitioners to approach appropriate forum for any other appropriate relief which may be available to them in law. Accordingly, the Contempt petition was dismissed. Thereafter, the Petitioners filed another writ petition before this Court in 1994 which came to be disposed of by the learned single Judge by the order dated of July 4, 1994 and directed a Scheme be prepared for absorption of all 37 Petitioners as directed earlier by learned Single Judge vide his Order dated November 21, 1988 within six months and till such absorption of such Petitioners no appointment of any other person shall be made as a casual labourer in the social forestry or regular establishment in Group-D Category in the district of Nadia and Murshidabad. Accordingly, this writ petition was disposed of. Against this order this appeal was filed and which came to be registered as MAT No. 2694

of 1994, and this Order was also not complied with. Then, again a contempt petition was filed which came to be disposed of by a learned single Judge by Order dated April 16, 1998 and whereby learned Single Judge held that there is a non-compliance of this Court's Order and he found the condemners guilty of violating the court's order dated July 4, 1994. However he observed that question of punishment will be taken up subsequently and gave opportunity to the condemners to purge the contempt and time to absorb the Petitioners in regular establishments failing which condemners will appear before the court for severe punishment. Aggrieved against this Order the present appeal was filed which came to be registered as MAT No. 1547 of 1998. The Division Bench stayed the operation of this Order by the Order dated May 13, 1998. Hence both these appeals are clubbed together and disposed of by a common Order.

4. Learned Counsel for the Appellant submitted that the earlier order passed by Justice Majumder, J. (as he then was) against which a contempt petition was filed and the contempt petition was rejected by Hon'ble Justice Banerjee, therefore, all the proceedings in pursuance of the aforesaid Order had come to an end.

Thereafter, the Petitioners filed another petition which was disposed of by the learned single Judge and the direction given earlier by the learned single Judge on November 21, 1988 was sought to be enforced. This according to Learned Counsel cannot be done as all proceedings has come to an end. Similarly no contempt proceedings could have been initiated by the learned Single Judge against the Order passed by him for the non-compliance of the Order dated July 4, 1994 on that basis. Learned Counsel further submitted that when an incumbent has been appointed under a particular Scheme, then at the end of that Scheme no employee has a right to be regularised against a permanent vacancy in the State. In support thereof Learned Counsel has invited our attention to a decision of the Apex Court given in the Case of Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, , (per Sawanti J.). As against this Learned Counsel for the Petitioner-Respondent submitted that the Petitioners have been continuing in service for long years. Therefore, they are entitled to be regularised and he drew a support from a decision given by the Apex Court given in the case of Faqir (dead) through Faqir (dead) through Shyam Deo Vs. Kishori alias Lalloo and another, (per S. Saghir Ahmed J.). He also submitted that the case of the writ Petitioners is covered by two Circulars of the State i.e. Circular No. 1650-EMP/EMP/3C-5/80 dated The August 28, 1980 and No. 1700-EMP/3C-26/78 dated The August 3, 1979. He also invited our attention to the communication dated April 13, 1996, wherein certain persons were sought to be absorbed and it was mentioned in that Communication that the cases of these Petitioners are pending before this Court.

5. The first and foremost question is whether such employees who were employed under a scheme have any right to be absorbed or not. It may be relevant to mentioned that the scheme sponsored by the Government of India under the Social Forestry was financed by the Government of India. The Scheme

came to an end with effect from 1st of April 1987 therefore the services of these persons were terminated. Once an incumbent is employed in a particular scheme sponsored by the Central Government then it is not an obligation of the State to absorb them against regular establishment. The incumbents when they were appointed knew it very well that it is the centrally sponsored scheme and it is financed by the Central Government and tenure of the Scheme is also fixed, therefore after the expiry of the scheme the incumbent will have no right to be absorbed. The fact which has emerged from the pleadings is more than apparent that the Petitioners were employed under a Scheme and the Scheme was financed by the Government of India and when the Scheme has come to an end automatically the incumbents' service stand discontinued. The Petitioners were not appointed against any perennial/permanent type of post by the State Government. Both the Circulars which have been pressed into service by the Petitioners being number 1650-EMP/3C-5/80 dated The August 28, 1980 and No. 1700-EMP/3C-26/78 dated The August 3, 1979, both Notification clearly lays down that it relates to the absorption of casual workers of state and such other categories of workers working under the State Government It is further clarified that such persons who have been working under the State Government against a perennial type of work for their cases be considered for regularisation if they have put in particular years of service. So far as the Petitioners are concerned they were not working under the Government of West Bengal against the perennial type of work. They were Workers under the Scheme, therefore both these Circulars have no relevance in present situation. The decision given by the Apex Court in the Case of Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi and Ors. squarely covers the Case of the Petitioners wherein Their Lordships while dealing with a similar question of the casual workers employed under Jawahar Rozgar Yojna observed that such persons cannot be absorbed. It was observed as under:

The Petitioners were given employment under the schemes which have been evolved to provide income for those who are below the poverty line and particularly during the periods when they are without any source of livelihood and, therefore, without any income whatsoever. The Schemes were further meant for the rural poor, for the object of the schemes was to start tackling the problem of poverty from that end. The object was not to provide the right to work as such even to the rural poor-Much less to the unemployed in general;

If the resources used for the Jawahar Rozgar Yojna were in their entirety to be used for providing full employment throughout the year, they would have given employment only to a small percentage of the population in need of income, the remaining vast majority being left with no income whatsoever. No fault can, therefore be found with the limited object of the scheme given the limited resources at the disposal of the State. Those employed under the Scheme, therefore, could not ask for more than what the scheme intended to give them. To get an employment under such Scheme and to claim on the basis of the said employment, a right to regularisation is to frustrate the scheme itself. No Court

can be a party to such exercise. It is wrong to approach the problems of those employed under such schemes with a view to providing them with full employment (1) Supra and guaranteeing equal pay for equal work. These concepts, in the context of such schemes are both unwarranted and misplaced. They will do more harm than good by depriving the many of the little income that they may get to keep them from starvation. They would benefit a few at the cost of the many starving poor for whom the schemes are meant. That would also force the State to wind up the existing schemes and forbid them from introducing the new ones, for want of resources. This is only to emphasize that even among the unemployed a distinction exists between those who live below and above the poverty line, those in need of partial and those in need of full employment, the educated and uneducated, the rural and urban unemployed etc.

6. Therefore the decision given by the Learned Single Judge on the November 21, 1988 is against the law laid down by the Apex Court and that could not have been enforced by filing another Writ Petition in 1994. Though the Contempt Petition against the Order passed on November 21, 1988 had been already dismissed by this Court. The basis on which this litigation commenced was an Order dated November 21, 1988, when that judgment is against the law as laid down by the Apex Court in the Case of Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi and Ors. (Supra) then all subsequent orders flowing there from stand vitiated. The writ petition which was filed in 1994 was nothing but in the execution of the Order dated November 21, 1988 which was disposed of by the order dated July 4, 1994 which is bad for the same reason. Similarly the contempt proceedings which was initiated for non-compliance of the Order dated July 4, 1994 is also bad for enforcement of an illegal order. Therefore the Order passed in this contempt petition on April 16, 1998 for violating the Order dated July 4, 1994 was also mis-conceived and not tenable in law. Hence all these orders i.e. Order dated July 4, 1994 as well as the Order dated April 16, 1998 passed in the Contempt petition are bad and illegal.

7. Learned Counsel for the Petitioner/Respondent invited our attention to a decision of the Apex Court in Faqir (dead) through Shyam Deo v. Kishori alias Lalloo but that judgment has no relevance in so far as the present controversy is concerned.

8. Hence as a result of the above discussion, we allow both these Appeals and set aside the Order passed by the Learned Single Judge dated July 4, 1994 as well as the Order dated April 16, 1998 passed in the contempt petition.

9. No order as to costs.

Girish Chandra Gupta, J.

10. I agree.