

(2001) 01 RAJ CK 0062

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2772 and 2779 of 2000

Ram Chandra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-01-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25G

Citation : (2001) 90 FLR 55 : (2001) 2 LLJ 431 : (2001) 2 RLW 751 : (2001) 1 WLC 606 : (2001) 1 WLN 385

Hon'ble Judges : H.R. Panwar, J;B.J. Shethna, J

Bench : Division Bench

Advocate : Moinuddin, for the Appellant; V.K. Mathur, for the Respondent

Judgement

Shethna, J.

(1). Both these writ petitions are disposed of by this common order as the same are arising out of the impugned common judgment and order dated 28.4.2000 (Annex. 13) passed by the Central Administrative Tribunal, Jodhpur Bench, Jodhpur (for short "CAT").

(2). There is chequered history behind these matters. The cases of both the petitioners were earlier decided by the single member of the CAT on 17.10.97. Against which 2 separate writ petitions were preferred by the present petitioners being 4507/97 and 4506/97, respectively. When those matters came up before the division bench, it was submitted that as per the rules of business, single member of the CAT cannot decide the matters pertaining to termination of casual labours. It was to be decided by 2 members of the Tribunal. That was the requirement under the provisions of the Central Administrative Tribunal Act itself. In view of that without going into the merits of the case, the division bench of this Court set aside the order passed by the single member of the CAT and remanded the matters to the CAT with a direction that 2 members of the CAT shall decide the same in accordance with law as early as possible.

(3). From the impugned common judgment and order dated 28.4.2000, it appears to us that the members of the Tribunal did not take the order, therefore, in para 3 of the order, it has been stated that, by an order dated 4.12.96 passed by the Chairman, it was ordered that the cases relating to Casual Labours has been added in the Schedule as entry no. 14 which could be disposed of by a single member. The said order of the Chairman was also quoted in it. It is unfortunate that this aspect of the matter was not brought to the notice of the division bench of this Court at the time of passing of the order. Neither the single member who passed the earlier order never stated so in its order.

(4). In our considered opinion, it was not necessary for the learned members of the CAT to refer to all this history and say that since there is a direction from the High Court that the cases should be heard by the bench consisting of 2 members, therefore, the record was considered and the cases were heard. Rightly or wrongly, when the High Court passes an order, then it was not open to any subordinate Court or Tribunal to make any comment upon the orders of its superior Court. This may even be considered to be a contempt. It is hope and trust that in future the subordinate courts should refrain itself from making such type of observations or reference in their order while deciding the cases on remand from the High Court.

(5). Coming to the merits of the case, we are fully convinced that the impugned common judgment and order passed by the CAT is not at all sustainable in the eye of law. Number of Supreme Court judgments have been relied upon by the Tribunal without duly considering the facts of the case. In our considered opinion, not a single judgment of the Supreme Court cited by the respondents had any application to the facts, of the case whatsoever.

(6). The Commanding Officer - present respondent no. 3 requested the Employment Exchange, Jodhpur by his letter dated 17.6.94 to sponsor the names for the post of casual labour (mazdoor). A proforma for notification of vacancies was also enclosed with the letter which is at Annex, 1. A perusal of the same makes it clear that the pay and allowances for the said post was Rs. 750/- P.M. plus usual allowances. The names of the petitioners were sponsored by the employment exchange along with others and after interviewing them, both the petitioners were selected for the said post. Thereafter, they were informed by a letter dated 18.7.94 (Annex.2) that they were selected for the post of Mazdoor and the pay scale will be Rs. 750/- p.m. plus usual allowances. Their initial appointment was for fixed period of 89 days.

(7). It is pertinent to note that after they were duly selected in the interview, they had also undergone the medical test in the Military Hospital, Jodhpur and only thereafter they were appointed as they were found fit for appointment to the said post. Not only that they have reported and jointed the duty as per the terms and conditions of the order at Annex. 2. However, after a period of a month or so, they were served with a letter dated 22.8.94 (Annex. 3) stating that para 2 of Annex. 2 was reconstituted and they shall be paid Rs. 35/- per day

as wages. Thereafter, their services were terminated by an order dated 11.10.94 (Annex.4) with effect from 16.10.94, Surprisingly, on the very next day on 17.10.94 once again they were appointed by an order dated 17.10.94 (Annex. 5) for 89 days. Their services were once again terminated by an order dated 12.1.95 (Annex, 6) with effect from 15.1.95. They were once again appointed by an order dated 17.1.95 (Annex,7) and their services were once again terminated by an order dated 17.4.95 (Annex, 8) with effect from 18.4.95. They were once again appointed by an order dated 20.4.95 (Annex.9) for 89 days. Their services were once again terminated by an order dated 17.7.95 (Annex. 10) with effect from 18.7.95.

(8). The above facts make it very clear that all throughout both the petitioners were given artificial break of a day or two in their services. It is clear that they had completed 240 working days in a calendar year when their services were terminated last without following the provisions of Section 25-F and 25-G of the Industrial Disputes Act.

(9). Aggrieved of the above, the petitioners approached the CAT by way of separate original applications which were dismissed by the CAT by a common impugned judgment and order dated 28/1.2000 (Annex. 13). Hence, this petition.

(10). From the abovementioned facts, three things are very much clear:-

1. That both the petitioners were duly selected and appointed after their medical examination was done on a fixed salary of Rs. 750/- per month with usual allowances.

2. Unilaterally, the respondents took the decision and changed the terms and conditions of their appointment and ordered that the petitioners shall be paid only Rs. 35/- per day as wages.

3. Right from the day one of the joining of their services, they have continuously worked for more than 240 days except for a day or two by way of artificial breaks in their services.

(11). From the order, it looks that their appointments were for a fixed period of 89 days but from the facts narrated hereinabove, it is clear that they were in continuous service except by way of artificial breaks. It was not excepted from the Union of India to act in this manner.

(12). However, it was submitted by learned counsel Mr. Mathur that when they realised their mistake of giving them appointment on a fixed pay scale of Rs. 750/- plus usual allowances then immediately they corrected their mistake. Whether it was a mistake or not? It's totally a different question. Even assuming for the sake of arguments that it was their mistake, then also in our considered opinion, having appointed them in the pay scale of Rs. 750/- p.m. plus usual allowances, they could not have unilaterally changed the terms and conditions of the petitioners. This act of the respondents was in clear violation of the principle of natural justice.

(13). Submission was made by learned counsel Mr. Mathur that the petitioners had accepted the changed terms and conditions of the service, therefore, they are estopped from raising this plea. This submission does not lie good in the mouth of the Union of India. They are poor majdoors. If this submission of Mr, Mathur is accepted, then it will go against him and they will not be able to plead about the fact that they Committed mistake in the past giving them appointment on a fixed pay scale of Rs. 750/- plus usual allowances.

(14). We have noticed that this is a general tendency growing in the State and Union of keeping poor labours and then terminating their services after taking work from them only because, they do not want to extend the legitimate benefits of services to them.

(15). At the cost of repetition, we may say that the Tribunal has relied upon the several judgments of Supreme Court which in our considered opinion have no application whatsoever to the facts of the present case and we may no hesitate in saying that because of different consideration, the Tribunal passed the impugned order against the poor petitioners. Such order cannot be sustained for a minute.

(16). In view of the above discussion, both these petitions are allowed, the original applications of the petitioners are granted, it is declared that their last termination orders were bad in law and illegal and their services were never terminated and they shall be treated as continuous in service and they shall be entitled to all the consequential benefits of the services. It is also declared that they shall be treated as appointed on the post having fixed pay scale of Rs. 750/- plus usual allowances. The respondents shall reinstate the petitioners by 31.3.2001 any pay all the arrears by that time.