
(2002) 03 DEL CK 0110
In the Delhi High Court
Case No : C.W.P. No. 1537 of 2002

Ram Das and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-03-2002

Acts Referred:

Defense Services Regulation, 1962 — Rule 820

Citation : (2002) 03 DEL CK 0110

Hon'ble Judges : S.B. Sinha, C.J.; A.K. Sikri, J

Bench : Division Bench

Advocate : Roop Chand, for the Appellant; A.K. Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—A judgment of the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the Tribunal") passed in O.A. No. 775 of 2000 dated 03.05.2001 dismissing the original application filed by the petitioners herein wherein non-conferment of temporary status on them in terms of Department of Personnel & Training's (in short, "DOPT") circular dated 10.09.1993 was rejected, is in question in this writ petition.

2. The petitioners contended before the learned Tribunal that each of them had worked under the respondent No. 3 from 01.01.1997 to 09.09.1997 and thus they completed 250 days" of work at a stretch. Allegedly, the petitioner except petitioner No. 6, again worked under the same respondent from 09.09.1997 till 22.05.1998. The petitioner No. 6 allegedly worked from 08.10.1997 to 22.05.1998. Thus, the petitioner Nos. 1 t 5 allegedly worked for 197 days, whereas the petitioner No. 6 worked for 174 days in the second spell, totalling 547 days" of work by the petitioner Nos. 1 to 5 and 424 days by the petitioner No. 6.

3. In that view of the matter, according to the petitioners, they were entitled to grant of temporary status in their favor.

4. It is not in dispute that the petitioners herein had filed an original application before the Tribunal, which was registered as O.A. No. 236 of 1998, wherein by a judgment and order dated 07.01.1999, the respondents were directed to consider their cases for grant of temporary status in accordance with the extent scheme.

5. Pursuant to and in furtherance of the said judgment, an order dated 23.04.1999 was passed wherein it was observed:-

"2. The case of Sh. Mahavir is not coming within the parameters of the Scheme 1993 regarding grant of Temporary Status and Regulation of Casual Labourers issued by DOP & T Govt. of India. It is provided therein that temporary status would be conferred on those casual labourers who are in employment on the date of issue of this OM and who have rendered a continuous service of at least one year which means they must have been engaged for a period of at least 20 days. As per your records you were employed as Casual worker for only 220 days from 1.1.97 to 6.9.97 with broken periods. Moreover you were also not in service on the date of issue of the OM dated 01 Sep. 93."

"3. Further you had worked for non-Government job during the period from Oct. 97 to May 98 and payment was made to you from non-Governmental funds. This work was also one time requirement and not of a continuous nature. Since during this period you were employed for non-Governmental job and paid out of non-Government funds, as such this period cannot be considered for the purpose of granting the temporary employees status to you under the existing scheme of 1993".

6. Thereafter an original application was filed before the learned Tribunal.

7. The contention of the petitioners before the learned Tribunal as also before us is that artificial breaks in their services should not have taken into account for the purpose of computing the total period of service in terms the said scheme.

8. A finding of fact has been arrived at by the authorities, which has been upheld by the Tribunal that the petitioners have not completed a period of more than 240 days and as such they did not become eligible for grant of temporary status.

9. A scheme, as is well known, must be applied having regard to the purport and object thereof. The petitioners herein during the second spell of their job did not work under the respondent No. 3. They worked in a Sports Complex, which is a Non Governmental Organization (in short, "NGO"). The emoluments of the petitioners were paid from the Regimental Fund, which was not a public fund. It thus, in our opinion, would not be correct to contend as has been done by the learned counsel for the petitioners that it is a case of artificial break in service.

10. The issue in question is squarely covered by a decision of the Apex Court in Union of India and Another Vs. Chotelal and Others, .

11. The Apex Court in the aforesaid case has clearly held that when

Dhobis(washer man)are paid their salaries from Regimental Fund, they cannot be said to be the holders of civil posts. Quoting para 801 of the defense Service Regulation, it was held that a Regimental Fund does not answer the characteristics of the public fund. Regimental Fund in terms of para 801(b) comprising all funds, other than public funds, maintained by a Unit. It was noticed:-

"4. Rule 820 provides for administration of such Regimental Fund and 820(a) clearly indicates that all funds other than public funds as defined in Para 801 maintained by a unit, which are financed either wholly or partly from public money. Regulation further provides that the Commanding Officer acts as a trustee in relation to the "Regimental Fund" and is responsible that the funds are properly applied with special reference to the object of the fund and for the benefit of the personnel or unit as a whole.

5. In view of the characters of the Regimental Fund, as discussed above, we have no hesitation to come to the conclusion that the said fund cannot be held to be public fund by any stretch of imagination and the Dhobis paid out of such fund cannot be held to be holders of civil posts within the Ministry of defense so as to confer jurisdiction on the Central Administrative Tribunal to issue direction relating to their service conditions. It is of course true that the Commanding Officer exercise some control over such Dhobis but on that score alone it cannot be concluded that the posts are civil posts and that payments to the holders of such post is made from out of the Consolidated Fund of India or of any public fund under the control of Ministry of defense."

12. The petitioners thus worked during two different spells under two different organizations and thus their work cannot be clubbed for the purpose of grant of benefit under the said scheme.

13. For the reasons aforementioned, we are of the opinion that the learned Tribunal cannot be said to have committed any error in passing the impugned judgment dated 03.04.2001.

14. This writ petition, Therefore, being devoid of any merit is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.