
(2016) 02 AHC CK 0116
In the Allahabad High Court
Case No : Special Appeal No. 481 of 2007

Ravindra Kumar Pandey	Vs	APPELLANT
Bharat Sanchar Nigam and Others		RESPONDENT

Date of Decision : 15-02-2016

Acts Referred:

Citation : (2016) 02 AHC CK 0116

Hon'ble Judges : S.S. Chauhan and Ritu Raj Awasthi, JJ.

Bench : Division Bench

Advocate : Ashok Kumar, Baldiha, G.C. Verma and O.P. Srivastava, for the Appellant; A.K. Chaturvedi and Pratul Kr. Srivastava, for the Respondent

Final Decision : Allowed

Judgement

S.S. Chauhan, J.—1. This special appeal has been filed against the judgment and order dated 01.05.2007 passed by the learned Single Judge, by means of which, the writ petition preferred by the appellant, claiming regularization on the post of Phone Mechanic, has been dismissed.

2. The appellant, who was working with the respondents, was appointed in the year 1979 and was granted temporary status by means of order dated 2.1.1991 with effect from 1.1.1990. After the grant of temporary status, the appellant was being paid salary alongwith D.A., H.R.A. etc. and the total salary of Rs. 1758/- was being paid to the appellant on the basis of temporary status granted to him. The temporary status granted to the appellant was cancelled by means of order dated 6.6.1994 without giving any show cause notice to the appellant. The said cancellation was made on the basis of break period on the ground that the break period was not condoned by the authorities although the temporary status was granted by the authorities condoning the period and also considering the fact that the case of the appellant was fully covered under the Scheme of 1989. The appellant was also provided three increments.

3. The appellant proceeded to challenge the order dated 6.6.1994 by means of

O.A. No. 547 of 1994 before the Central Administrative Tribunal, Lucknow. The order granting temporary status to the appellant was restored by means of order dated 29.12.1994 during the pendency of the original application. Since the respondents did not comply with the order dated 8.9.1994 passed by the Tribunal, the appellant filed a contempt petition bearing No. 105 of 1994 for complying the order passed by the Tribunal and allowing the appellant to join in Project Wing as the Maintenance Wing did not pay the salary to the appellant, although the appellant was performing his duties at O.F.C. Repeater Station, Kotwa Sadak, Barabanki. The Central Administrative Tribunal thereafter passed an order on 21.12.2000.

4. In compliance of the order dated 21.12.2000, the Project Wing passed an order directing the appellant to join his duties under the Divisional Engineering Telecom Project, Almora and thereafter in the Maintenance Wing and passed an order on 2.3.2001, by means of which, Shiv Nandan (OFC) repeated Station, Kotwa Sadak, Barabanki was posted in place of the appellant. The appellant handed over the charge to Shiv Nandan at Barabanki. He joined under the Divisional Engineering Telecom Project, Almora on 16.2.2001 and the necessary information in this regard was given to respondents No. 3 to 5 on 5.3.2001. As the service book of the appellant was not sent to the office of the Divisional Engineering Telecom Project, Almora, he was paid basic salary of Rs. 2550/-. The respondent Nos. 3 to 5 have only sent the last pay certificate and did not send the service book. The appellant filed Original Application No. 547 of 1994, which was finally decided by means of order dated 11.9.2001. The Tribunal while considering the temporary status of the appellant, directed the respondents to consider the claim of the appellant for being inducted as Phone Mechanic, subject to clearance of qualifying screening test w.e.f. 1994. It was also directed that subject to the appellant qualifies the screening test within a period of six months from the date of receipt of a certified copy of that order, he may be granted seniority from 1994.

5. The Original Application No. 547 of 1994 was allowed partly but the back wages were not paid to the appellant. The appellant, feeling aggrieved with the non-payment of back wages, proceeded to file Writ Petition No. 72 (SB) of 2003, which was allowed partly by this Court vide order dated 01.11.2012. Against the said order, a Special Leave Petition was filed before the Supreme Court, which was dismissed vide order dated 29.07.2013.

6. The direction to consider the case of the appellant on the post of Phone Mechanic was not considered by the respondents, so a contempt petition was filed, in which an order was passed to the effect that the order passed by the Tribunal may be complied with, subject to certain formalities of filling the form, being completed by the appellant within two weeks. This order was passed on 19.07.2004. But the respondents while considering the compliance of the order dated 11.09.2001 passed by the Tribunal and while considering the case of the appellant on the post of Phone Mechanic, proceeded to pass an order on

03.03.2005, cancelling the temporary status granted to the appellant.

7. The appellant, who was awaiting the compliance of the order passed by the Tribunal and the subsequent order dated 19.07.2004, came to know that his service book has not been sent to the place where he was transferred. He proceeded to file the present writ petition bearing No. 7683 (SS) of 2004. During the pendency of the said writ petition, the order dated 11.09.2001 was complied with, and while considering the case of the appellant on the post of Phone Mechanic, the order dated 06.06.1994 cancelling the temporary status of the appellant was withdrawn vide order dated 29.12.1994. The compliance of the order culminated into cancellation of temporary status of the appellant again, which stood recalled earlier by means of order dated 29.12.1994.

8. Submission of learned counsel for the appellant is that the order dated 11.09.2001 was accepted by the respondents and the same was never challenged, except the denial of back wages, which was challenged by the appellant by filing a writ petition, which came to be allowed partly by this Court and the Special Leave Petition filed against the said order was also dismissed. The respondents thereafter paid the back wages to the appellant. Submission is that once in the order dated 11.09.2001, a specific finding has been recorded to the effect that the temporary status of the appellant has been withdrawn by the respondents vide order dated 29.12.1994, then it was not open to the respondents to have again cancelled the temporary status of the appellant. Learned counsel submits that the order dated 06.06.1994, by means of which, temporary status granted to the appellant was cancelled, there was full application of mind of the respondents and thereafter, they proceeded to recall the aforesaid order. The only ground, which has been taken for cancelling the temporary status granted to the appellant, was the clarification issued by the Department of Telecommunications on 17.12.1990, wherein the requirement was that the delay, if any, has to be condoned and thereafter, temporary status may be granted. The aforesaid reason finds mention in the order dated 03.03.2005, by means of which, temporary status granted to the appellant was cancelled.

9. Learned counsel for the appellant further submits that the scheme for grant of temporary status was floated by the respondents in the year 1989 and on that basis, when it was found that the appellant was fulfilling all the requirements, he was granted temporary status w.e.f. 01.01.1990. The grant of temporary status in 1990 was not dependant upon the letter issued by the Department of Telecommunications on 17.12.1990 or 13.05.1994. The clarification/letter dated 13.05.1994 would have prospective application and it would not have retrospective application and that is why the respondents withdrew the order dated 06.06.1994, cancelling the temporary status granted to the appellant. Learned counsel also submits that the order passed by the Tribunal is clear and the said finding was binding upon the respondents and they could not have withdrawn from the aforesaid finding unless they challenged the same. Submission is that the temporary status of six persons was cancelled, out of

which, the appellant had only approached the Central Administrative Tribunal. The other persons did not approach the Central Administrative Tribunal and the withdrawal order dated 29.12.1994 has been accepted in respect of those persons and they have also been regularized whereas the appellant has been discriminated by the respondents.

10. Learned counsel for the respondents, on the other hand, has laid much emphasis upon the letter dated 17.12.1990 by means of which, clarification was issued by the Department of Telecommunications for condoning the delay. He has also relied upon the letter dated 17.12.1990 and has submitted that since the delay has not been condoned in respect of the break period, therefore, the appellant will not be entitled for grant of temporary status.

11. We have heard learned counsel for the parties and perused the record.

12. The stand taken by the respondents is very strange in this petition and we are surprised to know that while considering the claim of the appellant on the post of Phone Mechanic as directed by the Tribunal vide judgment and order dated 11.09.2001, which was readily accepted by the department and the said order was not challenged before any higher forum, the temporary status granted to the appellant has been restored vide order dated 29.12.1994. Once the said order was not challenged and it was accepted, then the finding recorded in the said order to the effect that the order dated 06.06.1994, by means of which, temporary status granted to the appellant was cancelled, has been withdrawn by means of the order dated 29.12.1994, was binding upon the respondents and the respondents could not have taken a somersault and again come out with a new case, by stating that the instructions contained in the letter dated 17.12.1990 were not complied with. Even the earlier cancellation took place relying upon the clarification of the Department of Telecommunications dated 13.05.1994. This time, when the respondents were considering the claim of the appellant in pursuance of the contempt proceedings initiated by the appellant, they proceeded to cancel the temporary status again as against the acceptance of the finding recorded in the order dated 11.09.2001 passed by the Tribunal.

13. The stand of the respondents is changing every time and now this time when they have considered the case of the appellant in pursuance of the contempt proceedings, they have taken a new ground in respect of non compliance of the Circular dated 17.12.1990.

14. The changing stand of the respondents cannot be accepted and neither they can be permitted to review their earlier order dated 29.12.1994 on some other pretext. Once they have taken a specific stand in the earlier order dated 06.06.1994 in respect of violation of clarification issued by the Department of Telecommunications dated 13.05.1994, then they cannot resile from the said stand and take a different stand. Even otherwise, if the clarification as alleged by the respondents is taken into consideration, then also it is clear that any casual labourer, who had been engaged prior to 30.3.1985 and did not qualify for

temporary status in accordance with Para 5.1 of the casual labourers (Grant of Temporary Status and Regularization) Scheme on 01.10.1989 will become eligible for grant of temporary status subsequently on completion of performance of duty of 240 days (206 days in the case of officers observing 5 days a week) during the proceeding 12 calendar months and such temporary status could be granted with retrospective effect from the date, the prescribed condition is fulfilled subject to the condition that the date of effect should not be earlier than 01.10.1989.

15. In the present case, the date of effect is 01.01.1990, that is not before 01.10.1989, therefore, the said argument would not be applicable in the case of the appellant.

16. The temporary status of six persons was cancelled vide order dated 06.06.1994 and out of these six persons, the appellant had approached the Central Administrative Tribunal, whereas the other persons, namely, Madan Mohan Singh, Tahsildar Singh, Nankhoo Bhagat, Anil Kumar Singh and Padam Kant Tiwari, did not approach the Tribunal. The withdrawal order dated 29.12.1994 has been accepted, though in respect of the remaining five persons and they have been given temporary status and thereafter they have been regularized whereas in the case of the appellant, a unique stand has been taken by the respondents.

17. Though the respondents have setup a case against the appellant in regard to condonation of delay, but they have not demonstrated and neither any document has been filed to indicate as to what was the status of other five persons, who have been regularized and whether they have fulfilled the required condition as contemplated in Para 5.1 of the scheme.

18. Now, we come to the question as to whether the respondents were authorized under law to cancel the temporary status, which has already been withdrawn by them on 29.12.1994 while considering the case of the appellant in pursuance of the contempt proceedings initiated against them, which was initiated for compliance of the order dated 11.09.2001 passed by the Tribunal. The Tribunal passed an order on 19.07.2004 in the contempt petition, directing the appellant to fill the prescribed form after completing all the formalities within a period of two weeks and thereafter the respondents were directed to comply the order passed by the Tribunal. The contempt petition was disposed of with the aforesaid direction.

19. The respondents thereafter considered the case of the appellant in pursuance of the order dated 19.07.2004 and proceeded to cancel the temporary status, just to overcome the non-consideration of the case of the appellant on the post of Phone Mechanic.

20. The appellant challenged the aforesaid order by way of amendment. The learned Single Judge proceeded to dismiss the writ petition finding that there was break in service, but the order dated 03.03.2005 itself goes to indicate that

there was no break and only the appellant has worked for less period of time.

21. No doubt, there was absence of 46 months of the appellant, but it has to be seen as to whether the appellant has fulfilled the condition for grant of temporary status on 01.01.1990. The working period of the appellant has been indicated from May 1989 to March 1990 (335 days), from April 1990 to March 1991 (359 days) and from April 1991 to June 1991 (91 days).

22. Taking into consideration the aforesaid working of the appellant and considering the qualifying condition provided in the scheme for grant of temporary status, which provides that the grant of temporary status would be considered of all the casual labourers currently employed and who have rendered continuous service of at least one year, the appellant was entitled for grant of temporary status as he was qualifying the condition for grant of temporary status and the working of the appellant is more than 240 days.

23. The earlier absence would be of no avail and neither the clarification as claimed by the learned counsel for the respondents is applicable as the said clarification itself goes to indicate that the effect of grant of temporary status should not be earlier than 01.10.1989. The clarification is in two part. The first part deals with the grant of temporary status in accordance with the scheme dated 01.10.1989. The condition of condoning the delay would arise only when the date of effect of grant of temporary status is given earlier than 01.10.1989.

24. In the case of the appellant, the temporary status has been granted w.e.f. 01.01.1990 and, therefore, the aforesaid argument of learned counsel for the respondents is of no avail and neither the same is tenable under law.

25. We have given our anxious consideration to the argument advanced on behalf of the parties and we find that the order passed by the learned Single Judge cannot be sustained in law.

26. Accordingly, the special appeal is allowed and the order dated 01.05.2007 passed by the learned Single Judge and the order dated 03.03.2005 are set aside. We direct the respondents to grant consequential benefits to the appellant in accordance with law.