

(2013) 07 DEL CK 0142
In the Delhi High Court
Case No : Writ Petition (C) 63 of 2005

Shri Ram Lal

APPELLANT

Vs

M/s. Air India Ltd.

RESPONDENT

Date of Decision : 03-07-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2013) 07 DEL CK 0142

Hon'ble Judges : Veena Birbal, J

Bench : Single Bench

Advocate : Padma Priya, for the Respondent

Final Decision : Dismissed

Judgement

Veena Birbal, J.—By way of this petition under Article 226 and 227 of the Constitution of India, petitioner has challenged the award dated 28.9.2004 passed by the Central Government Industrial Tribunal (herein after referred to as "the Tribunal") whereby industrial dispute raised by the petitioner for regularizing his services with the respondent/management has been rejected. Briefly, the facts relevant for the disposal of present petition are as under:-

The case of the petitioner is that he had worked with respondent/management i.e. Air India as Casual Loader w.e.f. September 1981 till 1985 and thereafter he was not allowed to continue in service. He had alleged that he was called in the year 1989 by respondent/management for joining the duty and when he contacted the Personnel Manager of the respondent he was not allowed to join and his letter was taken away. Subsequently, on the directions of the Tribunal in some other case the respondent/management had agreed to re-employ those casual workers who had worked for a total period of not less than 240 days during their entire span of service in Air India as on 31.12.1987 and secondly who had worked with respondent even after 1.1.1986. Petitioner had alleged that he fulfilled the eligibility criteria but was not allowed to resume the duty whereas the other similarly placed casual workers, namely, Jhaman Lal and Jai Singh had

been regularized by the respondent/management whereas the claim of the petitioner has been denied arbitrarily. It was alleged that discriminatory attitude was adopted by the respondent/management in denying him regularization. The petitioner approached the management for regularizing him. However, his request was turned down. Accordingly, the petitioner has raised an industrial dispute. The Central Government, Ministry of Labour vide its Order No. L.11012/10/97-IR (Coal-1) dated 6.2.98 had referred the following industrial dispute to the Tribunal for adjudication:-

Whether Shri Ram Lal, Casual Loader was covered within the provisions of the scheme published in the Gazette of India dated 11.5.91 for absorption/regularization of casual employees who was working with the management of Air India w.e.f. 19.8.80 and whether the action of the management of Air India by not regularising the services of Sh. Ram Lal, casual loader as per the scheme published in the Gazette of India dated 11.5.91 for regularisation of casuals is justified? If not, to what relief that concerned workman is entitled and from what date?

2. Pursuant thereto, the petitioner had filed a statement of claim setting out his case for regularization as is referred above.

3. The respondent/management opposed the same by filing written statement stating therein that the petitioner had worked as a Casual Loader with respondent/management during 1981 to 1985. Thereafter, he abandoned the work and did not perform any work. The management further stated that some of the casual workers filed petitions before the Supreme Court in the year 1987 for regularization of their services. The Hon'ble Supreme Court directed the Central Government to refer the matter for adjudication before the Tribunal. Accordingly, the reference was made and the Tribunal adjudicated upon the matter and passed an award dated 4.3.1997 holding that the regularization of the worker be done in accordance with the scheme prepared by the respondent/management. The said award was challenged vide SLP No. 3609/1992. However, the award was found to be fair and reasonable and the scheme proposed by the management for regularization was upheld. The stand of the respondent/management was that the petitioner was not eligible as per the scheme prepared by the management which was approved by the CGIT vide its award dated 4.3.1997 as such the petitioner was not considered for regular appointment and not called for interview on account of the non-fulfilment of eligibility criteria. It was further stated that the petitioner had filed the claim after a lapse of 7 years and it was highly belated one. The respondent/management further took a stand that after 1986 the petitioner never approached the Air India and he had voluntarily abandoned the work. It was further their stand that as per the Scheme only those casual workers who had not worked with the respondent after 1.1.1986 were not eligible for consideration under the scheme and as the petitioner had worked till 1985 therefore he was not considered for regular appointment. It was denied that the Personnel Manager had taken any document

from the respondent as was alleged by him. The respondent/management had adhered to the scheme and had regularized casual workers who were covered under the said Scheme and other employees were regularised. It was alleged that Jhaman Lal and Jai Singh were eligible as per the requirement laid down under the scheme and as such they were regularized.

4. Replication was filed by the petitioner denying the stand of the respondent/management and had reiterated the stand taken in the statement of claim.

5. Thereafter, both the parties had led evidence before the Tribunal. After closure of evidence, the arguments were heard by the Tribunal. The Tribunal gave a finding that the petitioner never worked with the management after 1985 as such he was not covered under the scheme formulated by the management for regularization. The Tribunal also gave a finding that the Scheme formulated by the management was approved by the Tribunal. The Scheme was submitted before the Tribunal in I.D. No. 99/1987. The said Scheme was made part of the award of the Tribunal in the aforesaid dispute vide order dated 4.3.1991. The same was published in the Gazette of India dated 11.5.1991. The scheme was even upheld before the Supreme Court in SLP No. 3609/1992 vide order dated 30.3.1992 of the Apex Court. The Tribunal also gave a categorical finding that there is no evidence that petitioner had worked after 1.1.1986 as such he was not entitled for absorption/regularization. Accordingly, the Tribunal decided that the Scheme in question was not applicable to the petitioner and he was rightly not regularized vide impugned award and the action of the respondent/management was justified in not regularizing him.

6. Aggrieved with the same, the present petition has been filed.

7. Learned counsel for petitioner has contended that the Scheme relied upon by the petitioner/management is arbitrary. It is contended that the petitioner had gone to work with the respondent/management after 1.1.1986 but was not given the job as such there is no fault of the petitioner and he ought to have been regularized by the management. It is further contended that the respondent/management had regularized the services of two similarly placed employees, namely, Jhaman Lal and Jai Singh even who had also not worked after 1.1.1986 like the present petitioner as such the petitioner be also given the same treatment.

8. On the other hand, the learned counsel appearing for the respondent/management has contended that there is no illegality in the impugned award and the petitioner had not worked after 1.1.1986 as such the claim for regularization has been rightly denied. It is further contended that the scheme for regularization referred in the impugned award has also been approved by the Supreme Court as such petitioner is not entitled for any relief.

9. I have considered the submissions made and gone through the material on record.

10. The relevant scheme relied upon by the respondent/management before the Tribunal and as stated in the counter affidavit is as under:-

We propose to draw out a list of Petitioners who had been working with us on a casual basis alongwith other casual in order of seniority of number of days actually worked in descending order as per the following criteria:-

(i) Total number of days would be calculated as on 31.12.87 since the reference was made by the Central Government for referring the dispute to the Central Government Industrial Tribunal on 23.9.1987;

(ii) Only such of the casual would be eligible for employment who had actually worked for a total period of not less than 240 days during their entire span of service of Air India as on 31.12.1987;

(iii) Such of the casual who have not with Air India after 1.1.1986 would not be eligible for consideration under the above scheme;

(iv) Such of the casuals against whom there are cases of misconduct would not be eligible for consideration under the above scheme. This is as per the order passed by the Hon"ble Presiding Officer of the Central Government Industrial Tribunal on 5th January, 1988;

(v) The casuals would be regularized as per the corporation recruitment procedure including the interviews, pre-employment medical examination and verification of character and antecedents by the Police Authorities etc. age relaxation would be given; and

(vi) In term of the above procedure, 112 Writ Petitioners would become eligible for regularization/absorption subject to Air India Recruitment Procedure, over the period of next three years in phased manner.

11. It is admitted position that some of the casual workers of respondent/management through its union had filed a petition in Supreme Court for regularization of their services with respondent. The Supreme Court had directed the Central Government to refer the dispute for adjudication to the Tribunal and accordingly the reference was made by the Central Government to the Tribunal. During the pendency of the dispute, the respondent/management proposed a scheme to the Tribunal stipulating the terms and putting conditions to regularize the casuals in a phased manner. The Scheme has already reproduced above. The said scheme was approved by the Tribunal and an award dated 4.3.1991 was passed in I.D. No. 99/1987 approving the said scheme. It is also admitted position that the said Scheme was also approved by the Apex Court also as is stated above. It is also admitted position that petitioner raised an industrial dispute for regularization after 7 years of passing of the award dated 4.3.1991 by the Tribunal wherein some of the workers had raised the dispute about their regularization. There is no explanation of delay by him. Further, as per the scheme of management, the casual workers who had not worked with petitioner after 1.1.1986 were not eligible for consideration under the said scheme. There

is nothing on record to show that petitioner had worked with the management after 1.1.1986. No evidence has been led by him in this regard though his stand is that he was called in the year 1989 for joining the duty but his letter was taken by Personnel Manager. However, no evidence has been led by the petitioner/management in this regard. The management has categorically denied the same. There is no evidence that he had worked after 1.1.1986. In these circumstances, petitioner is rightly not covered under the aforesaid scheme for regularization.

12. Further, the stand of the petitioner that the other two employees, namely, Jhaman Lal and Jai Singh who had not worked after 1.1.1986 like the petitioner have been regularized. The said stand is denied by respondent/management. The stand of the respondent is that they had worked after 1.1.1986. The management has led evidence in this regard before the Tribunal that they had worked after 1.1.1986. Even the attendance sheets are also placed before this court that they had worked after 1.1.1986. However, the petitioner has not placed any material on record that they had not worked after 1.1.1986 to substantiate his stand. In these circumstances, there is nothing on record to show that any discrimination has been done by the management as is alleged. In view of above discussion, there is no illegality in the impugned award which calls for interference of this court. No perversity is also seen in the impugned award.

The petition stands dismissed. There is no order as to costs.