
(2006) 08 AHC CK 0146

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6441 of 2004

Sitaram and Ors.

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 18-08-2006

Acts Referred:

Citation : (2006) 08 AHC CK 0146

Hon'ble Judges : R.K.Agrawal, J and Ran Vijai Singh, J

Final Decision : Dismissed

Judgement

R.K. Agrawal, J.—By means of the present petition under Articles 226/227 of the Constitution of India, the petitioners, Sita Ram and 7 others seek the following reliefs:

?(a) issue a writ, order or direction in the nature of certiorari quashing the select list dated 24122001 and 12/1312004 (Annexures 11 and 12); issued by respondent No. 3;

(b) issue a writ, order or direction of a suitable nature directing the respondents not to make any further appointment from outside and to give seniority to the petitioners from 2412 2001;

(c) issue a writ, order or direction of a suitable nature commanding the respondents to pay salary to the petitioners on the said posts regularly every month as and when it falls due;

(d) issue such other writ, orders or directions as this Hon''ble Court may deem fit and proper under the facts and circumstances of the case; and

(e) award costs of the petitioners?.

2. Briefly stated the facts giving rise to the present writ petition are as follows:

According to the petitioners, they were working as Seasonal Labourers on the post of Lower Division Clerk in the establishment of Government Opium and

Alkaloid Works, Ghazipur (hereinafter referred to as Opium Factory) and have worked for varied period, the earliest starting from the year 1988 (in respect of some of the petitioners) and ending the year 2000 with broken periods. The General Manager, Opium Factory respondent No. 3 issued a notice dated 12th December, 2001 regarding appointment of Seasonal Labourers who had worked earlier in the establishment. Upon some objections being filed by the petitioners before the Regional Labour Commissioner (Central), Kanpur, a direction was issued that option be given to the petitioners to opt for Class IV job in case the regularization was not possible. The General Manager respondent No. 3 issued notice to the petitioners, in response thereto 15 persons including all the petitioners gave their consent to join on Class IV post. According to the petitioners, a new General Manager, namely, Sri S.K. Sinha was appointed and he in a mala fide manner refused to give joining to 9 persons including 8 persons, who are the present petitioners. Instead he called for the names of persons for filling up the vacancies through the Employment Exchange, and by means of an order dated 24th December, 2001, 25 persons were appointed on Class IV post on which they had joined. The petitioners, feeling aggrieved preferred Original Application No. 105 of 2002 before the Central Administrative Tribunal, Allahabad which, vide interim order dated 26th April, 2002, directed that no induction of Seasonal Labourers shall be done without considering the claim of the petitioners. It is alleged that the respondents did not take any action in the light of the order passed on 26th April, 2002 by the Tribunal. The original application was dismissed by the Tribunal vide order dated 21st December, 2003. Thereafter the respondents have inducted 27 persons vide order dated 12th January, 2004 and 13th January, 2004. The action of the respondents in not appointing the petitioners on Class IV post as also the orders dated 24th December, 2001 and 12/13th December, 2004 are under challenge in the present writ petition on the ground that the same have been passed in arbitrary and discriminatory manner violating Article 14 of the Constitution of India and the respondents have failed to take any action in the light of the order dated 26th April, 2002 of the Tribunal to consider the claim of the petitioners.

3. We have heard Sri Manu Khare, learned Counsel for the petitioners and Sri K.C. Sinha, learned Assistant Solicitor General of India, appearing on behalf of the respondents.

4. Sri Manu Khare, learned Counsel for the petitioners submitted that, according to the experience certificate issued by the respondent No. 3, copies of which have been filed as Annexures 2 to 9 to the writ petition, it is absolutely clear and established beyond doubt that each of the petitioners have worked for a fairly long time as Seasonal Lower Division Clerks in the establishment of Opium Factory. The then General Manager of Opium Factory had invited option from the petitioners pursuant to the direction given by the Regional Labour Commissioner (Central), Kanpur for giving their consent to join on Class IV post. Even the action was taken on the options of the candidates and six persons were allowed to join and were appointed on Class IV posts. However, before the remaining

nine candidates could join the post, the General Manager had changed and the new General Manager refused to give appointment/joining to the remaining nine candidates including the petitioners and instead arbitrarily and malafidely called for names from the Employment Exchange for filling up the vacancies. He further submitted that the Tribunal had not considered the effect of the direction given by the Regional Labour Commissioner (Central), Kanpur and it was incumbent upon the General Manager of the Opium Factory to give appointment on preferential basis to the petitioners on Class IV posts. According to him, a casual workman is a workman, whose employment is of purely casual nature. Whenever a vacancy arises in the seasonal category, the senior most among the casual workman of corresponding skill shall be appointed to that category provided he fulfils the conditions laid down by the Government and if no casual workman remains for appointment in the seasonal category, direct recruitment of seasonal workman could be made, which has admittedly not been followed in the present case making the entire appointment illegal and void.

5. Sri K.C. Sinha, learned Assistant Solicitor General of India, on the other hand, submitted that the petitioners were engaged as casual hands (seasonal) for performing the ministerial duties from time to time with intermittent gap. Their engagement were based on requirement of work meaning thereby when import season comes, such seasonal hands were engaged including the petitioners who have performed the job of clerical nature. According to him, it is incorrect to state that any offer of absorption was given to the petitioners, therefore, the question of their regularization on the post does not arise. The vacancies of seasonal workman were filled up in accordance with the directions contained in the letters dated 2nd February, 2001 and 24th December, 2002 issued by the Regional Labour Commissioner (Central), Kanpur. Considering the persons whose names have been invited from the Employment Exchange, Ghazipur, the petitioners and other departmental candidates were interviewed and only then the candidates who have been successful have been given appointment. As the petitioners were not selected, they cannot claim as a matter of right for being appointed on Class IV post of seasonal workman. The original application filed by the petitioners has already been rejected by the Tribunal. According to him the petitioners are not entitled for any relief from this Court.

6. At the outset it may be mentioned here that the petitioners in their petition have not sought the relief of quashing the order dated 21st December, 2003 passed by the Central Administrative Tribunal, Allahabad by which their original application seeking absorption/regularization/appointment in the Class IV post of seasonal workman in the Opium Factory has been dismissed.

7. Having given our anxious consideration to the various pleas raised by the learned Counsel for the parties, we find that there is nothing on record to show except a bald statement in the petition that the then General Manager of the Opium Factory had agreed to absorb the petitioners on the Class IV post of seasonal workman. The plea based on promise/assurance given by the General

Manager thus cannot be accepted. The petitioners cannot, as a matter of right, claim their absorption/regularization on the Class IV post de hors the Rules in view of the Constitution Bench of the Apex Court in the case of Secretary, State of Karnataka & Ors. v. Uma Devi, 2006(3) LBESR 260 (SC) : 2006(4) SCC 1, wherein it has held as follows:

?(41) It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution of India, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality.?

8. The appointment has been made strictly in accordance with Clause 2(e) of the Certified Standing Order as certified on 2nd February, 2001 by the Regional Labour Commissioner (Central), Kanpur, and confirmed in Appeal by the order dated 24th December, 2002. There was no casual worker of corresponding skill available for being considered for the post of seasonal workmen. The petitioners were working, according to their own admission, on the post of Seasonal Lower Division Clerks, which shows that they did not come under the category of casual worker of corresponding skill. We further find that the respondent No. 3 had not only called for the names from the Employment Exchange but also pasted a notice on the notice board calling for applications from the departmental candidates, therefore, he has not acted in any arbitrary manner. The petitioners' candidatures were considered and if they were found unfit visavis the merit of other selected candidates, there cannot be any grievance. The Tribunal has perused the record, which was produced before it by respondent No. 3 and it came to the conclusion that the selection was fair. It had recorded a finding that there were six members in the Selection Committee who had given different marks to the candidates on the basis of the questions put to the candidates and

ultimately all the results were put together and after compilation, the final results were prepared and no mala fide has been alleged against the members of the Selection Committee. The Tribunal has further recorded that no irregularity has been committed by the respondent No. 3 in the selection. The findings recorded by the Tribunal are based on appreciation of evidence and material on record and we are of considered opinion that the order of Tribunal does not suffer from any illegality while arriving to the conclusion that the petitioners were not entitled for being absorbed/regularized on the Class IV post of seasonal workman.

9. In view of the foregoing discussions, we do not find any merit in this petition, which is hereby dismissed. However, the parties shall bear their own costs.