

(2008) 07 DEL CK 0105
In the Delhi High Court
Case No : LPA 2099 of 2006

Soran Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-07-2008

Acts Referred:

Citation : (2008) 106 DRJ 295 : (2008) 119 FLR 769 : (2009) 1 ILR Delhi 416 : (2009) 1 LLJ 700

Hon'ble Judges : A.P. Shah, C.J; Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : Deshraj and Vibudh Singh, for the Appellant; J.K. Singh, for the Respondent

Final Decision : Allowed

Judgement

1. Admit.
2. Mr. Singh, learned Counsel waives service on behalf of the respondent.
3. By consent of the parties appeal is taken up for hearing.
4. This appeal by the workman is directed against the judgment dated 12th October 2006 of the learned Single Judge in W.P. (C) No. 13260 of 2004 whereby the Award of the Tribunal directing reinstatement of the respondent/workman with 50% wages and other consequential benefits was set aside.
5. A large number of casual labourers (monthly rated) joined the Railways under a scheme of regularization. In March 1984 a racket was detected by the Vigilance branch of the Railways. It was reported that some persons had been employed on the basis of bogus or forged casual labour cards. A letter dated 18th October, 1985 was written by Central Railways, Headquarters Office, Personnel Branch to serve notice and seek explanation from the persons found to have entered service by fraudulent means. The said letter read as under:

Sub: Termination of Casual Labours.

Instructions regarding bogus Casual Labour Cards received under Board's letter No. E9NG) II-93/CL, 24 dated 9/2/84 were circulated vide this office confidential letter No. HPB/22513/R/XI dated 5/3/84.

Receipt Vigilance Investigations on JHS Division have revealed that large number of Casual Labours monthly rated or otherwise joined the Railways in that capacity by producing fake Casual Labour Cards.

Since casual Labour monthly/rated otherwise have obtained appointment on the basis of fake/forged entries in the Casual Labour cards involving serious misconduct, action should be taken against above casual labours to terminate their services on issue of show cause notice.

Notices as per performa should be issued and on receipt of explanation and other evidence if any should be considered by competent authority, giving reasons of termination of services as a speaking order.

Please note that these Casual Labours will not be eligible for benefits under ID Act.

6. Thereafter the Railways sent a list of bogus casual labourers to all its offices including the one at Jhansi, where the appellant was working, with a direction to ensure that their services were terminated immediately. The name of the respondent figured at serial number 137 of the list attached with the letter. A show cause notice dated 8th January, 1987 was served upon the appellant. He was thereafter terminated from service on 9th January, 1987 without waiting for his reply to the show cause notice. The appellant raised an industrial dispute which came to be referred to the Tribunal by the Central Government by an order dated 29th March, 1996 in the following terms:

Whether the action of the DRM Central Railway, Jhansi in terminating the service of Sh. Soran Singh APM w.e.f. 8.1.87 is legal and justified? If not, he is entitled to what relief?

7. The Tribunal found that no opportunity was given to the workman to give an explanation or to produce his defence. He was removed from the service in total violation of principles of natural justice. Further, the Tribunal noted that pursuant to an Award of the Central Government Industrial Tribunal, Kanpur, 47 employees whose services had been terminated in similar circumstances, were reinstated and were still working. This fact was not denied by the Railways. The only explanation offered was that their case was on a different footing. However, the Railways failed to distinguish the case of the appellant workman from the case of those 47 reinstated workmen. The Tribunal therefore concluded that the termination of his services was illegal and that the workman was entitled to be reinstated in service with 50 % back wages and other consequential benefits.

8. The respondent filed the aforementioned Writ Petition (C) No. 13260 of 2004 challenging the Tribunal's Award. Initially, notice was issued in the writ petition limited to the question of back wages for the period from October 1984 till March

1996. The learned Single Judge accordingly stayed the direction contained in the Award to pay 50% back wages for the aforementioned period. However, in the impugned judgment allowing the writ petition the learned Single Judge held that the writ petition could not be confined to the issue of back wages and proceeded to hold that where a person entered service by fraudulent means the Court had the duty to pass necessary orders. Relying on the decisions of the Apex Court in Union of India and others Vs. M. Bhaskaran, G. Radhakrishnan and C. Devan, and R. Vishwanatha Pillai Vs. State of Kerala and Others, , the learned Single Judge set aside the award of the Tribunal granting reinstatement with 50 % back wages to the appellant workman.

9. We have heard the learned Counsel appearing for the parties. We find that in the Statement of Claim of the workman has categorically stated that he was employed in the Railways with effect from 10th December 1982 and was posted under the Traffic Inspector, Circle Agra Cantonment. Thereafter he worked at the Agra City Railway Station till 7th January, 1987. The grievance of the workman is that he was removed from service on 8th January, 1987 without giving him an opportunity of hearing or producing his defence in support of his case. In its Award, the Tribunal noted that despite several opportunities, the Respondents herein did not file their written statement within the prescribed time. Ultimately a written statement came to be filed on 24th November, 2000 without the prior permission of the Tribunal. It was inter alia contended that the case of the appellant workman cannot be compared with those of the other employees because it was different and distinct. It was alleged that the appellant workman had obtained employment on the basis of a fake casual labour card and therefore the termination of his services was justified. The copies of documents filed by the Railways along with the list of fake casual labour cards were neither attested nor proved in evidence. However, as far as the workman was concerned besides filing documentary evidence he filed an affidavit. He was also cross-examined. The Railways did not file any affidavit of evidence. Also they failed to adduce any evidence to prove that the service card was fake or forged. The Tribunal recorded that the workman had not been given any opportunity by the Railways to explain his case. Further, in his cross-examination the workman had denied that he had submitted any fake casual labour card or that he had absconded from duty. On the basis of this evidence and material on record, the Tribunal came to the conclusion that the termination was illegal as the management was unable to show that how the appellant's case was different from the 47 employees who had been reinstated by virtue of the Award of the CGIT, Kanpur.

10. The learned Counsel appearing for the respondents was unable to show any evidence on record which would show that the workman's entry into service was on the basis of a fake casual labour card. In fact no enquiry had been conducted against the workman. The letter dated 18th October 1995 issued from the headquarters required that a show cause notice should be given to a fake casual labour card holder to seek an explanation before terminating his services. Even before a reply could be sent, his services were terminated. There cannot be any

doubt that the principles of natural justice were totally violated. We find that the learned Single Judge has failed to appreciate that the Railways had failed to produce any evidence in support of the case that the appellant had entered service by using a fake or forged casual labour card. The decisions relied upon by the learned single Judge in *Union of India and Ors. v. M. Bhaskaran (supra)* and *R. Vishwanatha Pillai v. State of Kerala and Ors. (supra)* have no bearing to the facts of the case. In *M. Bhaskaran's* case the employee was removed on the ground of snatching employment on the basis of bogus and forged casual labourer service cards. The order of removal was passed after holding departmental proceedings and hearing the workmen. The Court held that the fact that the employee continued in service for number of years on the basis of such appointment cannot create equity in his favour nor estoppel against the employer. In *R. Vishwanatha Pillai's* case, the delinquent officer was charged with procuring appointment in a reserved post by producing a false caste certificate. Scrutiny Committee constituted under the directions of the Supreme Court in *Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others*, after affording due opportunity to him, found him guilty and High Court as well as Supreme Court upheld that finding. It was held that in such circumstances issuance of a fresh notice to the delinquent under rules before dismissing him was unnecessary.

11. Coming to the question of the back wages it is seen from the record that after the termination letter dated 8th January, 1987 the workman approached the CGIT, Kanpur in case LCA No. 245 of 1989. Ultimately, the CGIT, Kanpur rejected the case and ordered the appellant workman to approach the appropriate forum under the Industrial Disputes Act. Thereafter the matter was taken up by the employees union and the conciliation proceedings were held on 27th January, 1994 and 22nd March, 1994. The failure of these proceedings ultimately resulted in a reference being made to the Tribunal. In the circumstances, this was not a case where the workman did not pursue his remedies with diligence. We are, therefore, unable to agree with the view of the learned Single Judge that there was nine year delay on the part of the workman to approach the Tribunal. This finding of the learned Single Judge is contrary to the record. In the circumstances, we are of the view that the order of the Tribunal granting 50% back wages to the workman is just and fair. Accordingly, we set aside the order of the learned Single Judge and restore the Award of the Tribunal. It is stated that the employee has been reinstated in service. The amount of the back wages be released within a period of two months.

12. The appeal is, accordingly, allowed.