

(2015) 01 RAJ CK 0108

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 706/2014

State of Rajasthan

APPELLANT

Vs

Saroj

RESPONDENT

Date of Decision : 06-01-2015

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2015) 2 LLN 253 : (2015) 2 RLW 967

Hon'ble Judges : Sunil Ambwani, Acting C.J.; Jaishree Thakur, J.

Bench : Division Bench

Advocate : P.S. Bhati, Addl. Advocate General, for the Appellant; Mukesh Vyas, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Sunil Ambwani, Actg. C.J.—We have heard learned Additional Advocate General for the State of Rajasthan. Shri Mukesh Vyas appears for the respondent-petitioner.

2. This Special Appeal is directed against the judgment dated 24.2.2014 passed by learned Single Judge, by which he has issued the following directions:--

"A. The respondents are directed to treat the petitioner's husband late Mahendra Kumar Panwar as regular employee after completion of 15 years of service on the post of Class IV employee and grant regular pay-scale of Class IV employee; and, further, the respondents are directed to make fixation of the salary of late Mahendra Kumar Panwar and release all arrears and retiral benefits in favour of the petitioner who is widow of late Mahendra Kumar Panwar.

B. The respondents are directed to consider the case of the petitioner for providing appointment to her on compassionate ground as per the Rules of 1996 within a period of one month from the date of receiving certified copy of this order on the post available in the respondent Department.

C. The respondents shall pay cost of Rs. 10,000/- to the petitioner."

3. Brief facts giving rise to this Special Appeal are that late Shri Mahendra Kumar Panwar (the workman), the husband of the respondent-petitioner was appointed as Tabulator in the Census Office in the year 1988. On the completion of the census, he was appointed in a vacant post of Junior Clerk in the office of the Assistant Director, Social Welfare Department, Jodhpur on 11.4.1988. He worked on daily wages till February, 1989, after which his services were not extended.

4. Late Shri Mahendra Kumar Panwar raised an industrial dispute, on which the matter was referred by the State Government to the Labour Court, Jodhpur for adjudicating the reference as to whether the termination of the services of the workman by the Assistant Director, Social Welfare Department, Jodhpur/ Director (Admn.), Social Welfare Department, Jaipur in February, 1989 was legal and valid; and if not, the relief to which he is entitled.

5. The Labour Court, after considering the evidence and material available on record and the nature of the services of the workman, held that the action taken by the respondents-authorities in February, 1989 to terminate the services of the workman was not legal and valid and thus, the workman was directed to be reinstated in service as daily wager with effect from 16.11.1993 when the reference was made by the State Government to the Labour Court, with only 20% of back wages. The Writ Petition No. 919/2004 filed by the Deputy Director, Social Welfare Department, Jodhpur and Director (Admn.) Social Welfare Department, Jaipur against the Award of the Labour Court was dismissed on 4.3.2004 with the following order:--

"Heard learned counsel for the petitioners.

The perusal of the entire writ petition shows that all through the award dated 24.4.98 is decried. While it is not shown that the award was ever challenged whereby the workman was ordered to be reinstated. The impugned award has been passed redressing the grievance of the petitioner that despite the earlier award, workman has not been reinstated, nor is being paid any emoluments. Nothing has been shown on the side of the petitioner, as to how this award is wrong.

In that view of the matter, I do not find any force in the writ petition. The same is, therefore, dismissed summarily."

6. The late workman was not reinstated until the decision of the writ petition. He was taken back in pursuance to the Award as a daily wager on 8.10.2004. The proceedings for regularization of his services were initiated in pursuance to the Notification dated 27.2.2009 issued by the State of Rajasthan in exercise of the powers conferred under the proviso to Article 309 of the Constitution of India providing for regularization of the services of those daily wagers, who had completed ten years of service on 10.4.2006 (the date on which the judgment in Secretary, State of Karnataka and Others Vs. Umadevi and Others, was

rendered by the Constitution Bench of the Supreme Court), without intervention of any Court or Tribunal, and were continuously working as such on the date of commencement of the Rules i.e. on 27.2.2009. The process of regularization of the services of late Shri Mahendra Kumar Panwar (the workman) initiated in the year 2009 could not be completed before he died on 13.10.2012. The letter of the Dy. Director, Social Justice and Empowerment Department, Jodhpur dated 11.12.2009 shows that the Department had treated his services to be continuous with effect from 16.11.1993 in terms of the order of the Labour Court, and on which he had completed ten years of service. His salary was being paid by the Department, but since he was posted in District Pali, from where the complete information was not received, his name was not included in the list of persons, who were to be regularized.

7. In the aforesaid facts and circumstances, Smt. Saroj, widow of late Shri Mahendra Kumar Panwar (the workman) filed a writ petition for treating the services of her husband to have been regularized; to pay to her the arrears of his salary; to pay to her family pension; and for consideration of her case for compassionate appointment. The writ petition has been allowed, giving rise to this Special Appeal.

8. Learned counsel appearing for the appellants submits that the services of late Shri Mahendra Kumar Panwar (the workman) were not regularized by the date he had died and that he was even otherwise not entitled for regularization of his services as a daily wager as he was directed to be reinstated with the intervention of the Labour Court. He submits that in view of the amendment of Rule 6 by the Rajasthan Class IV Service (Recruitment and other Service Conditions) (Amendment) Rules, 2009 (for short, "the Rules of 2009"), a person has to be in continuous service for a period of ten years upto 10.4.2006, without the intervention of any Court or Tribunal, to seek the benefit of regularization.

9. Learned counsel for the State further submits that where a person had died without getting the benefit of regularization, he would not be entitled to the relief posthumously. His widow in such case will not be entitled to arrears of salary, family pension and consideration for compassionate appointment.

10. Learned counsel for the respondent-petitioner, on the other hand, submits that the directions issued by the Labour Court, after industrial adjudication, would not fall within the directions issued in *Secretary, State of Karnataka and Others v. Umadevi* (supra). In the present case, after an industrial adjudication, the Labour Court found in the Award dated 24.4.1998 that the services of the workman were terminated illegally, and he was directed to be reinstated in service with effect from 16.11.1993 when the reference was made. The industrial adjudication cannot be equated with the interim directions or directions issued by the Court for regularization of services. There is no interim order or direction passed in favour of the workman to allow him to continue in service, on which he completed ten years of service before his death.

11. In Maharashtra State Road Transport Corporation and Anr. v. Casteribe Rajya Parivahan Karmchari Sanghatana ((2009) 2 SCC (LandS) 513), the Supreme Court held in paragraphs 36 and 37 as follows:--

"36. Secretary, State of Karnataka and Others Vs. Umadevi and Others, does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victim of unfair labour practice on the part of the employer under Item 6 of Schedule IV where the posts on which they have been working exist. Umadevi cannot be held to have overridden the powers of Industrial and Labour Courts in passing appropriate order under Section 30 of the MRTU and PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established.

37. There cannot be any quarrel with the proposition that courts cannot direct creation of posts. In Mahatma Phula Agricultural University and Others Vs. Nasik Zills Sheth Kamgar Union and Others, this Court held: (SCC pp. 352-53, paras 12-14)

"12. Mrs. Jaising, in support of Civil Appeals Nos. 4461-70 and 4457-60 arising out of SLPs (C) Nos. 418-21 of 1999 and SLPs (C) Nos. 9023-32 of 1998 submitted that the workmen were entitled to be made permanent. She however fairly conceded that there were no sanctioned posts available to absorb all the workmen. In view of the law laid down by this Court the status of permanency cannot be granted when there are no posts. She however submitted that this Court should direct the Universities and the State Governments to frame a scheme by which, over a course of time, posts are created and the workmen employed on permanent basis. It was however fairly pointed out to the Court that many of these workmen have died and that the Universities have by now retrenched most of these workmen. In this view of the matter no useful purpose would be served in undergoing any such exercise.

13. To be seen that, in the impugned judgment, the High Court notes that, as per the law laid down by this Court, status of permanency could not be granted. In spite of this the High Court indirectly does what it could not do directly. The High Court, without granting the status of permanency, grants wages and other benefits applicable to permanent employees on the specious reasoning that inaction on the part of the Government in not creating posts amounted to unfair labour practice under Item 6 of Schedule IV of the MRTU and PULP Act. In so doing the High Court erroneously ignores the fact that approximately 2000 workmen had not even made a claim for permanency before it. Their claim for permanency had been rejected by the award dated 20-2-1985. These workmen were only seeking quantification of amounts as per this award. The challenge, before the High Court, was only to the quantification of the amounts. Yet by this sweeping order the High Court grants, even to these workmen, the wages and benefits payable to other permanent workmen.

14. Further, Item 6 of Schedule IV of the MRTU and PULP Act reads as follows:

"6. To employ employees as 'badlis', casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees." The complaint was against the Universities. The High Court notes that as there were no posts the employees could not be made permanent. Once it comes to the conclusion that for lack of posts the employees could not be made permanent, how could it then go on to hold that they were continued as "badlis", casuals or temporaries with the object of depriving them of the status and privileges of permanent employees? To be noted that the complaint was not against the State Government. The complaint was against the Universities. The inaction on the part of the State Government to create posts would not mean that an unfair labour practice had been committed by the Universities. The reasoning given by the High Court to conclude that the case was squarely covered by Item 6 of Schedule IV of the MRTU and PULP Act cannot be sustained at all and the impugned judgment has to be and is set aside. It is however clarified that the High Court was right in concluding that, as per the law laid down by this Court, status of permanency could not be granted. Thus all orders wherein permanency has been granted (except award dated 1-4-1985 in IT No. 27 of 1984) also stand set aside."

12. In the present case, late Shri Mahendra Kumar Panwar (the workman) was employed by the State Government in the vacant post of Junior Clerk in the office of Assistant Director, Social Welfare Department at Jodhpur after he was retrenched from the census department on completion of census work in the year 1988. The Labour Court had jurisdiction to adjudicate over the validity of the termination order. After considering the evidence and material on record, the Labour Court held that the services of the workman were illegally terminated, on which he was directed to be reinstated from the date of reference (i.e. 16.11.1993). The workman had completed ten years of service on 10.4.2006, when the Rajasthan Various Service (Amendment) Rules of 2009 was notified on 8.7.2009. He was also considered for regularization and that his case was under active consideration when he unfortunately died. Under the circumstances, it cannot be said that he was not entitled for regularization under the Rules of 2009 notified on 8.7.2009. The benefits accrued to him under the statutory Rules, to which he was entitled, and which he could not receive, should not have been denied, nor any benefits which can be calculated in terms of monetary benefits, can be denied to his widow.

13. We however do not agree with the blanket directions issued by learned Single Judge that the petitioner's husband late Shri Mahendra Kumar Panwar shall be treated to have been regularized and that all arrears and retiral benefits be paid to his widow.

14. Where the statutory Rules provide for screening of the persons, who are eligible and fall within the scope of the Rules, the Courts should not ordinarily issue directions, by passing the screening for the purpose of considering the

eligibility and suitability, which can be considered on the basis of the documents, even after the death of the person, if he is otherwise entitled to such benefits.

15. In view of the aforesaid discussion, the Special Appeal is partly allowed to the extent that the directions issued by learned Single Judge that the petitioner's husband late Shri Mahendra Kumar Panwar shall be treated to have been regularized, are substituted with the directions that the appellants will now consider the case of the respondent-petitioner's husband late Shri Mahendra Kumar Panwar for regularization in accordance with the Rajasthan Various Service (Amendment) Rules, 2009 notified on 8.7.2009. If, on the basis of the documents on record in the office of the appellants, he is found to be entitled for regularization, after screening, the consequential orders of the regularization, arrears of salary and fixation of family pension will be passed by the appellants. We further direct that in case late Shri Mahendra Kumar Panwar (the workman) is found to be entitled for regularization and the order of regularization of his services is issued, his widow will be paid the entire arrears of salary payable to him upto his death, the retiral benefits and thereafter, family pension to her in accordance with relevant Rules. In such case, she will also be considered for compassionate appointment, in accordance with the prevailing Rules, subject to fulfilling all other conditions. The consequential orders will be passed and benefits will be paid to her within three months of service of this order on the appellants.