

(1989) 01 DEL CK 0032

In the Delhi High Court

Case No : Civil Writ Petition No. 3442 of 1987

Suresh Kumar and others

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 01-01-1989

Acts Referred:

Citation : (1989) 2 LLJ 110(1)

Hon'ble Judges : B.N. Kirpal, J

Bench : Single Bench

Judgement

1. The petitioners were working in the Central research Institute for Yoga (respondent No. 2) and have challenged in this writ petition the action of the said Institute in not absorbing them in regular service.

2. Briefly stated the facts are that petitioner No. 1 was appointed April 8, 1981 as an Attendant by respondent No. 2 on daily wages with effect from April 2, 1981. Petitioner No. 2 was appointed as a Sweeper vide order dated October 29, 1984 by the said Institute on daily wages. Similarly, petitioner No. 3 was appointed on January 19, 1982 on daily wages as a Peon by the said Institute. It is the case of the petitioners, and this is not denied by the respondents, that the petitioners continued to work on daily wages till their services were ultimately terminated on December 11, 1987 after filing of the present writ petition.

3. At the time when the petition was filed the grievance of the petitioners was that the respondent-Institute advertised in the newspapers on February 1, 1987 a number of posts including the posts of Peons and Sweepers. It appears that interview letters were issued, but one of the petitioners was not even called for interview. The interviews were to be held on December 7, 1987. The case of the petitioners is that the respondent-Institute is a "State" within the meaning of Article 12 of the Constitution, and as the petitioners have put in more than 240 days of work in a year, they are liable to be absorbed in regular service in view of the numerous decisions of the Supreme Court.

4. On December 8, 1987 this court issued notice to the respondents to show-case why the petition be not admitted. Notice was also issued in the interim application and it was ordered that any appointments that may be made from outside would be subject to further orders of the Court. Copy of the order is stated to have been served on respondent No. 2 on December 11, 1987. Thereafter, on that very day. i.e. on December 11, 1987 the respondent No. 2 issued three similar office orders to the effect that the services of the petitioners were no longer required with effect from December 11, 1987. Thereafter, another application for stay was filed, and it was directed by this Court, while admitting the writ petition, that any appointments which are made from outside will be subject to the orders of this Court. Counsel for the petitioners informs me that after the services of the petitioners were terminated five persons have been appointed to the posts of Peons and Sweepers.

5. In the affidavit filed in reply it has been, inter alia, contended that the respondent-Institute is not a state. It has been submitted that the institute is not an industry and in any case this Court should not exercise its jurisdiction under Article 226 of the Constitution and if it be held that the Institute is an industry, then the petitioners should be asked to take recourse to the provisions of the Industrial Disputes Act.

6. It is now well settled, and it has not been disputed by the learned counsel for the respondents, that a daily wager who works for more than 240 days in a year in an industry has to be regarded as having been regularly appointed. The services of such an employee is liable to be regularised and in this connection the following decisions of the Supreme Court may be noticed : Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others, ; U.P. Income Tax Department Contingent Paid Staff Welfare Association Vs. Union of India (UOI) and Others, ; Delhi Municipal Karamchari Ekta Union v. P. L. Singh & others 1988(56) F.L.R. 209 (S.C.); The General Secretary, Bihar State Road Transport Corporation, Patna v. The Presiding Officer Industrial Tribunal Patna & others 1988 II LLJ 109 and Business Combine Limited v. M. N. Jagtap & others 1988 (1) J.T.S.C. 30. In all these cases it was held by the Supreme Court that when an employee has served for a number of years without break, the person was entitled to be regularised and appropriate directions were issued direction the promulgation of the scheme for regularisation of the services of those persons.

7. In the present case, the petitioners had worked for over 750 days prior to their termination of service. It was, however, contended by Mr. D. D. Thakur before me that the respondent-Institute is not an industry. In this connection, reliance was sought to be placed by the learned counsel on the observations of the Supreme Court in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, where at page 349 the Supreme Court had observed that institutions like Ashrams where people work tirelessly and voluntarily and without wages would not be regarded as industry, even though a few scavengers

and servants or part-time auditors or accountants may be employed for wages. It is in that very case that the Supreme Court had held that the word "industry" was of a very wide import and where there was a systematic activity, organized by co-operation between the employer and the employees for the production and distribution of goods and services, calculated to satisfy human wants and wishes, then, prima facie, such activity by an enterprise would be regarded as an industry. It was further clarified that absence of profit motive or gainful objective was irrelevant. Applying the said test, the present Institute whose objectives is to conduct research in Yoga would be regarded as an industry, especially when most of its employees are person who are working for wages unlike an Ashram which has been referred to by the Supreme Court in paragraph 131 of its judgment in Bangalore Water Supply case (supra). The respondent-Institute is carrying out a systematic activity and its employees do not belong to any holy orders and are certainly not working voluntarily. I have, Therefore, no hesitation in coming to the conclusion that respondent No. 2 is an industry, and the petitioners having worked more than 240 days in a year are entitled to be treated as regular employees of the said Institute.

8. It was then contended by the learned counsel for the respondents that the said Institute is not a State within the meaning of Article 12 of the Constitution. Reliance was sought to be placed by the learned counsel on the decision of the Supreme Court in the case of Sabhajit Tewary Vs. Union of India (UOI) and Others, . It is no doubt true that in Sabhajit Tewary's case it was held by the Supreme Court that the Council of Scientific and Industrial Research was not an instrumentality of the State, but as has been held in the case of Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, , while dealing with the case of Sabhajit Tewary, that the decisions of the Supreme Court in Sabhajit Tewary's case turned on the activities of that Institute. The Supreme Court Clarified in Ajay Hasia's case that it is not because the Central Council of Scientific and Industrial Research was registered under the Societies Registration Act that it was regarded as not being an instrumentality of the State, but the said conclusion was arrived at after seeing the duties and function that were being performed by the said Society. It is, Therefore, important to see as to whether the respondent-Institute is functioning as an instrumentality of the State.

9. In the present case, the Memorandum of Association clearly discloses that the respondent-Institute is to be under the general supervision of the Union Ministry of Health and Family Welfare (Clause 2(ii)). In the affidavit in reply it has been admitted by the respondents that it is the Central Government which gives entire financial support to the Institute in addition thereto, the Minister of Health to the Government of India is the Chairman of the Institute and the Institute is also located in the Government premises though rent is being paid for that. Though the Institute is regarded as an autonomous body, nevertheless, it is clearly under the control and direction of the Government of India, Ministry of Health and family Welfare, and the entire finances are made available by the Government of India. Clause 4 of the Memorandum of Association further provides that the

income from the properties of the Institute shall be applied towards objects as set forth in the Memorandum of Association "subject to such limitations as the Government of India may, from time to time, impose". It appear, Therefore, that the Central Government also has a role to play with regard to financial control in the institute. The Institute clearly appears to be an agency of the State and is, Therefore, a "State" within the meaning of Article 12 of the Constitution.

10. It may be that the petitioners may be able to approach the Industrial Tribunal or the Labour Court for redress, but the writ petition having been admitted, and as the action of the respondents in not treating the petitioners as regular is clearly contrary to law, in my opinion, this is a fit case where this Court should exercise its extraordinary jurisdiction under Article 226 of the Constitution. The respondent-Institute has in fact, in the instant case, acted in a most vindicates and irresponsible manner. On December 11, 1987 the Institute was served with the interim order passed by this Court to the effect that any appointments which are made by the Institute would be subject to further orders of this Court. The action of the respondent-Institute to terminate the services of the petitioners on that very day, i.e. on December 11, 1987 not only shows the arbitrary manner in which it has acted, but also leaves an indelible impression in my mind that the action was vindictive in nature. The Institute seems to have taken it as an affront that the petitioners had approached this Court and obtained an interim order in their favor. One would expect the Institutes sponsored by the Central Government to act with a certain amount of discretion and without atleast appearing to be arbitrary. Even though in the writ petition there is no specific prayer for quashing of the orders dated December 11, 1987, but as the said orders were passed during the pendency of the writ petition, it would be appropriate to quash the said orders as well.

11. From the aforesaid it will follow that the petitioners are entitled to be regarded as being regular employees of the respondent-Institute. Had there been no regular vacancies available, the Institute would have been directed, as was done by the Supreme Court in aforesaid cases, to put forth a scheme with regard to regularisation of the employees. In the instant case, however, regular vacancies were available, as is evident from the advertisement of February 1, 1987 issued by the respondent-Institute for filling up a number of posts including those of Peons and Sweepers. The petitioners were entitled to be regularised in those posts.

12. For the aforesaid reasons the writ petition is allowed and a Writ of Mandamus is issued quashing the orders dated December 11, 1987 whereby the services of the petitioners were terminated, and a further Writ to Mandamus is issued direction the respondents to regard the petitioners as regular employees of the respondent-Institute and the Institute is further directed to pay to the petitioners full back wages and allowances which they would have been entitled, if their services had not been illegally terminated. The respondent are directed to reinstate the petitioners forthwith and should thereafter pay the petitioners the

arrears of salary, allowances, etc. within two months from today. The respondent-Institute shall be entitled not to pay the salary, allowances, etc. for the period after December 11, 1987 for which the petitioners may have been gainfully employed elsewhere, but such employment elsewhere would not be regarded as a break in service of the petitioners.

13. The petitioners shall also be entitled to costs. Counsel's fee Rs. 500/-.