

(2014) 04 PAT CK 0067
In the Patna High Court
Case No : C.W.J.C. No. 2449 of 2005

The Union of India and Others

APPELLANT

Vs

Ramesh Chandra and Others

RESPONDENT

Date of Decision : 25-04-2014

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution of India, 1950 — Article 226, 227, 41, 42

Citation : (2015) 1 PLJR 96

Hon'ble Judges : S.P. Singh, J;I.A. Ansari, J

Bench : Division Bench

Advocate : Bindhyachal Singh and Parijat Saurav, Advocates for the Appellant;
Satish Chandra Mishra, Nurul Hoda and Sudama Pandey, Advocates for the Respondent

Judgement

I.A. Ansari, J.—Though Articles 41 and 42 of the Constitution of India, combined together, envisage, inter alia, right to work and provision for just and humane conditions of work, as a Directive Principles of State Policy, the policy of hire and fire was continued, which was disapproved by many judicial pronouncements. No wonder, therefore, that the policy of hire and fire was commented, in Inder Pal Yadav and Others Vs. Union of India (UOI) and Others, , as a policy contrary to the scheme of employment postulated by Articles 41 and 42 of the Constitution of India. In order to, therefore, confer status of temporary workers on casual labourer employed on various projects, known as "Project Casual Labour", the Railways introduced a scheme by Circular No. E(NG)II/84/CL/41, dated 1.6.1984. The scheme contemplated conferment of temporary status on casual labourer subject to certain conditions. One of the conditions for conferment of temporary status required that the casual labourer, on the project, ought to have been in the service of the Railways on 1.1.1984. The Supreme Court, in Inder Pal Yadav (supra), noted that the choice of the cut-off date, as 1.1.1984, was arbitrary and the said date was, therefore, modified to 1.1.1981 by the Supreme Court in Inder Pal Yadav (supra).

2. By an application made under Section 19 of Administrative Tribunals Act, 1985, which gave rise to O.A. No. 421 of 1990, respondent No. 1, namely, Ram Chandra, approached learned Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as "the learned Tribunal"), seeking direction to be issued to the petitioners herein to make an enquiry into the grievance of the applicant-respondent No. 1 for the purpose of his re-engagement. O.A. No. 421 of 1990 was disposed of by order, dated 27.3.1992, with a direction to the Railways to enquire into the matter.

3. Pursuant to the direction, so issued, on 27.3.1992, by the learned Tribunal, the petitioner No. 3 herein held an enquiry into the matter and found that the appointment of applicant-respondent No. 1 herein was illegal and as such, he had his case for regularization.

4. The applicant-respondent No. 1 herein, then, went back to the learned Tribunal by yet another application made under Section 19 of Administrative Tribunals Act, 1985, which came to be registered as Original Application (O.A.) No. 147 of 1997, seeking therein directions to be issued for the reinstatement of the applicant-respondent No. 1, in service and regularization of his employment with consequential benefit.

5. The petitioners herein resisted O.A. No. 147 of 1997 by contending, inter alia, (i) that the appointment of the applicant-respondent No. 1 herein, as a casual labourer, was by a person not competent to make such appointment; (ii) that the prescribed period of 360 days of continuous employment had not been satisfied; and (iii) the applicant-respondent No. 1 herein (i.e. the application in O.A. No. 147 of 1997) had come to be engaged in the year 1982; whereas the cut-off date was 1.1.1981 and the applicant-respondent No. 1 herein was, therefore, not entitled to the benefit of reinstatement and regularization.

6. Notwithstanding the objections so raised by the petitioners herein to the prayer for regularization of the services of applicant-respondent No. 1 herein, the learned Tribunal passed an order, on 3.8.2004, in O.A. No. 147 of 1997, quashing the order, dated 16.9.1996, with a direction to the respondents to consider the case of the applicant-respondent No. 1 for his regularization.

7. Being aggrieved by the order, dated 3.8.2004, aforementioned, passed by the learned Tribunal, this writ petition has been filed by the Railways under Articles 226 and 227 of the Constitution of India.

8. We have heard learned Counsel for the parties.

9. Learned Counsel for the Railways submits that the learned Tribunal failed to take note of the fact that the applicant-respondent No. 1 was appointed by an authority, who was not competent inasmuch as the applicant-respondent No. 1, was, admittedly, appointed by Divisional Manager, Railways; whereas in terms of the Circular, dated 31.12.1980, a casual labourer could have been appointed by a General Manager or by his approval; whereas no such approval had been

obtained.

10. At any rate, contends Mr. Bindhyachal Singh, learned Senior Counsel, that the service of applicant-respondent No. 1 herein cannot be regularized inasmuch as he had not worked, as a casual labourer, continuously for 360 days, which was an essential condition of the Railways" policy/Circular, dated 1.6.1984, aforementioned. Further submission of the petitioners is that the applicant-respondent No. 1 had been appointed in the year 1982 and his appointment was, therefore, in the light of the decision in Inder Pal Yadav (supra), beyond the cut-off date of 1.1.1981. In no way, therefore, according to the learned Counsel for the petitioners, a direction for regularization of service of the applicant-respondent No. 1 could have been validly passed by the learned Tribunal.

11. Repelling the above submissions made on behalf of the petitioners, it is submitted, on behalf of the applicant-respondent No. 1, that he was appointed before the cut-off date, i.e. 1.1.1981.

12. While considering the merit of the rival submissions made before us, it is pertinent to note that by Circular, dated 31.12.1980, North Eastern Railway framed Recruitment Policy for appointment of casual labourer. According to this Recruitment Policy, a casual labourer could have been appointed only by a General Manager or, in any view of the matter, only after obtaining prior personal approval of the General Manager.

13. In the present case, it is the assertion of the Railways that applicant-respondent No. 1 had neither been appointed by the General Manager nor was his appointment had been approved by the General Manager. Besides this, there is dispute whether applicant-respondent No. 1 had completed 360 days of qualifying service for being treated as a temporary labourer in terms of the relevant scheme, dated 1.6.1984.

14. Yet another question raised by the petitioners herein, as already indicated above, is that the applicant-respondent No. 1 had come to be employed, as a casual labourer, in the year 1982 and, therefore, fell outside the relevant scheme inasmuch as the scheme required a person to have been in employment, as a casual labourer, on the cut-off date, i.e. 1.1.1981.

15. From perusal of the impugned order, we find that there is no determination of the date of appointment of the applicant-respondent No. 1 by the learned Tribunal nor is there any determination of the question, as to whether applicant-respondent No. 1 had been appointed by a competent authority, as a casual labourer, or not.

16. Coupled with the above, there is no determination of the question as to whether applicant-respondent No. 1 herein had requisite working experience of 360 days on the relevant date for being treated as a temporary labourer.

17. The learned Tribunal has, thus, not determined if the applicant-respondent No. 1 falls within the ambit of the scheme, which had come into force on

1.6.1984.

18. Since the decision on the points, as indicated above, would be not only very relevant, but essential in the context of the facts of the present case so that a decision on merit can be validly reached and since the learned Tribunal has not answered any of the questions, which had so arisen for determination, we hereby, in the interest of justice, set aside the impugned order, dated 3.8.2004, passed in O.A. No. 147 of 1997 and remit the matter to the learned Tribunal for its decision afresh on the questions, which had arisen for determination and have been pointed out in the preceding paragraphs of this order.

19. As the applicant-respondent No. 1 had been knocking on the doors of the learned Tribunal since the year 1990, the decision by the learned Tribunal may be rendered expeditiously and, preferably, within a period of three months from the date of receipt/production of a copy of this order.

20. In terms of the above observations and directions, this writ application shall stand disposed of. No order as to costs.

S.P. Singh, J.

I agree.