
(2013) 12 AHC CK 0195
In the Allahabad High Court
Case No : C.M.W.P. No. 68656 of 2009

Union of India and Another

APPELLANT

Vs

Central Administrative Tribunal, Allahabad Bench at Allahabad
and Another

RESPONDENT

Date of Decision : 18-12-2013

Acts Referred:

Citation : (2014) 102 ALR 757 : (2014) 141 FLR 96 : (2014) 1 UPLBEC 484

Hon'ble Judges : Rakesh Tiwari, J; Bharat Bhushan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard Ms. Vijay Laxmi, respondent No. 2, who has appeared in person, Sri A.K. Gaur, learned Counsel for the petitioners and perused the record. Brief facts of the case are that respondent No. 2, Vijay Laxmi was initially engaged in different capacities i.e., Typist, Machine Operator, Record Keeper and Sorter on daily wage basis, though the petitioners continued to take work from her that of Stenographer. Her services were regularized as Gangman on 6.6.1998 while she was working as a Record Sorter under D.E.N. Agra Cantt; that on 20.12.1989 she was promoted from the post of Photostat Machine Operator to the post of Record Sorter in the grade of Rs. 825-1200/- (RPS), although she was allowed to continue as Stenographer in stop-gap arrangement as the office of AEE (C) MTJ does not have any post of Stenographer.

2. It is averred by the petitioners that respondent No. 2 moved an application dated 12.9.2006 for her transfer to the office of S.S.E. N.C.R. Palwal whereupon she was transferred vide order dated 10.1.2007 on her own request showing her to be working on the post of Gangman but she refused to join on the said post at the transferred place of posting claiming sickness; that a show-cause notice dated 5.2.2007 was given to her stating that in case she does not join her duty at Mathura as Gangman and, disciplinary action will be taken against her for refusal and absence from duty. As she did not joined duty at Mathura and

remained absent w.e.f. 14.11.2006, she claimed harassment by her immediate officer and prayed for relieving her for joining at her transferred place of posting at Palwal. Thereafter, respondent No. 2 filed Original Application No. 376 of 2007, Vijay Laxmi v. Union of India and others before the Central Administrative Tribunal, Allahabad Bench, Allahabad (hereinafter referred to as "the Tribunal") which was allowed vide order dated 16.9.2009 directing the applicant to submit within 6 weeks from the date a certified copy of this order is produced before the concerned respondents/Competent authority, who shall in turn ensure that the applicant is allowed to join her duties forthwith as Steno-Typist in the office in question at Mathura (i.e., office of AEN, NCR, Mathura) and pay her arrears as well as month by month future salary treating her in continuous service and other consequential benefits within two months as per relevant statutory rules.

3. Aggrieved by the aforesaid order dated 16.9.2009 of the Tribunal, the petitioners have filed the instant writ petition praying for the following reliefs:

1. "To issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 16.9.2008 passed by respondent No. 1 in Original Application No. 376 of 2007, Vijay Laxmi v. Union of India and others.

2. To issue any other writ order or direction as this Hon''ble Court may deem fit in the circumstances of the case.

3. To award cost of the petition to the petitioners.

4. Learned Counsel for the petitioners submits that on perusal of medical report (Annexure-11 to the writ petition) would indicate that the allegation of respondent No. 2 that she fell ill w.e.f. 14.11.2006 and could not attend the duty till 19.1.2007 falsifies her version inasmuch as the record clearly shows her to be absent from 14.11.2006; that the findings and observations of the Tribunal that respondent No. 2 was selected as Steno-Typist and the work relating to the said post existed throughout and she had worked as Steno-typist for decades are based on no evidence and are wholly perverse finding; that the Tribunal has decided the dispute totally against the pleadings and relief sought, hence it has committed manifest error of law by granting relief which was not even claimed.

5. In support of aforesaid contentions, learned Counsel for the petitioners has placed reliance upon the decisions in Pyare Mohan Lal Vs. State of Jharkhand and Others, and Civil Appeal No. 3414 of 2009, State of West Bengal and Another Vs. West Bengal Regn. Copy Writers Assn. and Another, ., connected with: (Civil Appeal No. 3415 of 2009, State of West Bengal and another v. Chiranjib Kumar Das and others and (Civil Appeal No. 3416 of 2009) State of West Bengal and another v. Sadhan Kumar Dutta and others.

6. In Sadhan Kumar (supra) the Apex Court held that the High Court has travelled beyond the scope of original application and writ petition and in paragraph No. 12 of the judgment in State of West Bengal (supra) it has been observed that a writ petitioner has to stand on his own legs and has to rely on

the pleadings in the writ petition or in the original application. The Apex Court has gone to the extent of saying that unfortunately the High Court seems to have travelled much beyond the pleadings and has, therefore, fallen into error in granting an unimaginable relief to the writ petitioners of creating a service for them with a separate nomenclature. All this was clearly beyond the jurisdiction of the High Court.

7. He also submits that relying on the decision of Pyare Mohan Lal's (supra) the Apex Court has clearly held that relief not specifically sought cannot be granted by the Court; that from a perusal of the pleadings and grounds taken in Original Application it is evident that respondent No. 2 never raised any ground or relief that her services may be regularized on the post of Steno-Typist and the judgment of the Tribunal utterly surprise the petitioners as to on what ground the services of respondent No. 2 can be regularized on the post of Steno-Typist particularly when there exist no such post and more-so-ever where the original application is completely silent with regard to any such relief.

8. He next submits that the most striking feature of the case is that respondent No. 2 has prayed for resuming her duties as Gangman and also regularizing the unauthorized absence from 14.10.2006 to 14.3.2007, which was availed by her without any sanctioned leave and as this fact has not been considered by the Tribunal, hence it has committed grave error in treating her to be Steno-Typist, directing without considering that she was regularized as Gangman and that this direction cannot be acted upon as it violates the existing rules.

9. He further submits that the Tribunal has wrongly come to a conclusion that respondent No. 2 worked only as Steno-Typist throughout her service that too on the basis of annexures which were appended alongwith the original application; that it has failed to consider that all those annexures clearly show that she worked only for a very short period as Steno-Typist on daily wage basis; and that from perusal of the contents of original application it is clear that she worked in different capacities before her services were regularized on the post of Gangman.

10. Learned Counsel for the petitioners has placed reliance upon an interim order dated 17.12.2009 passed by this Court in the present writ petition and submits that in view of the facts stated above, the aforesaid judgment of the Tribunal deserves to be quashed and is liable to be set aside. The interim order dated 17.12.2009 reads thus:

Issue notice to respondent No. 2.

Learned Counsel for the petitioners contends that the Tribunal by the impugned order has allowed the relief to respondent No. 2 which was not even prayed for. It is submitted that respondent No. 2, who was initially engaged on casual capacity was subsequently regularized as Gangman and her prayer in the petition was to permit her as Gangman whereas the Tribunal has directed for regularization of services of respondent No. 2 on the post of Steno-Typist which post was neither there nor respondent No. 2 was entitled for any regularization

on the said post.

Let counter-affidavit be filed within four weeks. List thereafter.

In the meantime, the operation of the impugned order dated 16.9.2009 passed by respondent No. 1 shall remain stayed.

11. Per contra, Vijay Laxmi, respondent No. 2 who has appeared in person, submits that she was duly selected by a Selection Committee for the post of Steno-typist and after selection she was initially engaged as casual Steno-Typist vide order dated 6.12.1983, when she was found medically fit in B-1 category temporary status was given to her vide order dated 20.1.88; that on record she was shown working sometimes as Machine Operator, Record Sorter and Gangman but the petitioners since her initial appointment have always taken work of Steno-typist from her throughout her service period i.e., 6.12.1983 to 13.11.2006 and after 13.11.2006 she was not taken on duty by SSE (S) P.W. MTJ Shri A.K. Asthana (respondent No. 5 in the aforesaid O.A. No. 376 of 2007).

12. She submits that the Tribunal has passed the impugned judgment dated 16.9.2008 in the light of facts and circumstances as well as appointment letter and other documents on record which establish that she has been discharging her duties on the post of Steno-Typist for more than two decades which has not been rebutted or denied by the learned Counsel for the petitioners, hence the action of the petitioners directing her to work as Gangman cannot be said to be justified.

13. In so far as the contention of learned Counsel for the petitioners that the ground or relief which was not even prayed for in the original application or in the writ petition cannot be granted, she submits that in prayer No. (iii) she has prayed for issuance of any other suitable writ, order or direction in the facts and circumstances of this case which Hon"ble Tribunal may deem fit and proper, hence the judgment of the Tribunal granting her relief for regularization on the post of Steno-Typist cannot be said to be perverse, and as such no interference is required by this Court.

14. After hearing learned Counsel for the petitioners, respondent No. 2 in person and on perusal of the record it is apparent that respondent No. 2 was selected as Steno-Typist in the year 1982. She was appointed as Steno-Typist on casual basis vide order dated 6.12.1983 and had continued to work as Steno-Typist since then, though she had also been shown to have worked as casual Steno-Typist, Photo Machine Operator (TS), Record Sorter (TS) in the following periods and thereafter regularized as Gangman:

6.12.83 to 30.9.87 Casual Steno

1.10.87 to 19.12.89 Photo Machine Operator (TS)

20.12.89 to 5.6.98 Record Sorter (TS)

6.6.98 to 13.11.2006 Regularized as Gangman

15. No document has been brought on record by the petitioners that respondent No. 2 had actually ever worked during the period w.e.f. 1.10.1987 to 5.6.1998 or thereafter as Gangman till her transfer to Palwal. Throughout her service she in fact was never put to any physical work of Machine Operator, Record Sorter and Gangman. Rather, work of Steno was continuously taken from her since the date of her appointment on 6.12.1983 as such it appears that due to unfair labour practice she was shown to have been working against the post of Stenographer on casual basis though she was granted temporary status of Photo Machine Operator, Record Sorter and then regularized as Gangman. It is her case that SSE (S) P Way/NCR/Mathura her superior officer (respondent No. 5 in the OA) was harassing her and compelling her to apply for transfer which she ultimately did vide application dated 12.9.2006 forwarded by him on 3.1.2007 after a considerable lapse of time. His this act also appears to be in violation of Railways Board letter No. E (D and A), 69 RG 6-3 dated 14.2.69 which provides that any such representation should be decided within a period of one month. Moreover, when she applied sick leave from 14.11.2006, she was not provided the benefit of railway hospital and was compelled to get herself treated from a private doctor in the aforesaid circumstances. After she was medically declared fit on 20.1.2007, respondent No. 5 issued a memo to her for joining duty as Gangman at Mathura.

16. It is also apparent from the record that though she was transferred from her last posting at Mathura to Palwal yet respondent No. 5 was compelling her to join duty at Mathura as Gangman, She protested this again on the ground that she already stood transferred Palwal and work of Gangman had never been taken from her and issue her relieving order. She was harassed by pressurizing her to join at Mathura.

17. It is in the aforesaid backdrop that respondent No. 5 served letter dated 5.7.2007 upon her for disciplinary action against her if she did not turn up for duty at Mathura. This compelled her to move a representation dated 9.2.2007 and was issued transfer order on 12.3.2007 by post also. She submitted a memo of sickness on 14.3.2007 for reporting on duty to SSE (P) PWL, who refused to accept any representation.

18. The contention of respondent No. 2, who appears in person, has some force. She was neither relieved by Sri A.K. Asthana from Mathura though she stood transferred from there, this preventing her from joining at Palwal, rather she was threatened by disciplinary action against her and pursuant, to thereof a charge-sheet was issued after 4 years on 15.2.2011 alleging that she was unauthorizedly absent from 13.11.2006 till the date of issuance of charge-sheet.

19. From the record it is evident that respondent No. 2 had applied for medical leave which was not sanctioned nor any memo of sickness was given to her by Sri A.K. Asthana, respondent No. 5 to the OA for her treatment in railway hospital, thus, denying her medical treatment and leave just to harass her. After recouping from sickness a fitness certificate having been issued by the private

doctor she was again examined by the Railway Doctor, who issued medical certificate (M-15-B B No. 187319 dated 20.1.2008), in pursuance whereof she reported for duty to SSE (S) P Way MTJ with M-15 B and leave application for 134 days commuted leave.

20. It is also clear from the record that respondent No. 2 was selected as Steno-Typist and that work only was taken from her throughout her service period from her but respondent No. 5 to the OA in order to harass her and to make her succumb to his wishes, was compelling her to join her duties as Gangman on which she had been illegally regularized while working as Steno-Typist against the post on which she was selected.

21. In our considered opinion, if respondent No. 2 had been selected as Steno-Typist and had worked as such for more than two decades and a half i.e., from 6.12.1983 to 13.11.2006, she could not have been regularized on the post of Gangman.

22. It is not open for the Railway or any department to appoint a person for desk work, take work from him or her as stenographer for about 7 years and then for purpose of harassment and to take out vengeance, regularize such a person on the post of Gangman to do physical work but continued to take work from her after putting more than 15 years of service as stenographer and thereafter insisted to join as Gangman after her transfer. Merely because the Railway did not regularize her as Steno-Typist, for the reasons best known to it, though she had been selected for the post, she cannot be punished for it by a person who developed other ideas to harass her. In fact this cannot be tolerated or allowed by a person of sound mind or a Court that a person who has put in 15 years of service as Steno-Typist to work as a Gangman. Once she has been transferred at Palwal, there was no question of respondent No. 5 in the OA to ask her to work as Gangman at Mathura. In this regard, reference may be made to the case of General Manager, N.E. Railway, Gorakhpur and others v. Jamait Ram Khatnani and others 1975 (31) FLR 246 (All.). wherein it has been held that-

Once an employee is transferred and posted to a particular place acceptance of the transfer order by that employee is immaterial. Even though he may not join his duties or physically may not go to the new place of posting he will continue to be posted there in the eye of law. His place of posting cannot be deemed to have changed merely because he disobeys the transfer order.

In the instant case the respondent did not join his duties at Fatehgarh but that did not change his place of posting. His place of posting for all purposes continued to be Fatehgarh.

23. In the instant case, respondent No. 2-employee was transferred from Mathura to Palwal and her transferred place of posting remained at Palwal for all practical purposes, respondent No. 5 had no authority to compel her to join as Gangman at Mathura and except to handover her the relieving order rather than pass order of termination/removal from service. This harassing attitude reflected

in this case by respondent No. 5 against a lady is abhorable.

24. In this regard the Tribunal has rightly held in its operative portion of the judgment thus:

Services of the applicant could not be dispensed with in a slip shod manner. The impugned action of the respondents is whimsical and against principle of fair play" and "good conscience.

The applicant is entitled to a direction against the respondents (including respondent No. 6/the Senior Section Engineer (P. Way), North Central Railway, Palwal) to permit the applicant to work as Steno-Typist in the office of ADPM, NCR/AEN, Mathura and threat/regularize her service against the post of Steno-Typist and pay arrears as well as future salary (alongwith all increments as may have fallen due) treating her in service without break.

Consequently, we direct the applicant to submit within 6 weeks from today a certified copy of this order before concerned respondents/competent authority who shall in turn ensure that the applicant is allowed to join her duties forthwith as Steno-Typist in the office in question at Mathura (i.e., office of AEN, NCR, Mathura) and pay her arrears as well as month by month future salary treating her in continuous service and other consequential benefits within two months as per relevant statutory rules.

OA stands allowed subject to above observation. No costs.

25. The case of State of West Bengal (supra) relied upon by the learned Counsel for the petitioners is clearly distinguishable to the facts of the present case as no error has been committed by the Tribunal in granting relief to respondent No. 2. In the aforesaid case, the petitioners had come in a writ petition and the Apex Court in the facts and circumstances of that case in appeal had observed that the High Court fell into an error in granting an unimaginable relief to the writ petitioners of creating a service for them with a separate nomenclature, which was beyond its jurisdiction. In the instant case, respondent No. 2 has been appointed as stenographer after selection and, therefore, it cannot be said that any post or nomenclature had been created by the Tribunal for granting relief to respondent No. 2 of reinstatement as Stenographer.

26. In view of the aforesaid and in the facts and circumstances of this case, we do not find any illegality or infirmity in the impugned judgment of the Tribunal, hence no interference is required by this Court. For the reasons stated above, the writ petition is dismissed. No order as to costs.