

(2012) 10 AHC CK 0177

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 20671 of 2011

Union of India and Another

APPELLANT

Vs

Jahangir Khan and Another

RESPONDENT

Date of Decision : 12-10-2012

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21
Constitution of India, 1950 — Article 14, 16

Citation : (2013) 3 ADJ 530

Hon'ble Judges : Sheo Kumar Singh, J;B. Amit Sthalekar, J

Bench : Division Bench

Advocate : A.K. Gaur, for the Appellant; S.M. Ali, R.K. Nigam and S.C., for the Respondent

Final Decision : Allowed

Judgement

B. Amit Sthalekar, J.—Assailing the order of the Central Administrative Tribunal, Allahabad dated 8.2.2012 passed in Original Application No. 1046 of 2005 the Union of India has filed this writ petition seeking to quash the same. An Original Application No. 1046 of 2005, Jahangir Khan v. Union of India and another, was filed by the respondent No.1 in the Central Administrative Tribunal, Allahabad for a direction to absorb him in class IV/Group D category. The contention of the respondent No. 1 before the Central Administrative Tribunal was that he had worked in the Railways for the following periods:

21.6.1975 to 3.7.1975

30.8.1975 to 1.9.1975

18.9.1975 to 23.9.1975

25.2.1976 to 15.3.1976

14.7.1993 to 31.7.1993

9.5.1994 to 31.7.1994

2.5.1995 to 31.7.1995

2. The case of the respondent No. 1 also was that the matter of screening and absorption was taken up by the Chief Workshop Manager. His further case is that he was issued a Casual Labour Card, which was verified by the Loco Foreman/Chief Crew Controller, Jhansi on 19.6.1999 but he has not been considered for regularisation of his services. He submitted a representation on 29.9.2001 but it is not stated in the Original Application that any order was passed thereon.

3. The case was contested by the petitioner, Railway Administration and a counter-affidavit was filed. With regard to the letter of the Chief Crew Controller, Jhansi it was stated in the counter-affidavit that the said letter was issued in connection with verification of the applicant's (the respondent No. 1 herein) Casual Labour Card and the Chief Crew Controller returned the Casual Labour Card bearing No. 168434 with the remarks:

The period cannot be verified because the Live Register has been sent from this office to Senior D.M.E. Office, Jhansi/D.R.M. (P), Jhansi office, vide letter No. PS/13 B PT-II on 20.6.1995.

4. It was stated in the counter-affidavit that the record was sought to be verified from the office of the Divisional Railway Manager (P), Jhansi but it was informed by the D.R.M.(P), Jhansi by letter dated 6.7.1995 that there is no person of the name Jahangir Khan mentioned in the Casual Live Register. However, an enquiry was made personally by the Senior Personnel Inspector and on 10.8.1996 he submitted a report and it was informed that there is no such Casual Card bearing No. 168434 in the Casual Live Register. It was stated that the entire story of the applicant (respondent No. 1 herein) of being Casual Labour Card No. 168434 was a fake and fabricated story manufactured solely to secure regularization in the Railways. A preliminary objection was also raised before the Tribunal that the Original Application was not within limitation as prescribed u/s 21 of the Administrative Tribunal Act, 1985. The Tribunal has also recorded a finding that the applicant worked as casual labour in different spells from 21.6.1975 to 15.3.1976 and again from 14.5.1993 to 31.7.1995 and has, therefore, directed the Railway Administration to conduct a proper enquiry to verify the Casual Labour Card of the applicant and also the period which he had worked and thereafter the applicant must be regularised in Class IV/Group "D" category from the date when his other colleagues were regularised.

5. We have heard Sri A.K. Gaur, learned counsel appearing for the petitioner and Sri S.M. Ali, learned counsel appearing for respondent No. 1.

6. From a perusal of the impugned order and averments of the respondent No. 1 in his Original Application filed before the Central Administrative Tribunal, Allahabad it will be seen that the respondent No. 1 on his own showing had worked in different spells from 21.6.1975 to 3.7.1975, 30.8.1975 to 1.9.1975, 18.9.1975 to 23.9.1975, 25.2.1976 to 15.3.1976, 14.7.1993 to 31.7.1993, 9.5.1994 to 31.7.1994, 2.5.1995 to 31.7.1995. These dates reveal that

respondent No. 1 never worked continuously in the Railways and that the nature of his work was only intermittent and in any case there is nothing on record to show that after 1995 he had ever worked in the Railways, and in any case on the date of filing of the Original Application in the year 2005 he was not in service in the Railways.

7. The respondent No. 1 has also not indicated as to how he came to be engaged in the Railways i.e. whether he was appointed through any known process of selection conducted after issue of the advertisement. In the absence of categorical pleadings to this effect, the only inference which can be withdrawn is that even if it is accepted for a moment that the respondent No. 1 was engaged in the Railways on 21.6.1975, his engagement/appointment was in violation of the Rule of equality, enshrined in Articles 14 and 16 of the Constitution of India and, therefore, such an appointment or engagement was no appointment, in the eye of law. The legal position in this regard is firmly settled after the judgment of the Supreme Court in the case in Secretary, State of Karnataka and Others Vs. Umadevi and Others, .

8. The other aspect, which emerges from the pleadings of the parties is that the alleged Casual Labour Card No. 168434 could not be verified to be a genuine document even though ample efforts were made by the Railway Administration for verification of the same. The Railway Administration had even deputed its Senior Personnel Inspector to inspect the records. The Chief Crew Controller, Jhansi had also sought verification of the record from the office of the Divisional Railway Manager (Personnel), Jhansi in 1995 itself and it is also then that the Railway Administration came to the conclusion that the Casual Labour Card No. 168434 was not verifiable and the name of the applicant Jahangir Khan, respondent No. 1 was not found in the Casual Live Register.

9. Thus from the above findings which emerge from the facts of the case, it is seen that the respondent No. 1 had never worked in the Railways and his Casual Labour Card No. 168434 from verification by the Railway Administration was found to be a fake and manufactured document and there was no record which showed the name of respondent No. 1 in the official records maintained by the Railways.

10. There is another aspect of the matter which requires examination. Even assuming that the respondent No. 1 had worked up to the year 1995 in any case neither on the date of filing of his Original Application nor as of today he is in service and, therefore, his case for regularization cannot be considered and no direction therefore, can be given to that effect. The Supreme Court in the case in Ramchander and Others Vs. Additional District Magistrate and Others, , has held that a person not in service cannot be considered for regularization. Para-5 of the said judgment reads as follows:

5. We are not examining the correctness or otherwise of this interpretation because, in the present case, the appellants did not fulfill the basic requirement

of Rule 4(i) namely that they should be continuing in service as ad hoc employees in order to be eligible for regularisation. The services of at least some of the appellants were terminated in February, 1984. The services of others were terminated in June 1984. In view of the fact that the services of the appellants had been terminated, they will not be eligible for regularisation under the amended Rules of 1984. Those who are not in service cannot be regularised. In the writ petition which was filed, the appellants who were the petitioners, prayed for regularisation. Although they made averments relating to their termination of service, they did not pray for setting aside the orders of termination passed in their cases. So long as the orders of termination stand, they cannot get the benefit of regularisation under the amended Rules of 1984.

11. The above decision of the Supreme Court has been followed by a Division Bench of this Court in the case of Dr. Raghvendra Pratap Singh Vs. Director of Higher Education, and the Division Bench in paragraph 35 has held as under:

35. The Hon''ble Supreme Court in Himachal Pradesh Housing Board Vs. Om Pal and others, and Ramchander and Others Vs. Additional District Magistrate and Others, , categorically held that the services of a temporary employee who stood removed cannot be regularised unless the order of termination itself is quashed by the Court. Thus, validity of the provisions inserted by the Amendment Ordinance. 1997, becomes doubtful. Even if the validity of a law is not challenged, the Court can bypass it and ignore it as has been held by the Apex Court in Bharathidasan University and Another Vs. All India Council for Technical Education and Others, . But we are not inclined to decide the issue as there are no proper pleadings in this respect.

12. In the case before the Tribunal also the petitioner in his Original Application only sought the following relief:

8. Relief Sought--

In view of the facts mentioned above, the humble petitioner prays for the following relief (a):

(i) to issue a writ, order or direction in the nature of Mandamus thereby commanding the Respondents to immediately screen and absorb the petitioner in appropriate Clause IV Group "D" category for which a time bond direction in fervently prayed;

(ii) to issue any other suitable order in favour of the humble petitioner as deemed fit by this Hon''ble Tribunal in the facts and circumstances of the case;

(iii) to award cost of the petition in favour of the humble petitioner.

13. The order terminating his services, with effect from 31.7.1995 was never challenged before any Court of Competent jurisdiction. In the circumstances, the ratio of the Supreme Court Judgment in the case of Ramchander and others (Supra) and the Division Bench judgment in the case of Dr. Raghuvendra Pratap

Singh (supra) squarely apply in the facts of the present case and, therefore, also no relief could be granted to the petitioner.

14. For the reasons stated above, the writ petition stands allowed and the order of the Central Administrative Tribunal dated 8.2.2012 is set aside. There shall be no order as to costs. Interim order, if any, stands vacated.