
(2012) 04 AHC CK 0230

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 35950 of 2008

Union of India and Others

APPELLANT

Vs

Rakesh Chandra Sharma and Others

RESPONDENT

Date of Decision : 06-04-2012

Acts Referred:

Constitution of India, 1950 — Article 141

Citation : (2012) 8 ADJ 420 : (2013) 1 AWC 560 : (2012) 134 FLR 882

Hon'ble Judges : Rakesh Tiwari, J; Ashok Pal Singh, J

Bench : Division Bench

Advocate : Mithilesh Chandra Tripathi, M.C. Tripathi and A.S.G.I., for the Appellant; R.C. Pathak, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Rakesh Tiwari, J.—Heard Learned Counsel for the parties and perused the record. The petitioners have challenged the validity and correctness of the order dated 14.3.2008 passed in Original Application No. 795 of 2004, Rakesh Chandra Sharma and others v. Union of India and others, passed by the Central Administrative Tribunal, Allahabad (hereinafter referred to as "the Tribunal"). The Tribunal has held that case of the appellant was squarely covered by the decision of the High Court, rendered in Writ Petition No. 21577 of 2007, Union of India and others v. CAT, Allahabad.

2. In the aforesaid writ petition the validity and correctness of the order passed by the Tribunal impugned in that case was challenged in which the Tribunal after perusal of the records was of the opinion that the matter therein was covered by the decision of the judgment rendered in the aforesaid writ petition No. 21577 of 2007 and that similar controversy in O.A. No. 1111 of 2000 was decided by the Tribunal relying upon the decision of the Apex Court wherein it was held that after rendering three years of continuous service, casual labourers with temporary status shall be treated at par with temporary Group "D" employees in the Department of Posts for the entitlement of the benefits as are admissible to

Group "D" employees on regular basis. After recording the aforesaid findings the Court quashed the impugned orders of recovery dated 31.3.2004, 30.4.2004, 28.5.2004 and 25.6.2004 in the Original Application No. 1111 of 2000 as illegal. The O.A. aforesaid was accordingly allowed and the respondents were directed to continue to pay the bonus to the employees at the rate specified in the impugned orders therein.

3. The facts of this case are that respondent Nos. 1 to 6 in the writ petition, who were civil employees, having put in three years of continuous satisfactory service were granted temporary status on 29.11.1992 at par with Group (sic) employees by the Central Government w.e.f. 29.11.1989 vide letter No. A/Cont/Paid/ 91 dated 5.6.1991, issued by the Superintendent of Post Offices, Budaun in pursuance of communication No. 45-95-187, dated SPB-1, dated 12.4.1991 and communicated vide CPMG, Lucknow letter No. Rectt/R-39/V/5 dated 30.4.1991 by the Director General (Posts).

4. Adhoc bonus was allowed to these temporary status casual labourers (i.e. respondent Nos. 1 to 6) by the department at par with regular Group "D" since 1992-93 with the ceiling of Rs. 2500/- per month as per the guidelines issued by the Government of India, Ministry of Communication No. 26.11.96-PAP dated 19.9.2000.

5. The contention of counsel for the petitioners is that respondent Nos. 1 to 6 were erroneously allowed adhoc bonus at par with Group "D" employees. According to him it is clearly indicated in the said communication dated 19.9.2000 that the eligibility ceiling of casual labourers having more than 3 years service, who had been granted temporary status was Rs. 750/-. It is stated that the Ministry of Communication has also clarified that such employees with temporary status are eligible for grant of bonus at the rate applicable to casual labourers only and not at par with regular Group "D" employees. Therefore, the bonus erroneously paid to these temporary status employees at par with regular Group "D" employees was erroneously over paid to the tune of Rs. 68,220/-, which the department was liable to recover. Learned Counsel for the petitioner in support of his contentions has relied upon paragraph Nos. 8, 9 and 10 of the writ petition in this regard, which reads thus:

8. That the aforesaid payment of Bonus was pointed out by the Audit Party in Audit I.R. during 4.7.2001 to 17.7.2001 and instructed to recover the amount from the concerned officials. In compliance Audit IR item No. 1, this over payment recovery was started from the officials under Bill from the month of November, 2001 @ Rs. 500/- per month upto January, 2002 and thereafter recovery was stopped w.e.f. February 2002 in compliance to the order passed by learned Tribunal, Allahabad Bench in OA No. 89 of 2002.

9. That it is also relevant to mention here that CAT, Mumbai Bench, has decided the case in O.A. No. 737/ 2000 filed by Shri S.P. Jadhav and others on 25.6.2001. The copy of judgment dated 25.6.2001 passed by Hon''ble CAT

Mumbai Bench in O.A. No. 737 of 2000 is being annexed herewith and marked as ANNEXURE-4 to this writ petition.

In the aforesaid order, the CAT, Mumbai Bench observed in its orders that Government has taken policies decisions that temporary status casual labourers are not to be paid bonus at par with Group "D" temporary employees. The learned CAT, has indicated that this being a policy decision, there is no scope to interfere.

10. That this matter was re-examined afresh by Postal Directorate in light of aforesaid decision of CAT Mumbai and further decided to recover the overpaid amount of adhoc bonus paid to temporary status casual labourers also in the light of Hon"ble CAT Bangalore Bench's order dated 1.5.2002 in O.A. No. 1517 and 1577 to 1646 of 2000 and the judgment dated 9.7.2003 passed by Hon"ble High Court of Karnataka in Writ Petition No. 35419 and 42328 - 443 of 2002. True copy of letter dated 12.3.2004 issued by the Ministry of Communications and Information Technology, Department of Posts, Government of India is being filed herewith and marked as ANNEXURE-5 to this writ petition.

6. It is submitted that the matter was also considered by the Directorate DAK Bhavan, New Delhi, which vide its communication circulated under PMG Bareilly No. RPB/Estt/II 258-91/Ch.I/2003, dated 17.3.2004 ordered for recovery of excess amount paid. The recovery was then started by the Post Master, Budaun, H.O. @ Rs. 500/- per month and as such, there was no need for the department to have issued any notice or show-cause prior to passing the orders of recovery and also for the reason that this recovery was not liable to be waived under Rule 86 of the Financial Hand Book-1.

7. Per contra Learned Counsel for the respondents has submitted that the aforesaid O.A. No. 795 of 2004, Ramesh Chandra Sharma and 5 others v. Union of India, was allowed by the Central Administrative Tribunal Bench at Allahabad vide order dated 14.3.2008 holding that the workmen who had rendered three years continuous service and were conferred temporary status under the various memorandum of the Central Government were as such rightly placed at par with Group "D" employees of the Central Government, claiming entitlement to bonus at par at the same rate as paid to the employees of the Central Government in the Postal Department.

8. After hearing the arguments and perusal of the judgments, we find that the judgment is not happily worded.

9. We find that the bonus is paid to the employees under the Payment of Bonus Act, 1965 (hereinafter referred to as the Act) which is a complete code in itself. The word "employee" is defined in Section 2(13) of the Act as thus :

employee" means any person (other than an apprentice) employed on a salary or wage not exceeding [three thousand and five hundred rupees] per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial,

administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied;

10. The definition under the Act does not differentiate between the daily wagger, casual workmen or permanent employees. Any employee who falls within the ambit of Payment of Wages Act is entitled to bonus. Admittedly, the Government by various Office Memorandums has conferred temporary status upon those casual daily workers who have put in more than three years continuous service in the department. These have been placed at par with the Central Government Group "D" employees and therefore, are eligible for bonus at the same rate which the Central Government employees were being paid. The provisions of law cannot be over ruled by any communication issued by the department.

11. We have also noted that the counsel for the petitioners has not addressed us on the issue that the judgment does not apply to the facts of the case and is otherwise distinguishable. Therefore, we are bound to accept the findings in the impugned judgment in favour of the respondents, which is based on judgment of Apex Court, binding on all Courts under Article 141 of the Constitution of India.

12. For all the reasons stated above, we do not find any illegality or infirmity in the approach and conclusion of the order impugned as it is based on judgment of the High Court as well as the Apex Court, which is binding under Article 141 of the Constitution of India.

13. This writ petition is accordingly dismissed. No orders as to costs.