

(2014) 03 AHC CK 0213

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 10541 of 2009

Union of India

APPELLANT

Vs

Ramakant

RESPONDENT

Date of Decision : 05-03-2014

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, 20

Citation : (2014) 3 ADJ 372 : (2014) 4 ALJ 147 : (2014) 142 FLR 146 : (2014) 2 UPLBEC 1402

Hon'ble Judges : Rajesh Kumar Agrawal, J; Ashwani Kumar Mishra, J

Bench : Division Bench

Advocate : A.K. Gaur and Saral Srivastava, Advocate for the Appellant; Rakesh Verma, Nimai Dass, R.P. Sinha, Ramanand Pandey and S.C. Varma, Advocate for the Respondent

Final Decision : Allowed

Judgement

Rajes Kumar and Ashwani Kumar Mishra, JJ.—Union of India, through the General Manager, North Eastern Railway, Gorakhpur and Deputy Chief Engineer, Gorakhpur Area, North Eastern Railway, Gorakhpur, have challenged the judgment and order passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad dated 5.11.2008, passed in Original Application No. 602 of 2005 "Ramakant and others v. Union of India and others". The tribunal allowed the original application after noticing that applicants' claim is covered by the judgment of the tribunal dated 20.11.2006, passed in Original Application No. 190 of 2002 "Naumi Nath and others v. Union of India and others" and in that view of the matter the respondents were directed to consider the claim of the respondent-applicants, and also all other similarly situated persons in their organization, by calling such persons including applicants, who fulfil requisite qualification, in accordance with relevant guidelines/circulars on the subject, to hold medical test/screening test etc. in order to finalize absorption of the applicants in class IV, against available vacancies in the scheduled caste quota subject to their eligibility as per requisite criteria under law. The respondent-

applicants filed Original Application No. 602 of 2005. Challenging the order dated 12.4.2004, whereby their claim has been rejected, with a further prayer to re-engage and regularize the respondent-applicants within a fixed period.

2. Prior to it the respondent-applicants had filed Original Application No. 334 of 1997 with the similar prayer to consider and regularize their cases. The Central Administrative Tribunal, Allahabad Bench, Allahabad, vide its order dated 24.11.2003, disposed of the original application permitting the applicants to file a detailed representation staking their claim for re-engagement/absorption etc., and the same was to be considered and disposed of by the competent authority, in accordance with law, by means of a reasoned and speaking order. Pursuant to this direction of the tribunal, the claim of the respondent-applicants have been considered and rejected vide order dated 12.4.2004.

3. The respondent-applicants, in their original application filed before the tribunal have pleaded that they have worked for more than 180 days in the office of Deputy Chief Engineer, Gorakhpur and names of respondent-applicants appears in "live casual labour register". The certificates acknowledging such fact have been enclosed as annexure-2 to their original application before the tribunal. The respondent-applicants have further stated that they have worked before 1.1.1980, where after they were disengaged as casual labourers from open-line without giving any notice to them. The respondent-applicants submits that having worked for more than 180 days, they were eligible for grant of temporary status, but the same has been denied, nor they have been re-engaged although a number of juniors have been retained. The respondent-applicants have further stated that in the screening test conducted on different dates i.e. 29.8.1988, 30.8.1988 and 12.9.1988 for regularization of ex-casual labourers belonging to scheduled caste community for filling up the backlogs of scheduled caste vacancies, the respondent-applicants were called and call letters have also been annexed, however, the result of the screening test was not declared and the respondent-applicants kept eagerly awaiting its outcome. It is alleged that various other persons, who also faced the same screening test approached the tribunal vide Original Application Nos. 358 of 1989, 1226 of 1991 and 61 of 1992, which have been allowed by the tribunal, by giving direction to the respondents to subject the applicants to the medical fitness test and absorb those of them who are found medically fit, without any loss of time against existing vacancies. The respondent-applicants about coming to know of the aforesaid facts filed Original Application No. 334 of 1997 seeking consideration of their claim for absorption on the basis of screening test conducted in August and September, 1988. The original application filed in the year 1997 was disposed of on 24.11.2003, which order has been noticed above. It is further alleged that the rejection of respondent-applicants' claim pursuant to the order of the tribunal was erroneous. By filing rejoinder affidavit, the respondent-applicants also stated that their claim is covered by the previous adjudication of the tribunal in the case of Naumi Nath, passed in Original Application No. 190 of 2002 dated 20.11.2006.

4. The tribunal has held that the case of the respondent-applicants are covered by the judgment of the tribunal dated 20.11.2006, passed in Original Application No. 190 of 2002. The said judgment dated 20.11.2006 was challenged by filing Writ Petition No. 10992 of 2007, which was dismissed. The matter was taken to the Apex Court by filing Special Leave Petition, which also was dismissed on 25.2.2008 and consequently, the same benefit as was granted in Naumi Nath's case has been allowed to the respondent-applicants.

5. The Union of India has assailed the judgment of the tribunal on the following grounds.

(i) The claim of the respondent-applicants was grossly barred by limitation, inasmuch as claim based on the screening conducted in 1988 could only have been raised within a period of one year and mere rejection of their claim vide order dated 12.4.2004 does not give a fresh cause of action and, therefore, the claim of the respondent-applicants is barred by limitations u/s 19 and 20 of the Administrative Tribunals Act, 1985.

(ii) It is next contended that the claim of the respondent-applicants in the instant case, on facts, is separate and distinct from the facts in the case of Naumi Nath and, therefore, the tribunal was not justified in issuing directions based on the facts of Naumi Nath's case.

(iii) It is also contended that all the respondent-applicants were above 50 years of age, where in terms of scheme framed by the department, maximum permissible age is 40 years and their cases could not be considered, as has been held in a similar matter by this Court in Writ Petition No. 19276 of 2006 decided on 3.3.2006.

(iv) It is also contended that the claim of absorption/regularization was not covered under any rule or policy of the railways and the rejection of respondent-applicants' claim vide order dated 12.4.2004, did not require any interference but the contrary view taken by the tribunal, is wholly illegal and perverse.

6. In reply, the respondent-applicants have stated that their claim are identical with that of the applicants in Naumi Nath's case and, as such, the tribunal did not commit any error in issuing similar directions in their favour. It was further contended that the respondent-applicants belong to scheduled caste, and their claim for absorption was covered under the policy framed by the railways and consequently, the judgment of the tribunal is just legal and valid. Emphasis was also led that large number of persons, similarly placed as respondent-applicants since have already been allowed benefit of absorption, no different view be taken in the instant case by this Court.

7. We have heard Sri A.K. Gaur, Advocate, appearing for the petitioners and Sri Ramanand Pandey along with Shri Nimai Dass, Advocates, appearing for the respondent-applicants and have examined the materials available on record.

8. In order to appreciate the claim of the respondent-applicants, we have

referred to the pleadings of the original application. From a perusal whereof, it is clear that the basis of their claim is based on their working for more than 180 days before 1.1.1980 as casual labourers from open-line. The respondent-applicants claimed that having worked for more than 180 days, they are eligible for grant of temporary status, which status has been denied to them, nor they have been re-engaged. The order dated 12.4.2004, rejecting respondent-applicants' claim of temporary status due to their casual working and denial of re-engagement has been questioned on the ground that similar pleas taken in respect of other similarly placed persons have already been adjudicated and rejected, and thus, same pleas of railway are not available/open in this case.

9. The Counsel for the parties have placed before us the relevant policy in this regard. It transpires that casual employees are entitled to temporary status after the completion of 120 days. The casual labour, who has acquired temporary status, can be brought to the permanent regular establishment or treated to be irregular employment only if they are selected through Selection Board under group "D" post in the manner laid down and in accordance with the instructions issued by the Railway Board. Such absorption is, however, not automatic, but is subject, inter-alia, to availability of vacancy, suitability and eligibility on individual casual labour and rules regarding seniority unit method of absorption, decided by the railway administration.

10. The facts of the respondent-applicants' case, have been considered, in light of the policy, aforesaid, from which it is admitted that none of the respondent-applicants have been conferred status of temporary employee and, therefore, consideration of their claim for regular vacancies cannot be directed. So long as the respondent-applicants, on account of their working for sufficient period, is granted temporary status, the further consideration of claim for absorption would not arise. No relief for grant of temporary status has even been claimed.

11. The claim of the respondent-applicants had been considered by the railway administration and rejected vide order dated 12.4.2004, taking note of the claim of each and every individual. It was observed in the order that the certificates relied upon by them, are not correct. Specific reasons have been assigned in respect of each person. For illustration, while dealing with the claim of Sri Ramakant, it was observed that the certificate of working has been issued on 20.10.1979 by IOW/Factory under the signatures of W. Shah, whereas on the said date the concerned office was occupied by Sri V.K. Talwad and it has been thus observed that the certificate is not correct. Similarly, reasons have been assigned in respect of each and every applicant.

12. Having gone through the pleadings of the original application and we find that the finding returned in the order dated 12.4.2004 has not been specifically challenged, and no reasons have been mentioned even in the order of the tribunal to set aside the findings so returned in the order dated 12.4.2004. The tribunal has essentially proceeded on the ground that the facts of the instant case are since covered by the decision rendered in the case of Naumi Nath's, as

such the applicants were entitled to the relief prayed.

13. We have examined the judgment of the tribunal in the case of Naumi Nath. The factual scenario existing in the case of Naumi Nath has been noticed by the tribunal in its judgment in para 6 thereof, which is reproduced.

There is no whisper in the reply that these certificates as annexure-1 or these call letters as annexure-2 did not bear the signature of authorities concerned or were fake or forged. When the applicants say that such certificates or letters were issued by the authorities concerned and when the respondents have no relevant records with them so as to authoritatively dispute the genuineness thereof and when the respondents do not bear the signature of the authorities concerned, the tribunal has no reason nor to accept these papers as genuine and true.

14. The factual scenario noticed by the tribunal in the case of Naumi Nath is clearly distinct from the facts of the present case. The certificates relied upon in Naumi Nath's case had not been doubted, whereas in the present case, the veracity of the certificates have been considered and have been found incorrect for the reasons mentioned. No serious attempt has been made to challenge the findings contained in the order dated 12.4.2004 nor any material has been placed to question it. The tribunal, therefore, clearly misdirected itself in holding that the facts of the instant case were similar and covered by the facts stated in the case of Naumi Nath. The finding of the tribunal, merely relying upon the pleadings, without considering the contents of the order in Naumi Nath's case cannot be sustained. The judgment of the tribunal in following the directions of the Naumi Nath's case was wholly unjustified.

15. We further find from the policy placed before us that in the absence of grant of temporary status, none of the respondent-applicants were entitled to be considered for absorption. The law with regard to regularization or absorption has been the subject matter of consideration in large number of judgments of the Apex Court, wherein such entitlement has been held to be available only in accordance with the relevant rules. We may refer the judgment of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, which has been followed in recent decision rendered in (2010) 15 SCC 452, State of Haryana and others v. Polu Ram and another, Since the claim of the respondent-applicants for absorption on the basis of rules have not been made out the directions for consideration of the cause cannot be sustained.

16. We further find that all the respondent-applicants had merely claimed to have worked for 180 days prior to 1.1.1980. Mere working for 180 days does not entitle consideration for absorption under the policy. However, the respective age of all the respondent-applicants varied from 50 to 60 years. This Court while dealing with a similar grievance, vide its judgment dated 3.3.2006, in Writ Petition No. 21799 of 2006 held as under:-

Undoubtedly, there is scheme framed by the present petitioners for reemployment and regularization of those casual workers who had been retrenched. The maximum age for consideration of reemployment and regularization in the same scheme is 40 years. However, a relaxation has been provided upto certain age, i.e. in case OBC category candidate, it can be relaxed upto 43 years and in case of SC/ST candidates, upto 45 years. The respondent employee admittedly belongs to OBC category and he is about 50 years of age. Thus, in view of the admitted facts, no purpose would be served if his case is considered for reemployment and regularization, as no relaxation is permissible beyond the age of 43 years to the OBC candidates.

In view of the above, we are of the considered opinion that the directions issued by the tribunal are in futility and issuing such a direction, which cannot be carried out in accordance with law, are not permissible in law. As the claim of the respondent employee cannot be considered in accordance with law and he is not entitled for any relief, the direction issued by the learned tribunal is in contravention of scheme framed by the present petitioners. The Court or tribunal cannot pass an order in contravention of law. Thus, issuing the present petitioners to consider the case of the respondent employee for reemployment and regularization, being a futile exercise, is not going to serve any purpose and the writ petition to be allowed.

The petitioner succeeds and is allowed. The impugned judgment and order dated 2.1.2006 is hereby set aside.

17. We find that since the age of all the respondent-applicants is above 50 years, as such, the direction for consideration of claim for absorption/regularization is otherwise not sustainable.

18. We are also impressed with the argument of the Counsel for the petitioner that raising of claim, based on the screening test held in 1988, by filing the original applications years thereafter was otherwise barred by latches/limitation.

19. The argument of the Counsel for the respondent-applicants that similar benefits have been extended to other persons and, therefore, the grant of benefit in the instant case be not interfered, also cannot be sustained. Once, the claim of respondent-applicants on merits have been considered and not found covered under law, it cannot be allowed to stand. The claim of respondent-applicants for absorption since has not been made out, we cannot approve of the directions issued by the tribunal in this regard. In view of the facts and circumstances as narrated above, the order of the Central Administrative Tribunal dated 5.11.2008, passed in Original Application No. 602 of 2005 "Ramakant and others v. Union of India and others" is set aside. The writ petition is allowed. The claim petition of the respondent-applicants filed before the Central Administrative Tribunal is dismissed. However, no order is passed as to costs.