

(2010) 03 DEL CK 0073

In the Delhi High Court

Case No : Writ Petition (C.) No. 1166 of 2007

Union of India (UOI) and Another

APPELLANT

Vs

Sh. Chuttan

RESPONDENT

Date of Decision : 04-03-2010

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 88
Constitution of India, 1950 — Article 226

Citation : (2010) 03 DEL CK 0073

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : Rekha Palli, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioners, Union of India and Anr. have challenged the order dated 1st August, 2006 passed by the Central Administrative Tribunal, Principal Bench in O.A. No. 798/2006 titled as Sh. Chuttan v. Union of India and Ors. whereby the original application of the respondent seeking retiral benefits have been allowed on the basis of a decision of the Central Administrative Tribunal, Principal bench rendered in O.A. No. 427/2004 titled as Mohammad Razak v. Union of India and Ors. decided on 22nd February, 2004.

2. It is not disputed that the respondent was engaged as a casual worker in the year 1965 and he continued to work as a casual worker till he attained the age of superannuation. On attaining the age of superannuation the services of the respondent Sh. Chuttan were dispensed with.

3. On behalf of respondent it was contended that he was granted the temporary status and his services were dispensed with only after he attained the age of superannuation after completing 30 years of service. He contended that he had not been granted any retiral benefits though he is entitled for the same. In the circumstances, he sought ex post facto regularization and retiral benefits.

4. The Tribunal relied on its decision in Mohammad Razak (Supra) holding that if a person has been in employment on casual basis till he attains the age of retirement on superannuation, comparing with other Government servants, it would be unjust, unreasonable and against all canons of justice and equity to deprive such a person the benefits of pension etc. The Tribunal also held that Rule 88 of CCS (Pension) Rules, 1972 provides that in consultation with the Department of Personnel & Training (DoP&T), relaxation in any of the provisions of CCS (Pension) Rules, 1972 can be accorded. The Tribunal had noted that in Mohammad Razak (Supra) ex post facto sanction has been accorded by DoP&T and since the respondent was similarly circumstanced, therefore, it was held that ex post facto sanction should not be deprived to the respondent for regularization of his service and consequent to grant of pension, as he is equally placed and identically situated with Mohammad Razak in whose case the Tribunal had allowed the regularization and retiral benefits which judgment has already been implemented and not challenged by the petitioner.

5. Consequently by the impugned order dated 1st August, 2006 the petitioners were directed to extend to the respondent the same benefits as were passed in O.A. No. 427/2004 and to process ex post facto approval and grant the same for his regularization only in order to grant him pensionary benefits.

6. Pursuant to the present writ petition filed by the petitioners, on 14th February, 2007 on their application of for stay of order dated 1st August, 2006, order impugned in this writ petition, this Court had declined any interim order as three months time granted to the petitioner by order dated 1st August, 2006 by the Central Administrative Tribunal had already expired in November, 2006. In the circumstances, by order dated 14th February, 2007 it was held that retiral benefits be paid to the respondent pursuant to the order of the Tribunal which shall be subject to the result of the writ petition.

7. On 7th March, 2007 for the retiral benefits paid or to be paid to the respondent pursuant to the order of the Central Administrative Tribunal, it was contended that the petitioners would not press for bank guarantee or surety but sought an undertaking to secure from the respondent to reimburse the petitioner in case the petitioners succeeds in the writ petition. However, this Court did not directed the respondent to give any such undertaking, however, the retiral benefits are paid to the respondent.

8. Later on also while disposing of the application of the petitioner being CM No. 2069/2007 seeking stay of the impugned order dated 1st August, 2006, this Court passed the order dated 22nd April, 2009 holding that the respondent has already given the benefit of the judgment subject to the respondent, therefore, declined to stay the order of the Tribunal which is impugned by the petitioner in the present petition and disposed of the application. This Court, however, had also held that since the question of law, namely whether a casual employee, who is only given temporary status and had not been regularized in service till the date of his retirement, is entitled to pension and/or is entitled to the benefit of

50% of the casual service, would be open to the petitioner to be raised in appropriate matters before the Tribunal and consequent thereto the respondent had been paid the retiral benefits and is continued to be paid retiral benefits. This order was not challenged by the petitioners.

9. The learned Counsel for the petitioners has admitted that the decision of Mohammad Razak (Supra) on the basis of which the Central Administrative Tribunal had passed the order in the case of the respondent has become final. This is also not disputed that the order of this Tribunal has already been implemented, and the petitioners has not challenged the order dated 22nd April, 2009 holding that the petitioners shall be entitled to raise the alleged point in some other petition for appropriate decision.

10. In the subsequent petitions filed before the Tribunal by the casual workers seeking retiral benefits, the retiral benefits have been denied to such casual employees on the basis of the decision in Mohammad Razak (Supra). The learned Counsel has specifically relied on a decision dated 4th October, 2007 in O.A. No. 1786/2007 titled as Sh. Bashir v. Union of India where the employee had been working as a full time worker and he had completed more than 240 days in each year till 2003. The said employee had been granted temporary status in the year 1996 as per DoP&T scheme of 1993 but on his superannuation he was neither given any retiral benefits nor any pension or DCRG. The Principal Bench, Central Administrative Tribunal, however, relying on a full bench decision of the tribunal in the case of Smt. Bhagwati Devi had declined the relief to the applicant in that original application in the peculiar facts and circumstances of that case.

11. The learned Counsel for the petitioner, however, has admitted that the decision of the full bench of the Tribunal in the case of Smt. Bhagwati Devi has been assailed before this Court in W.P (C) No. 8868/2008 and the said writ petition is pending and the decision of the Tribunal has not become final.

12. The learned Counsel for the respondent has contended that the retiral benefits have already been given to the respondent and the order dated 22nd April, 2009 directing the petitioners to pay the retiral benefits and to raise the point in some other appropriate proceedings, which order has not been challenged by the petitioners, has become final. It is further submitted that the petitioners are not entitled to deny retiral benefits to the respondent in the peculiar facts and circumstances of the case. It is also contended that the ratio of Uma Devi (supra) is not that an employee who continued as temporary worker till attaining the age of superannuation will not be entitled for retiral benefits and since the petitioners had not challenged the order dated 22nd April, 2009 of this Court, the retiral benefits should not be denied to the respondent.

13. This Court has heard the learned Counsel for the parties in detail. In the peculiar facts and circumstances of the present case since the relief was granted to the respondent relying on the decision of the Tribunal in the case of Mohammad Razak (supra) which has been implemented and the petitioner has

also been given liberty to raise the question of law whether a casual employee having a temporary status on attaining the age of superannuation shall be entitled for retiral benefits to be raised in some other petition which order had not been challenged by the petitioners, and since the decision of the full bench is also not final as it is under consideration, it will be just and appropriate not to interfere in exercise of this Court's jurisdiction under Article 226 of the Constitution of India in the facts and circumstances of the present case.

14. This cannot be disputed that for issuing a writ for any other purpose under Article 226 of the Constitution of India, it has always been in the discretion of the High Court to interfere or not, depending upon the facts and circumstances of each case. It is not necessary for the High Court in exercise of its writ jurisdiction to interfere in every case where there is violation of fundamental statutory rights. Reference in this connection may be made to the decisions of the Supreme Court in *Durga Prasad Vs. Chief Controller of Imports and Exports*, , holding that even where there is an allegation of breach of fundamental right, the grant of relief is discretionary and such discretion has to be exercised judiciously reasonably. Constitution Bench of the Supreme Court in *The Moon Mills Ltd. v. M.R. Meher* AIR 1967 SC 1450 had held that writ is legally a matter of sound discretion and would not be issued if there be such negligence or omission on the part of the applicant to assert his right as taken on conjunction with the lapse of time and other circumstances, which may cause prejudice to the adverse party. Writs so far as they are concerned with the enforcement of the other rights are not issued as a "matter of course."

15. In *Shangrila Food Products Ltd. and another Vs. Life Insurance Corporation of India and another*, , the Supreme Court had held that the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. The jurisdiction of the High Court, being extra ordinary, is normally exercisable keeping in mind the principle of equity. One of the ends of the equity is to promote honesty and fair play. If there be any unfair advantage gained by a party, before invoking the jurisdiction of the High Court, the court can take into account the unfair advantage gained and can require the party to shed the unfair gain before granting relief.

16. The writ petition is therefore, dismissed in the peculiar facts and circumstances of this case. It shall, however, be open to the petitioners to raise the question whether an employee who is granted temporary status and who retires after attaining the age of superannuation would not be entitled for pensionary benefits in appropriate case. It is further clarified that the decision in the present writ petition shall not be a precedent. Considering the facts and circumstances, the parties are also left to bear their own costs.