
(2005) 02 RAJ CK 0034

In the Rajasthan High Court

Case No : Civil Writ Petition No. 6562 of 2003

Union of India (UOI) and Others

APPELLANT

Vs

Ganesh Lal and Another

RESPONDENT

Date of Decision : 09-02-2005

Acts Referred:

Constitution of India, 1950 — Article 21, 300A

Citation : (2005) 2 RLW 969 : (2005) 2 WLC 311

Hon'ble Judges : Rajesh Balia, J;Dinesh Maheshwari, J

Bench : Division Bench

Advocate : Ravi Bhansali, for the Appellant; S.K. Malik, for the Respondent

Final Decision : Dismissed

Judgement

Dinesh Maheshwari, J.—The petitioners-Union of India and Others have Submitted Writ Petitions No. 6562/2003 and 1867/2004 against the Orders dated 29.5.2002 and 12.12.2003 respectively passed by the Central Administrative Tribunal, Jodhpur Bench, Jodhpur ("the Tribunal") in Original Applications (OA) No. 244/2001 and 92/2003 respectively filed by respondent No. 1 Ganesh Lal. The subject matter of both the writ petitions being inter-related, on common facts and involving common questions, both the petitions were heard together and are being disposed of by this common order.

2. The parties have already had various rounds of litigation, culminating into the two impugned orders. It shall therefore, be useful to narrate chronology of events :

Preliminary

3. Respondent No. 1 Ganesh Lal was informed by the Superintendent (Excise), Udaipur by the letter dated 2.1.1990 that his name had been forwarded by the Employment Office, Udaipur for appointment on the post of Gardener as daily wager and he was called to appear on 11.1.1990 with relevant certificates. Therefore, by the Order dated 18.1.1990 issued by the Office of the Assistant

Controller, Central Excise and Customs Division, Udaipur, sanction was accorded for part time contingent paid staff at the rate of Rs. 200/-per month from 22.1.1990 to 21.4.1990 and the respondent No. 1 was ordered to be appointed in Central Excise and Customs Division, Udaipur as Gardener w.e.f. 22.1.1990. Initially, he was paid Rs. 200/- per month, therefore at the rate of Rs. 300/- per month and from June, 1991 onwards at the rate of Rs. 400/- per month.

OA No. 255/1993 decided on 15.7.1994

4. The status of the respondent No. 1, continued as such and it seems that he made efforts for getting regularised and ultimately submitted Original Application No. 255/1993 before the Tribunal which was decided on 15.7.1994. The Order dated 15.7.1994 has not been placed on record by either of the parties before us. However, the Tribunal has quoted the directions contained in the Order dated 15.7.1994 in the impugned Order (dated 29.5.2002) in Writ Petition No. 6562/2003 which shows that while disposing of the said OA No. 255/1993, the Tribunal directed for considering the case of the applicant on the following points:-

"(a) Whether any benefit can be extended to the applicant as per Order of the Government referred to as Annex. A/2 dt. 26.09-89 and subsequent orders;

(b) Whenever any vacancy occurs in Class "D" the applicant's case for absorption or appointment should be considered on that post with other similarly situated persons. However, preferential treatment should be given to those persons who are working for a pretty long time while considering on merit. This aspect should also be kept in mind while considering their regularisation."

OA No. 244/2001 Decided on 29.5.2002

5. The pleadings and documents pertaining to OA No. 244/2001 have not been placed before us by either of the parties. However, from the narratives in Order dated 29.5.2002, it is found that the applicant (respondent No. 1 herein) contending the he had rendered more than 11 years and 6 months of service without break and his case for regularisation was not being considered, filed this OA No. 244/2001 and submitted that he was duly selected as Daily Causal Labour (Gardener). Although he was shown as part time contingent staff for the period 22.2.1990 to 21.4.1990 but he has been discharging duties for more than eight hours a day. The applicant also contended that vacancy exist in Group "D" but despite that no action was being taken either to confer temporary status or to regularise him in Group "D" post. The applicant contended that he was entitled for 1/30th of the minimum of the pay in the pay scale of Rs. 750-940 as per DOPT orders applicable to the Department and since he has been continuously working without break, he was entitled for regularisation. The applicant also referred to letter dated 5.10.1995 by the Administrative Officer to the Central Excise and Customs, Jaipur in which it has been stated that the applicant was appointed on daily wages basis and work of gardener was being taken from him which was of regular nature. The applicant alleged that he was

paid Rs. 55/- per day from January, 2000 onwards, although as per circular dated 11.11.1999, minimum wages" for the Gardener was Rs. 1768/- per month or Rs. 68/- per day.

6. The writ petitioners countered with the submissions that the applicant was engaged as Gardener on part time basis only for four hours per day at a consolidated sum of Rs. 200/-; that he has worked only upto June, 2001 and since his services have already been dispensed with, he was not entitled for grant of temporary status and for regularisation in group "D" post. He was paid a consolidated amount per month which was raised from time to time and he was paid Rs. 55/- per day from January, 2000 to June, 2001 for working four hours per day. According to the writ petitioners, there was no post of Gardener under the Office of Assistant Commissioner, Central Excise and Customs, Udaipur and as per DOPT Office Memorandums dated 10.1.1993 and 12.7.1994, temporary status could not be granted to part-time casual worker.

7. The applicant submitted rejoinder and claimed that he has worked in the month of July, 2001 also and that respondents (petitioners herein) have stopped payment from the month of October, 2001 onwards to force him to withdraw the OA. The applicant also seems to have annexed copies of correspondence as Annex. A20 and a copy of fax message as Annex. A21 written by one Rawat Construction to the Assistant Commissioner stating therein that the applicant was working since June, 2001 and this was done to deprive him of the temporary status and regularisation. It also appears that applicant filed MA No. 7/2002 contending that payment to him has been stopped from the month of October, 2001 to force him to withdraw the case and the salary deserves to be released to save him from starvation.

8. The Tribunal proceeded to dispose of OA No. 244/2001 by the Order dated 29.5.2002. The Tribunal found that judgment dated 15.7.1994 has already become final and the parties were bound by the same. It was of course true that in the said judgment dt. 15.7.1994 no direction was given for granting of temporary status to the applicant but only for consideration. But then, there was nothing on record to establish that respondents considered the case of the applicant for grant of temporary status. The applicant was also unable to establish that he was engaged as full time gardener and payment of Rs. 55/- per day from the year 2000 would not lead to the conclusion that the applicant was a regular employee. On the basis of the material on record, the learned Tribunal found that the contention of the respondents that applicant was part time casual gardener appeared to be correct and that a part time casual employee was not eligible for grant of temporary status. Thereafter, the learned Tribunal recorded that however it was not disputed by the respondents that the applicant worked continuously for about 11 and 1/2 years as part time gardener and his performance was satisfactory and that there was force in contention on the part of applicant that there was no proper compliance of the earlier Order of the Tribunal. The OA No. 244/2001 was disposed of with the following directions:-

"In view of the above discussion, this OA is disposed of with the direction to the respondents to consider the applicant for appointment to any group "D" post which may fall vacant under the jurisdiction of the respondent No. 2 and is required to be filled up under normal direct recruitment quota, within 3 years, by giving due preference to him for having worked satisfactorily with them for over 11 years and by granting age relaxation for the period he worked with them. Since the respondents are principal employer, they shall ensure that the applicant is paid wages including arrears, if any, due to him for the period he performed work of Gardener through the contractor. Let such amount, if any, be paid to the applicant without two weeks from the date of receipt of this order."

Contempt Petition No. 34/2002 Decided on 25.2.2003

9. The applicant respondent No. 1 prayed for making payment and when no payment was received by him, he filed contempt Petition No. 34/2002 before the Tribunal in which notices were issued and then the contempt petition was disposed of by the Order dated 25.2.2003. From the copy of the Order dated 25.2.2003 placed on record in Writ Petition No. 1867/2004 it appears that in compliance of the aforesaid directions dated 29.5.2002 in OA No. 244/2001, the payment was sought to be made by Cheque dated 10.9.2002 but it was observed that cheque was issued wrongly in the name of other person and it has to be returned. Finally, another cheque of the said amount was handed over to the learned counsel for the applicant on 12.12.2002 and the matter was heard on that date. However, the Tribunal took note of the fact that there was abnormal delay in complying with the orders, and therefore, Assistant Commissioner was directed to appear in person and on his appearance, the contempt petition was heard and disposed of on 25.2.2003. It appears that before the Tribunal, the stand was taken by the contemnors that Central Public Works Department ("CPWD") was the principal employer of the applicant and not the Central Excise and Customs Department and this stand was objected against by the applicant being contrary to the earlier findings of the Tribunal. However, the Tribunal while dealing with the contempt petition considered the additional reply filed on behalf of the contemnors for the reasons assigned for delay in payment that the applicant has been working for them through an agency of CPWD and upon receipt of the Order dated 29.5.2002, the issue was taken up with CPWD Authorities and this process took time for which the contemnors tendered unconditional apology. It was then brought to the notice of the Tribunal that the Order dated 29.5.2002 has already been challenged before this Court. (Noteworthy it is that contempt petition was heard on 12.12.2002 when for abnormal delay in compliance, the Assistant Commissioner was directed to remain personally present and that the Writ Petition No, 6562/2003 was filed only on 18.2.2003). The learned Tribunal disposed of the contempt petition with the following observations:-

"7. Having perused the entire records and considering the arguments, we are of the considered view that orders of the Tribunal have been fully complied with

though, after an abnormal delay for which Shri Rajesh Kumar Verma, contemnor (respondent No. 2), has sought unconditional apology. Notwithstanding the fact that there has been laxity on the part of department in not seeking extension for compliance of the orders when they realised that the same was going to take time, but it is not a case of deliberate and willful disobedience of our order. Moreso, when the orders have actually been complied with in so far as the issue raised by the learned counsel for the applicant that the respondents have violated the orders by stating that the C.P.W.D. was the principal employer, we are of the view that this limited aspect is not relevant to the relief claimed by the applicant and this is no ground to proceed in a contempt matter any further.

8. In view of the above discussions, we dismiss this contempt petition and discharge the notice issued to the contemnors as the petitioner/applicant has received his full wages. In case, he is not satisfied with the sum paid to him and still something is left, he shall be at liberty to move this Tribunal afresh, if he is so advised."

Writ Petition No. 6562/2003

10. At this juncture, we may notice the averments in Writ Petition No. 6562/2003 filed on 18.2.2003 against the Order dated 29.5.2002. The writ petition has been submitted with only the Order dated 29.5.2002 as Annex. 1 and the pleadings and documents in the OA No. 244/2001 have not been produced on record. This petition was placed for admission on 24.11.2003 after removal of defects and notices were issued to the respondents. It has been contended by the petitioners by way of grounds in this writ petition that the direction given by the learned Tribunal to consider respondent No. 1 for appointment on any Group "D" post which may fall vacant under the jurisdiction of the petitioner No. 2 within three years under direct recruitment quota by giving due preference to respondent No. 1 is illegal and perverse. The petitioners have contended that respondent No. 1 was engaged as Gardener on part time basis only on consolidated amount of Rs. 200/- per month in January, 1990. He was not given appointment by the competent authority by following rules and regulations in this regard. The applicant was paid Rs. 55A per day from January, 2000 to June, 2001 for working per day in the Department. The applicant has worked in the Department as part time worker for the work of gardener and no other work of Class- IV employee was taken from him as there are 9 Sepoyes Class IVth for the works of peon. Reiterating the submissions made before the Tribunal, the petitioners have contended that earlier the applicant filed OA No. 255/1993 which was decided on 15.7.1994, with directions for considering the case of the applicant for regularisation under government Order dated 26.9.1989 or whenever any vacancy arose in Class-D. The petitioners have contended that case of the applicant was considered for regularisation in the month of December, 1994 against the vacancy of Group "D" post and again in the year 1995 and both the times, the applicant could not get regularisation as more seniors and more eligible candidates were available in the Department. It has been reiterated that

services of respondent No. 1 were not utilised by the petitioner-Department after June, 2001. The daily wages casual worker does not ipso facto get the right to continue as this right is subject to availability of work and satisfactory performance and conduct. According to the petitioners, a part time casual labour has no right to hold civil post and therefore the relief sought by the applicant was misconceived and the findings of the Tribunal were perverse. The applicant worked with the Department upto June, 201 only and after June, 2001, the work of garden maintenance is being looked after by the CPWD, Horticulture Wing. The petitioners have contended that they are not the principal employer of the applicant or any other gardener working in the department through Horticulture Wing of the CPWD and therefore, the Order dated 29.5.2002 was liable to be quashed and set aside.

OA No. 92/2003 Decided on 12.12.2003

11. As noticed above, the Writ Petition No. 6562/2003 came up for admission before the Court only on 24.11.2003 when notices were ordered to be issued. However, in the meantime on 16.4.2003, applicant Ganesh Lal filed yet another OA being No. 92/2003 complaining against the omission on the part of writ petitioners in not making monthly payment to him. The applicant narrated the facts as noticed hereinbefore including the Order dated 29.5.2002 in OA No. 244/2001 and the Order dated 25.2.2003 in Contempt Petition No. 34/2002 and submitted that he was being harassed by no making payment of monthly salary and being threatened with discontinuation of the service. The applicant averred that at no point of time, he discharged duty with any contractor and only in Order to deprive him of the benefit of the regularisation, the respondents are sometimes asserting that he was discharging duties with the contractor and even a cheque of Rs. 20,000/- was paid to him through the contractor but now the contractor was stating that applicant was not his employee and but of the Assistant Commissioner. According to the applicant, he was being made to suffer between the contractor and the Assistant Commissioner despite findings of the court that principal employer of the applicant was respondent No. 3 only. The applicant contended that he has been discharging duties continuously with the Department and not making of payment to him was contrary to the orders of the court and violative of Article 21 and 300A of the Constitution of India. The payment has been made only upto March, 2002, although the case was decided on 29.5.2002. The applicant prayed for relief that the respondents be directed to release monthly salary with effect from April, 2002 till date of payment with interest at the rate of 18% per annum and that if any termination Order verbal or otherwise be passed by the respondents, the same be declared illegal and be quashed.

12. The petitioner filed reply to this OA No. 92/2003 on or about 6.6.2003 with the contentions inter alia that the applicant was given appointment on part time basis by the Order dated 18.1.1990 and he was paid wages till he worked under the petitioner-Department. According to the petitioner, the Order dated

15.7.1994 in OA No. 255/1993 has already been implemented in its letter and spirit. The issue sought to be raised by the applicant has been decided in the Order dated 29.5.2002 in OA No. 244/2001 and the applicant was now trying to mislead the Tribunal and was trying to raise the controversy which has already been settled by the Tribunal. The petitioners contended that the applicant had already been paid all the due wages by his contractor and that the case of applicant would be considered by the Department in pursuance to the directions issued by the Tribunal in OA No. 244/2001 whenever any vacancy will be available with them within three years from the date of judgment by giving him due preference. The petitioners further contended in the said reply that office of Assistant Commissioner was small one and the garden work was not for more than four hours per day. The work of gardener in the office was given to CPWD Horticulture Wing after June, 2002 and they engaged Ravindra Construction to look after the work of gardener and the the applicant was engaged by the contractor to whom work of maintenance of lawns and gardens was assigned. Upon receipt of the application from the applicant, competent authorities of CPWD Horticulture Wing were requested to arrange the payment to the applicant who was looking after their garden through contractor. The submissions by the petitioners in para 4.10 of the reply ma be noticed which read as under:-

"4.10 That the averments contained in Para 4.10 of the Original Application are not admitted in the manner as alleged by the applicant. It is most humbly and respectfully submitted on behalf of the answering respondents that the applicant i.e., Shri Ganesh Lal was removed from the the work of part time contingent by the Division Office on 31.05.2001 and thereafter, he was taken on work by contractor of C.P.W.D. (Horticulture Wing). The applicant was working with them till 31.03.2002. The applicant has already been given payment for the above period by the contractor, which Shri Ganesh Lal has already accepted.

It is empathetically submitted on behalf of the answering respondents that after 31.03.2002, the applicant is not working in the office of respondent No. 3 neither as a part time employee nor as employee of C.P.W.D. contractor. It would be also pertinent to note here that presently C.P.W.D. (Horticulture Wing) contractor has engaged one Shri Ramesh Meena as gardener to look after the garden in the office of respondent No. 3. It is further submitted on behalf of the answering respondents that Shri Ramesh Meena is regularly working in the office of respondent No. 3. At the cost of repetition, it is submitted that Shri Ganesh Lal is not working in the office of respondent No. 3 at all."

13. Therefore, in nutshell, according to the petitioners, Shri Ganesh Lal was working through the contractor of CPWD, Horticulture Wing after 31.5.2001 and further that after 31.3.2002, he was not working in the office of petitioners at all and that garden in the office of respondent No. 3 was being looked after by other person engaged through CPWD contractor.

14. The Tribunal decided the OA No. 92/2003 by the Order dated 12.12.2003. The Tribunal noted the following as admitted facts:-

"(a) That the applicant was appointed as part time contingent staff on 18.1.1990 vide copy of orders placed at Annex. A/2.

(b) That the applicant was initially paid Rs. 200/- per month, Rs. 300/-per month, thereafter and lastly, Rs. 400/- per month from June 1991 onwards.

(c) That the case of the applicant for regularisation was considered but as limited vacancies were available with the department and other candidates were also available, the applicant could not get it."

The Tribunal noted following disputed facts:

(a) That the applicant is working as Gardener in the Office of Assistant Commissioner, Central Excise and Customs.

(b) That the applicant is doing work which is of a regular nature.

15. The Tribunal noted the contention on the part of applicant that the status of the gardener even though part time has been conferred by an office Order and the same could be taken back only through another Order and the respondents (petitioners herein) have not been shown any such order. The Tribunal also noted the other submission on the part of applicant that even if it be held that applicant was a part time employee, the long services of nearly 11 years rendered by him attracts the spirit of decision of the Hon"ble Apex Court in the State of West Bengal and Others Vs. Pantha Chatterjee and Others, It was found that there was no reply from the respondents to the first argument and all that was said was that work of gardening was done by CPWD and that was being attended by the contractor. However, the petitioners were silent about any Order that put an end to the employment of the applicant. The Tribunal considered the facts of the case including the earlier Order passed by the Tribunal for the relief claimed by the applicant of monthly salary with effect from April, 2002. The learned Tribunal found that the applicant should be held in the employment of the respondents and continuing on the basis of the Order dated 18.1.1990 and this should lead to the next corollary i.e., respondents were under obligation to pay all arrears till the status of part time employee subsists. The learned Tribunal referred to the facts borne out by the letter dated 5.10.1995 issue under the signatures of the Administrative Office, Central Excise and Customs Division, Udaipur which shows that work performed by the applicant was of regular nature. The OA was therefore allowed insofar the claim of payment of arrears was concerned directing the present petitioners to ensure payment of all arrears within a month of the receipt of the order.

Writ Petition No. 1867/2004

16. Against the aforesaid Order dated 12.12.2003, Writ Petition No. 1867/2004 has been submitted on 14.1.2004. The petitioners have contended in this writ petition that the applicant has not challenged the Order dated 29.5.2002 passed in OA No. 244/2001 wherein it was mentioned by the Tribunal that Ganesh Lal was working in the Department through the contractor and without challenging

this Order dated 29.5.2002, he could not claim himself to be the employee of the petitioner-Department nor was entitled for any salary. According to the petitioners, the Tribunal in its judgment dated 12.12.2003 has failed to consider the submissions of the petitioners that the applicant was presently not working in the office of Assistant Commissioner neither as part time employee nor as employee for CPWD contractor as the contractor has engaged Shri Ramesh Meena as Gardener to look after the garden in the office of respondent No. 3 and that the applicant did not place on record any document or evidence to prove that he was working continuously in the office of Assistant Commissioner, and therefore, question of payment of salary does not arise.

17. We have heard the learned counsel for the parties in both the writ petitions and have scanned through the entire material placed before us in two writ petitions.

18. After giving our thoughtful consideration to the entire matter, we are clearly of the opinion that both the writ petitions are devoid of substance and deserve to be dismissed. In our opinion, the fundamentals of the relationship of the applicant and the writ petitions were already settled by" the Order dated 15.7.1994 passed in OA No. 255/1993 and the writ petitioners were under an obligation to consider the case of the applicant for grant of temporary status and for absorption or appointment whenever any vacancy arose in Class D Post with other similarly situated persons subject to the preference to the persons working for long time.

19. The petitioners have neither placed on record the Order dated 15.7.1994 nor have placed on record the material to show the consideration of the case of the applicant. From the factual averments, all that is discernible is that in the year 1994, the case of the applicant was considered on the post of Sepoy and in the year 1994 on the post of Farash. Nothing else has been stated and on the contrary, it appears that admittedly the applicant continued to work uninterruptedly till the time he chose to file OA No. 244/2001 seeking conferment of temporary status upon him with effect from 10.9.1993 and for regularisation of the services and for payment at the rate of 1/30th of the minimum of the pay scale of Rs. 750-940/- at it has been contended in reply to the said application that he worked upto June, 2001 when his services were dispensed with.

20. The learned Tribunal in comprehension of all the facts and entire circumstances has noticed in the Order dated 29.5.2002 that there was nothing on record to establish that respondents considered the case of the applicant for grant of temporary status in terms of the judgment dated 15.7.1994. However, the payment of Rs. 55/-per day from the year 2000 would not lead to the conclusion that applicant was a regular employee and in view of the available material on record including Order dated 18.1.1990, the contention of the respondents (present petitioners) was accepted as correct that the applicant was a part time casual gardener who may not be eligible for grant of temporary

status, but nevertheless, the fact remained undisputed that the applicant worked for about 11 1/2 years as part time gardener and Para (b) of the Order of the Tribunal dated 15.7.2004 yet remained to be complied with. In the overall circumstances of the case, we do not find any error in the Order of Tribunal directing the present petitioners to consider that case of applicant for any Group "D" post which may fall vacant and is required to be filled under normal direct recruitment quota within three years by giving due preference to the applicant for having worked satisfactorily for 11 years by granting age relaxation for the period he worked with them.

21. So far the current status of the applicant was concerned, we find from the impugned Order dated 29.5.2002 that although, it was contended on behalf of the writ petitioners that services of applicant have already been dispensed with and he worked upto June, 2001 only and that he was engaged by the contractor to whom the work for maintenance of garden was assigned, but then, it was conceded on behalf of the writ petitioners that they being the principal employer, if any payment had not been made to the applicant by the contractor, they would ensure that the payment is made to him immediately. In that view of the matter, the Tribunal seems to have not gone into the question of present status of the applicant but only directed that as respondents were the principal employer, they would ensure payment of wages to the applicant including arrears due to him for the period he performed the work of gardener through the contractor. In our considered opinion, in the circumstances of the case and in view of the subject matter involved, the Tribunal has rightly not ventured into the question of present status of the applicant and only directed on the basis of the concession of the respondents that they being the principal employer would ensure payment of wages. The applicant has not challenged the Order dated 29.5.2002 and we find no ground to interfere in this Order at the instance of the writ petitioners as the Order appears to be just and proper in the over all circumstances of the case and does not suffer from any illegality or perversity so as to warrant interference by this Court in writ jurisdiction.

22. We have noticed that this Order dated 29.5.2002 has been challenged by filing a writ petition on 18.2.2003 only after the applicant has filed a contempt petition, notices were issued therein and the personal presence of Officer concerned was ordered by the Tribunal.

23. We have noticed from the Order 25.2.2003 passed in the Contempt Petition No. 34/2002 that the averments of the Department of claiming CPWD to be the principal employer of the applicant was seriously opposed on behalf of the applicant but that aspect was left undecided as irrelevant for the purposes of contempt petition and the applicant was left with liberty to move the Tribunal if he was not satisfied with the sum. paid to him and if something was left. OA No. 92/2003 has thereafter been filed on 16.4.2003.

24. Coming to the subject matter of OA No. 92/2003, it is found from the impugned Order dated 12.12.2003 that the learned Tribunal considered the

respective stand of the parties and noted the contention on behalf of the applicant that he was appointed as gardeper; that work was of regular nature; and that he continued to be in their employment; and that even if status as part time gardener was conferred by an office order, the same could be taken back only through another order and found that there was no reply to this argument. All that was said was that the gardening was being done by CPWD and was being attended by a contractor but the writ petitioners were silent about any Order that put an end to the employment of the applicant. The learned Tribunal noted that the OA was essentially for payment of arrears which would arise, in case, it be held that applicant was continuing in his job and no Order of termination having been found, the Tribunal considered the position to the effect that applicant should be held in employment of the respondents and continuing on the basis of the Order dated 18.1.1990 and obligation to pay was a necessary corollary.

25. In our opinion, the learned Member of the Tribunal while disposing of OA No. 92/2003 has rightly construed the status of the applicant and position of respective parties. So far the current status of the applicant was concerned, the petitioner-Department being the principal employer has rightly been found in the Order dated 29.5.2002 which we have affirmed hereinabove and as a necessary corollary of the same, the petitioners were under an obligation to ensure payment of all the arrears to the applicant which has rightly been allowed by the learned Tribunal. The Order dated 12.12.2003 cannot be said to be perverse or suffering from any error so as to warrant interference by this Court in writ jurisdiction. In our considered opinion, the writ petitioners are not justified in seeking to somehow find an escape from their liability for ensuring payment to the applicant. The story of CPWD being the principal employer itself seems to have been put forward substantially as a defence to the contempt proceedings, else in the proceedings in OA No. 244/2001, it was specifically conceded on behalf of the writ petitioners that they being the principal employer would ensure payment of arrears. Although, it has been submitted that the petitioners were not be principal employer but the aforesaid concession was neither explained nor any material has been placed before the Tribunal or before us to show as to how the employment of applicant came to an end. From the entire material on record, it is not found as to how and in what manner, the services of the applicant were dispensed with after June, 2001 and the learned Member of the Tribunal appears to be perfectly justified in observing in the Order dated 12.12.2003 that the respondents were only arguing that the work was being managed by a contractor and the applicant was no more in the employment but when the applicant was appointed by a written order, the same was required to be superseded by a proper communication.

26. From the entire averments adopted by the writ petitioners, we do not find the fundamental fact as to when the petitioners terminated the Order of appointment which was issued way back in the year 1990 and according to the admission of the petitioners themselves, the applicant continued at least till June, 2001. AH the has been asserted is that thereafter gardens and lawns were

maintained by CPWD, Horticulture Wing who managed it through a contractor and the contractor in turn engaged the applicant. The story of such engagement by the contractor of the applicant only in the office of petitioner No. 3 alone appears to be simply an attempt to over-reach the process of law, to over-reach the Order dated 15.7.1994 and to frustrate the claim of the applicant in OA No. 244/2001.

27. In our opinion, the learned Member of the Tribunal has rightly directed the writ petitioners to ensure payment of arrears and these directions are unexceptionable and do not suffer from any error so as to warrant interference by this Court in writ jurisdiction.

28. As a result of the aforesaid, both the writ petitions fail and are dismissed with costs quantified at Rs. 2500/- in each writ petition.