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In the Calcutta High Court

Case No : W.P.C.T. No. 211 of 2007

Union of India (UOI) and Others — APPELLANT

Vs

P. Simhachalam and Another — RESPONDENT

Date of Decision : 07-09-2007

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2008) 2 CHN 863

Hon'ble Judges : Subhro Kamal Mukherjee, J;Kalidas Mukherjee, J

Bench : Division Bench

Advocate : Mohammed Tabraiz, for the Appellant;Roshan George, for the Respondent

Final Decision : Allowed

Judgement

Subhro Kamal Mukherjee, J.—This is an application under Article 226 of the Constitution of India (the writ petition in short) against judgment and order dated May 24, 2007 passed by the Central Administrative Tribunal in Original Application No. 45/AN/2006.

2. The respondents in this writ petition are working as daily rated mazdoors in the Central Agricultural Research Institute from 1991.

3. Government of India formulated a scheme for granting temporary status and for regularisation of the casual workers, who were employed and had rendered one year of continuous service. Such scheme was formulated on September 10, 1993. The Indian Council of Agricultural Research (ICAR), the parent body of the Central Agricultural Research Institute, adopted the said scheme in respect of the casual workers engaged by the institutions under ICAR.

4. The said scheme is "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993". Under the said scheme temporary status would be conferred on all the casual labourers, who were in employment on the date of issue of the said scheme and who have rendered

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continuous service of at least one year. It was, further, decided that such casual labourers, who would acquire temporary status, would not, however, be brought on the permanent establishment unless they were selected through regular selection process for Group-D posts. Clause 5 of the said scheme described the benefits granted to the casual labourers following their temporary status under the scheme. It was specifically provided under Clause 6 of the said scheme that no benefit other than those specified in the said Clause 5 would be admissible to the casual labourers with temporary status. It was recorded in Clause 9 that on regularisation of the casual labourer with temporary status, no substitute in his place would be appointed, as he was not holding any post.

5. The Director, Central Agricultural Research Institute, in terms of the said scheme, granted temporary status to the respondents in this writ petition. It was, however, recorded in the office order dated March 10, 1995 that by grant of temporary status they would not acquire any right whatsoever to be brought under the permanent establishment unless they were selected after following the regular selection procedure laid down for the post.

6. The Central Agricultural Research Institute published an advertisement inviting applications from the eligible candidates for the post of T-3 in the pay scale of 4500-125-7000. The age limit prescribed was 18-30 years as on May 7, 2006 with age relaxation of three years for Other Backward Classes and five years for the Scheduled Tribes. However, no age limit was prescribed for ICAR employees.

7. Taking advantage of the said age relaxation Clause for the ICAR employees, the respondents in the writ petition applied for the said post of T-3.

8. As they were not asked to appear in the interview, they made representations to the Director, Central Agricultural Research Institute. The Central Agricultural Research Institute, however, declined to grant them age relaxation.

9. Being aggrieved, they approached the Central Administrative Tribunal. In the application filed before the Central Administrative Tribunal they prayed for a direction on the Central Agricultural Research Institute to consider them as employees of the said institution to enable them to appear in the said selection process pursuant to the said advertisement.

10. By the impugned judgment and order dated May 24, 2007, the Central Administrative Tribunal allowed the said application and directed the authorities to consider their applications for the post of T-3 and to allow them to participate in the interview and proceed ahead with the selection. The Tribunal, further, directed that in case the applicants could not be selected on merits, in the event of future vacancies for direct recruitments, the applicants and any other person, who has completed more than 10 years of temporary status might apply and they would be considered by granting age relaxation treating them as the employees of the ICAR.

11. Being aggrieved, the authorities have come up with this writ petition.

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12. At the outset, we must record with appreciation the stand taken by Mr. Roshan George, learned Advocate appearing for the respondents in the writ petition, that he cannot support the order of the Tribunal directing consideration of the respondents in the writ petition and any other temporary status mazdoor, who has completed more than 10 years of temporary status, in case of future vacancies for direct recruitment by granting age relaxation. He submits that it was not even the prayer before the Tribunal. Mr. George, however, submits that in view of grant of temporary status under the said Scheme of 1993, the respondents are employees of the institution and the age relaxation Clause available to the employees of the institution is available to them. Therefore, the Central Administrative Tribunal was right in asking the authorities to permit them to participate in the interview.

13. The short question is whether the respondents in the writ petition are employees of ICAR or not?

14. Under the scheme, as aforesaid, they were granted temporary status. They are entitled to the benefits under the said scheme, that is, they were entitled to temporary status and consideration for regularisation in the establishment through regular selection process for Group-D posts. The benefits that were given to the said temporary status mazdoors have been clearly laid down in Clause 5 of the said scheme. It was, further, laid down in Clause 6 of the said scheme that they were not entitled to any other benefit than the benefits mentioned in Clause 5 of the said scheme. It was specifically mentioned in the Clause 9 of the said scheme that temporary status mazdoor was not holding any post in the institution.

15. It is settled law that a casual laborer does not hold a post though he may be under the administrative control of the State during the period of his working. The respondents are casual employees with temporary status, but they have not, yet, been appointed to a temporary post. In view of the scheme, as aforesaid, it cannot be said that the respondents are employees of the institution. Since they are not employees of the institution, the age relaxation clause, as mentioned in the said advertisement is not applicable to them. The scheme itself is encouraging the backdoor entry principle and the Court cannot open the backdoor wider. The Tribunal, therefore, applied wrong legal test in considering the case of the respondents in the writ petition.

16. The order impugned in the writ petition passed by the Central Administrative Tribunal is set aside.

17. Tne original application filed before the Central Administrative Tribunal is rejected.

18. The writ petition is, thus, allowed.

19. We, however, direct the parties to bear their respective costs in this writ petition.

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Kalidas Mukherjee, J.

I agree.

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