
(2011) 07 DEL CK 0220

In the Delhi High Court

Case No : Writ Petition (C) No. 27 of 2007

Union of India (UOI)

APPELLANT

Vs

Ram Kishore and Others

RESPONDENT

Date of Decision : 27-07-2011

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21
Constitution of India, 1950 — Article 226

Citation : (2011) 07 DEL CK 0220

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : Kumar Rajesh Singh, for the Appellant; A.K. Trivedi, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar Misra, J.—The Petitioner, Union of India through the General Manager, Northern Railway has challenged the order dated 22nd November, 2005 passed by the Central Administrative Tribunal, Principal bench, New Delhi in O.A No. 1067/2005 titled as "Ram Kishore and Ors. v. Union of India and Ors." partly allowing the original application of the Respondents and directing the Petitioners to pay the Respondents the arrears in lieu of the grant of temporary status after completion of 120 days on verification of their claims.

2. The Brief facts to comprehend the dispute between the parties are that the Respondents were initially appointed as casual labour during the period of 1974 to 1981 in the Construction Organization, and after screening of the Respondents, all of them were working in the open line in their respective categories of Group "D" posts. The Respondents were continuously working in their initial appointments till the date of attaining temporary status without any interruption and there was No. break in their entire service records.

3. The grievance of the Respondents is that they are entitled for the grant of scale rate payment, after the completion of 120 days of continuous service from

their initial date of appointment till the date of grant of temporary status, and therefore, they claimed the arrears for the said period from the Petitioner, since similarly placed employees were given the same temporary status and benefits. The Respondents addressed their grievances to the Petitioner through the proper channel however, No. action was taken by the Petitioner and the Respondents representations were not even considered.

4. Thereafter, the Respondents filed O.A. No. 1067/2005 before the Tribunal, wherein they claimed that they had been engaged as Casual Labour during the period from 1974 to 1981, but they were not granted temporary status after completing 120 days of continuous service. They prayed for directions to the Petitioner that they may be granted regular pay scale of putting 120 days as casual service and also be granted arrears of pay from the completion of 120 days as casual service, till the date the Respondents became entitled for grant of temporary status.

5. In support of their submissions the Respondents relied on the Railway Board Instructions dated 12th July, 1973 by which the period of six months of continuous service for the grant of temporary status was reduced to 4 months. The Respondents also relied on the judgments of the Tribunal in OA No. 371/2001 titled as "Tara Chand and Ors. v. Union of India and Ors." and OA No. 996/2001 titled as "Rameshwar and Ors. v. Union of India and Ors." wherein similar relief, as claimed by the Respondents, were given to other casual labors. The Respondents also relied on the judgment of the High Court of Delhi in C.W. No. 5247/1997, wherein it was held that the order of the Labour Court denying the arrears of pay was erroneous and hence was set aside. It was also pointed out that the Petitioners had themselves admitted the claim in LCA No. 302/1994 and LCA No. 307/1994. As per the Respondents even though a large number of Railway employees were paid the arrears of pay with consequential benefits, yet for some reason best known to the Petitioner the Respondents were excluded from the same benefits.

6. The pleas and contentions of the Respondents were contested by the Petitioner contending, inter alia, that the Respondents have misrepresented the facts by claiming that they worked as casual labour in the construction organization and after screening they were engaged in the open line on Group-D post. According to the Petitioner they have not divulged any details or produced any documents in support of their claims and there is No. reference of even a date on which they supposedly joined the construction organization and were subsequently transferred to the open line. In these circumstances it was asserted that the Respondents are not entitled for any relief.

7. The learned Counsel for the Petitioner also contended that the Respondents have never worked as casual labour under the Administration of Delhi Division, but have instead been employed as casual labour in the construction organization. It was also submitted that the Respondents were project casual labour who worked in the construction organization and thus they are entitled for

temporary status only after the completion of 360 days after 1st January, 1981 in terms of PS No. 9048 and not 120 days as claimed by the Respondents, which was the case for casual labour who worked on the open line. It was also contended that in any case the application of the Respondents was barred by limitation as the cause of action arose 3 years prior to the date the Tribunal came into existence.

8. The Tribunal carefully considered the pleas and contentions raised by both the parties. The Tribunal also took note of the decision of this Court in the Banwari Lal's case decided on 27th October, 1999 wherein similar claims as that of the Respondents was allowed. The similar decision in similar circumstances was reiterated by the Tribunal in OA No. 371/2001 titled as "Tara Chand and Ors. v. Union of India and Ors." and OA No. 996/2001 titled as "Rameshwar and Ors. v. Union of India and Ors.". In light of the many decisions on similar issue, the Tribunal allowed the claim of the Respondents and directed the Petitioners to pay the Respondents arrears in lieu of the grant of temporary status after 120 days on verification of their claim. The relevant para of the Tribunal's judgment is as follows:

3. The issue is No. more res integra. High Court of Delhi on 27.10.1999 in Banwari Lal's case had allowed the aforesaid claim which has been reiterated by this Tribunal in OA-371/2001 (Tara Chand and Ors. v. U.O.I. and Ors.) decided on 16.2.2001.

4. In another case in OA-986/2001 (Rameshwar and Ors. v. U.O.I. and Ors.) decided on 26.4.2001, taking cognizance of the decision of the High Court, the O.A. was allowed in view of the decision in Ram Prasad and Ors. v. Ganpati Sharma and Anr. (CWP-5247/87) decided on 27.10.1999. By another order passed in OA-2747/2003 (Amar Nath and Ors. v. U.O.I. and Ors.) decided on 22.12.2004, a similar claim has been allowed.

5. Though the Respondents have vehemently opposed the above contentions, yet in the light of several decisions on the issue including the decision of the High Court in CWP-5247/87, as the applicants are similarly circumstanced, this O.A. is partly allowed. Respondents are directed to pay to the applicants the arrears in lieu of grant of temporary status after 120 days after verification of their claim, within a period of three months from the date of receipt of a copy of this order. No. costs.

9. Being aggrieved by the said order of the Tribunal, the Petitioner preferred to file a Review Application No. 117/2006, on the ground that as per the claims of the Respondents themselves, they had worked as casual labour three years prior to the date on which the Tribunal had come into existence and therefore the original application was barred by limitation in view of Section 21 of The Administrative Tribunal Act, 1985. However, the Tribunal dismissed the same on account of delay by order dated 2nd August, 2006.

10. Against this decision of the Tribunal the Petitioner had filed writ petition No.

17029-32/2006. However since order dated 2nd August, 2006 passed by the Tribunal in R.A. No. 117/2006 was not on record and the writ petition was filed only against the order passed in OA No. 1067/2005, therefore permission was sought by the Petitioner to withdraw the same with the liberty to file a fresh writ petition. Thereafter the Petitioner has filed the above noted writ petition.

11. The learned Counsel for the Petitioner has challenged the order of the Tribunal dated 22nd November, 2005 by contending inter alia that the Tribunal failed to appreciate the fact that the Respondents had filed the O.A. after a lapse of 25-30 years and therefore it clearly stood barred by limitation. In support of his contention the learned Counsel relied on the case of Ratna Chandra Samnta v. UOI and Ors. JT 1993 (3) SC 148, wherein the applicants had filed the O.A. after 15 years and it was held by the Supreme Court that delay deprives a person of the remedy available in law. It was emphasized that a person who lost his remedy due to lapse of time, loses his right as well.

12. Learned Counsel for the Petitioner also contended that the Tribunal failed to appreciate the fact that the Respondents have not produced a shred of document or proof of their employment as casual labour under the Administrative Control of Delhi Division. Also since as per PS 1666 muster rolls/ salary bills/ labour pay sheets were destroyed after 5 years, in the absence of any document or casual labour card, the claim of the Respondents is unsubstantiated and the same could not have been accepted by the Tribunal. According to the learned Counsel for the Petitioner, in any case as per P.S. No. 9048 the casual labour working under a project are entitled for temporary status only after completing continuous service of 360 days from the date of appointment and not 120 days as observed by the Tribunal, which is the criteria applicable only for casual labour under the Administrative Control of Delhi Division.

13. The Respondents have reiterated their plea and contentions made before the Tribunal and contended that they were appointed as casual labor during the period of 1974 to 1981 in the Construction Organization, and after screening of the Respondents, all of them were working in the open line in their respective categories of Group "D" posts. The Respondents were continuously working in their initial appointments till the date of attaining temporary status without any interruption and there was No. break in their entire service records. They have contended that they are entitled for the grant of scale rate payment, after the completion of 120 days of continuous service from their initial date of appointment till the date of grant of temporary status. They also claimed the arrears for the said period from the Petitioner, since similarly placed employees were given the same temporary status and benefits. The Respondents addressed their grievances to the Petitioner through the proper channel, however No. action was taken by the Petitioner and the Respondents representations were not even considered.

14. This Court has heard the learned Counsel for the parties in detail, and perused the entire record which was before the Tribunal as well as the writ

petition. Along with the writ petition the entire record of the Tribunal was not filed, however, later on the learned Counsel for the Petitioner filed all the relevant records which was before the Tribunal on 8th July, 2011.

15. It cannot be disputed that the Respondents were initially appointed as casual labour and thereafter, have also attained temporary status and have been regularized in the service. The dispute is regarding criteria for grant of temporary status and the consequential benefits which include arrears, if the claim of the Respondent is to be accepted.

16. The Tribunal has based its decision in accordance of the ratio of the High Court of Delhi in Banwari Lal's case which allowed the claim, prayed for by the other laborers who were similarly placed as Respondents. The Tribunal has followed the decision of Banwari Lal's case in OA No. 371/2001 titled as "Tara Chand and Ors. v. U.O.I. and Ors." decided on 16.2.2001. Therefore, the validity of the Tribunal's decision is dependent on the High Court's ruling in Banwari Lal's case and its applicability in the present matter.

17. The learned Counsel for the Petitioner is unable to refute that the order dated 27th October, 1999 passed in the case of Banwari Lal (supra) which is also followed by the Tribunal in the case of OA No. 371/2001 titled as "Tara Chand and Ors. v. Union of India and Ors." has been reversed/ modified or set aside or differed by the High Court. The learned Counsel for the Petitioner is also unable to refute that the decision in OA No. 371 of 2001 titled as Tara Chand and Ors. v. Union of India and Ors. has not been modified or set aside in any writ petition filed against the order passed in said case.

18. The learned Counsel for the Petitioner faced with this situation during arguments on 18th July, 2011, had taken time to ascertain whether the orders relied by the Tribunal while allowing the claim of the Respondents have been set aside or modified in any manner. Time was given to the learned Counsel for the Petitioner on 18th July, 2011. The learned Counsel for the Petitioner is however, unable to produced copy of any order showing that the orders relied on by the Tribunal have been modified or reversed or set aside in any manner. The learned Counsel for the Petitioner has not even produced the copies of the orders relied on by the Central Administrative Tribunal to show that the ratio of the judgments relied on by the Tribunal are not applicable or that they are distinguishable in any manner.

19. In the circumstances the decision of the Tribunal to grant temporary status to the Respondents after 120 days after their employment as casual labour after verification of the claims of the Respondents and then to pay the arrears from the date of grant of temporary status cannot be faulted on any ground urged by the Petitioner. The plea of limitation raised by the Petitioner also cannot be accepted as in similar circumstances the High Court and Tribunal has granted temporary status and arrears to other casual laborers who were similarly placed. Despite the opportunity given to the learned Counsel for the Petitioner, he has

not even produced the copies of the orders relied on by the Tribunal allowing the claim of the Respondents. In the totality of the facts and circumstances, there is No. such illegality or unsustainability in the order of the Tribunal or such perversity which will require any interference of this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

20. The writ petition is, therefore, without any merit and it is, therefore, dismissed. Parties are, however, left to bear their own costs.