

(2009) 11 DEL CK 0097

In the Delhi High Court

Case No : Writ Petition (C.) No. 6500 of 2008

Union of India (UOI)

APPELLANT

Vs

Sh. Mangal Singh

RESPONDENT

Date of Decision : 19-11-2009

Acts Referred:

Citation : (2009) 11 DEL CK 0097

Hon'ble Judges : Vipin Sanghi, J;Anil Kumar, J

Bench : Division Bench

Advocate : H.K. Gangwani, for the Appellant; Sant Lal, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has impugned the order dated 29th April, 2008 of Central Administrative Tribunal in O.A. No. 1124/2007, Mangal Singh v. Union of India and Ors. directing the petitioner to grant benefits of pay and allowance to the respondent for the period 17th June, 2000 to 3rd September, 2006 and setting aside the order dated 28th September, 2006 to the extent of not granting TRCA (time related continuity allowance) for the period 17th June, 2000 to 3rd September, 2006 on the ground that the respondent had not worked, relying on principle of "no work no pay".

2. The petitioner has contended that since the notional reinstatement was given to the petitioner with retrospective effect, he is not entitled to back wages on the principle of no work no pay and grant of back wages is not automatic. The learned counsel for the petitioner, Mr.Gangwani also very emphatically contended that the appointment of the respondent was a short term arrangement, as a substitute EDDA of a regular incumbent. It is asserted that the respondent was selected provisionally as SC candidate and the action of the ACPO to form a panel of appointment against the post falling vacant subsequently was not in conformity with the recruitment rules of EDDA and method of recruitment was not regular, and since the respondent was given provisional appointment, his

appointment was not as a regular appointment and was only a substitute and he had no right to join on regular basis and consequently the respondent shall also be not entitled for back wages.

3. The plea of the petitioner is contested by the respondent contending, inter-alia, that the respondent had been selected against the vacancy reserved for SC candidate, however, he was wrongly shown as selected provisionally. The respondent also refuted the averment made by the petitioner that respondent was appointed as a substitute and reliance is placed on a judgment dated 1st March, 2002 in O.A No. 292/2001 filed by the respondent which was allowed by order dated 1st March, 2002 and the petitioners were directed to regularize the respondent as EDDA within a period of three months. While directing the petitioners to regularize the respondent the tribunal had held that the respondent was appointed after fulfillment of the pre appointment formalities and there was nothing on record to suggest that his appointment was as a substitute. Reliance has also been placed by the respondent on a writ petition filed against the order dated 1st March, 2002 in O.A. No. 292/2001, Sh. Mangal Singh v. Union of India and Ors. which was disposed of by order dated 9th May, 2006 in W.P(C) No. 3338/2002 holding that the petitioners have not been able to show any document that the appointment of the respondent was as a substitute and, therefore, no fault was found with the order of the Tribunal dated 1st March, 2002 directing the petitioners to appoint the respondent on a regular basis as EDDA.

4. The respondent had also filed a contempt petition No. 449/2002 complaining that the monetary benefits for which he had become entitled had been denied for the period 17th June, 2000 to 3rd September, 2006. The contempt petition filed by the respondent was disposed of holding that the appropriate remedy of the respondent was to file an appropriate legal proceedings to claim the back wages pursuant to which petition claiming back wages was filed by the respondent before the Central Administrative Tribunal. The respondent has contended that he is a lowest paid Gramin Dak Sewak which is a part time post of maximum 5 hours a day and the petitioners have forced him in this litigation for redressal of his grievances and he has been suffering serious hardships.

5. We have heard the learned counsel for the parties in detail. This cannot be disputed that the findings of the Tribunal that the respondent had been sponsored through an employment exchange and was called upon by the petitioner for being appointed as EDDA and was subjected to pre appointment formalities as laid down in the relevant recruitment rules, has become final. Once the respondent had been appointed on regular basis from 28th July, 1998, the TRCA could not be denied to him on any of the grounds alleged before us, as the respondent was prevented from performing the duties on account of the act on the part of the petitioners and imputable to them. The Tribunal has held that since the respondent was prevented from performing his duties by the petitioner, the principle of no work no pay shall not apply. The Tribunal also relied on State

of Kerala and Ors. v. E.K. Bhaskaran Pillai 2008(1) SLJ 164 and Commissioner, Karnataka Housing Board v. C. Muddaiah 2007 (1) Scale 625. The Supreme Court in Commissioner, Karnataka Housing Board (Supra) had held that in appropriate cases the Court of law must take into account all the facts in their entirety to pass an appropriate order and in case a person was willing to work but was prevented by any order passed by the authorities or he was prevented from performing his duties, such authorities in some circumstances may be directed to pay all benefits considering as if that employee had worked. In the circumstances it was held that there is no absolute proposition that no direction of payment of consequential benefits can be granted by a Court of law on the basis of principle of "No work no pay".

6. In the circumstances this cannot be disputed that if the respondent did not perform his duties from 17th June, 2000 to 3rd September, 2006, it was on account of the acts of the petitioners and imputable to them as the petitioners did not treat him as regular employees and prevented him from doing and performing his duties attached to the post held by him.

7. In the circumstances, the order of the Tribunal dated 29th April, 2009 holding that the denial of TRCA (Time related continuity allowance) to the respondent was not in consonance with law, and directing the petitioners to pay all the emoluments to the respondent for the relevant period and the decision of the Tribunal to his effect, cannot be faulted in the facts and circumstances. The writ petition is, therefore, without any merit and it is dismissed. Considering the facts and circumstances of the case, the petitioner shall also be liable to pay a cost of Rs. 10,000/- to the respondent.