

(2006) 10 DEL CK 0124

In the Delhi High Court

Case No : Writ Petition (C) 13260 of 2004

Union of India (UOI)

APPELLANT

Vs

Soran Singh

RESPONDENT

Date of Decision : 12-10-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10
Railway Services (Conduct) Rules, 1966 — Rule 3(1)

Citation : (2006) 92 DRJ 348

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Jitender Kumar, for the Appellant; Kusum Singh, for the Respondent

Final Decision : Allowed

Judgement

Shiv Narayan Dhingra, J.—By this writ petition, the petitioner has challenged the validity of Award dated 10.12.2003 whereby directions were given by the Tribunal to reinstate the respondent/workman with 50% wages and other consequential benefits.

2. Briefly the facts are that a large number of casual labours (monthly rated) joined railways under a scheme of regularisation. A racket was detected in March 1984 and Vigilance branch of railways reported that certain casual labours (monthly rated) had entered into the service on the basis of bogus casual labour cards. After unearthing this racket, investigation was done by Vigilance Department and the name of those persons were found out who had entered into the service on the basis of fake/forged labour cards. Railways sought to take action against such persons as it amounted to playing fraud and grave misconduct. A letter was written by Central Railways, Headquarters Office, Personnel Branch on 18.10.1985 to serve notice on such labours who had entered into services by fraud and to receive their Explanation. Text of the letter is re-produced as under:

Sub: Termination of Casual Labours.

Instruction regarding bogus Casual Labour Cards received under Board's letter No. E9NG) II-93/CL, 24 dated 9/2/84 were circulated vide this office confidential letter No. HPB/22513/R/XI dated 5/3/84.

Receipt Vigilance Investigations on JHS Division have revealed that large number of Casual Labours monthly rated or otherwise joined the Railways in that capacity by producing fake Casual Labour Cards.

Since casual Labour monthly rated/otherwise have obtained appointment on the basis of fake/forged entries in the Casual Labour cards involving serious misconduct, action should be taken against above casual labours to terminate their services on issue of show cause notice.

Notices as per performa should be issued and on receipt of Explanation and other evidence if any should be considered by competent authority, giving reasons of termination of services as a speaking order.

Please note that these Casual Labours will not be eligible for benefits under ID Act.

3. After investigation by the Vigilance Branch, railways sent a list of bogus casual labours service card to all branch offices including Jhansi, where respondent was working, to the following effect:

Sub: Fake Casual Labour card holders and termination of their services.

Please refer to this office letter No. P162/0/EG/Policy dated nil under which headquarters instructions regarding termination of services of BOGUS Card holders were issued. Again vide letter No. P/104/1/EG dated 15/1/86 it was stressed that instructions issued vide Hqrs letter No. HPB/22513/R/XI dated 13/12/85 circulated vide this office letter No. quoted above should be observed and such staff are to be removed with 15 days notice without following provisions of I.B. Act.

ACVO (E) BB VT vide his confidential DD letter dt. 8/10/86 has instructed that action should be followed vigorously in this regard. Legal hurdles have been removed and the procedure circulated vide this office circular No. P/162/8/EG/Policy dated nil has been ratified by Law Ministry.

A list of such staff, who have been detected to be having fake casual labour cards is attached herewith for your information. Please ensure that their services are terminated immediately and furnish a list of staff removed from service for onward submission to Hqrs. Office.

GM has taken very serious view in HDDs meeting held on 15/9/86. This matter will gain be discussed in the next HDDs meeting.

4. The name of the respondent figured at Serial number 137 of the list attached with the letter. It seems that after receipt of the above letter along with list

where name of the respondent appeared, a show cause notice dated 8.1.1987 was served upon him as to why his services be not terminated as he had obtained employment on the basis of fake/bogus casual labour cards. He was terminated from service on 9.1.1987 without waiting for reply to the show cause notice. Respondent raised an industrial dispute about his termination after nine years some time in 1995-96, and the following industrial dispute was referred to the Tribunal by the Central Government vide order dated 29.3.1996:

Whether the action of the DRM Central Railway, Jhansi in terminating the service of Sh. Soran Singh APM w.e.f. 8.1.87 is legal and justified? If not, he is entitled to what relief?

5. CGIT-cum- Labour Court (for short the " Tribunal") came to the conclusion that since no opportunity was given to the respondent to give Explanation before termination of his service, termination was illegal and the Tribunal ordered that workman was entitled to be reinstated in the service with 50% back wages and other consequential benefits.

6. In the Statement of Claim filed by the workman before the Tribunal, workman stated that allegations were made against him that he obtained fake/bogus certificate and got employment in railways. He was served a notice to this effect on 8.1.1987 and the management did not wait for his Explanation and terminated him on 9.1.1987. Nowhere in his statement of claim he stated that he had not obtained employment on the basis of a fake/bogus casual card or that he was having a genuine certificate. His only claim was that even if he was involved in a fraud, as per principles of natural justice, he could not be removed from services without giving an opportunity of hearing. In fact he raised industrial dispute only after learning of an award of CGIT, Kanpur, whereby 47 employees similarly placed were reinstated.

7. I consider that where a person enters into a service by fraud and is terminated, his claim for reinstatement cannot be entertained unless he proves that his entry into the service was by lawful means. Several rackets have come to light in which people entered into government services in connivance with babus by obtaining fake appointment letters or on basis of fake muster roll, fake casual labour card and even fake list of candidates who had cleared examination. This court had occasion to deal with cases where a candidate had not even appeared in competition examination but got a fake letter from UPSC about passing examination and obtained service in a government department. The Courts have also come across cases where several persons got employment in DDA on the basis of fake muster roll certificate. Often directions were being given by Supreme court and High Courts to regularize daily wagers/muster roll employees/casual labour. Taking benefit of these directions several persons were being inducted into the services on the basis of fake and forged documents. Some rackets come to light while some rackets did not come to light. A person who enters into service by adopting foul means like forgery etc. cannot be legally considered to be in employment of the department. A person can be considered

to be in employment of an organisation only if he enters into the organisation by legal means e.g he has been actually employed as a daily wager/muster roll employees and has been actually working and thereafter, under a scheme has been considered for regularization or he entered into service by open competition where he has actually passed the examination and his name has been sponsored by the UPSC, SSC or other service Commissions as a successful candidates or whose services have been procured through employment exchange etc. Where a person enters into service by fraud in connivance with some officers of the department, such a person cannot be considered to be legally in service. Such a person cannot claim the protection of the service rules and Industrial Disputes Act, 1947, which are available to the legally and regularly recruited persons. Industrial Disputes Act and other service rules and regulations were enacted to protect the innocent workman and not to protect the cheaters and those who play fraud. The distinction between a person who entered into service through legal route and a person who entered into service through fraud cannot be obliterated and the same set of principles cannot be followed for the two. Where a person entered into services through fraud and was terminated, the first thing he is to be asked is to prove before the Labour Court or any other Court his entry into the service as lawful and only if he proves his entry into services by lawful means, the Court should proceed further and give him protection of a workman. If a person does not even contend that he had entered into services by legal means, he is not entitled to any protection of Industrial Disputes Act or any other Act which have been enacted to protect the workman.

8. While opening argument, learned Counsel for the respondent has stated that this Court should hear arguments limited to the question whether respondent workman was entitled to back wages for the period from October 1984 till March 1996, since notice in the writ petition was ordered to be issued only to this question. I consider that when a petition under Article 226 of the Constitution of India is before the Court, the court has powers and duty to pass necessary orders so that material justice is done. Where a gross irregularity comes to the notice of High Court and High Court finds that serious and important question of public importance arises in view of the Award of Labour Court amounting to rewarding cheaters and putting premium on dishonesty, Court is bound to exercise powers under Article 226 of the Constitution of India and to set right such practices.

9. In a similar case of employees in railways (UOI v. M Bhaskaran - 1996 SC 686 Supreme Court held that such orders of removal (after detection of fraud) would amount to recalling of fraudulently obtained erroneous appointment orders. Supreme Court further observed that even independently of Rule 3(1)(i) and (iii) of the rules such fraudulent appointment orders could be legitimately treated as avoidable at the option of employer and could be recalled by the employer and in such cases, the fact of employees having continued in service for a number of years on the basis of such fraudulently obtained employment orders, cannot create any equity in their favor or any estoppel against the employer. Supreme

Court observed that no Court should be a party to the perpetuation of the fraudulent practice. By such fraud or intended fraud on the employer or on the appointing authority the aggrieved are all those who had similar or even better qualifications than the appointee or appointees, but who could not apply for the post because of fraud played by those who obtained appointment by fraud. It amounts to fraud on public. If by doing fraud, an appointment is obtained, such fraudulent practice cannot be permitted to be continued by a court of law in directing reinstatement of respondent workman with all consequential benefits.

10. R. Vishwanatha Pillai Vs. State of Kerala and Others, , the case pertained to termination of services of the of the petitioner on the ground that he got appointment on the basis of a false caste certificate. Supreme Court observed that the right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment to the post meant for Scheduled Caste, thus depriving the genuine Scheduled Caste of appointment to that post, does not deserve any sympathy or indulgence of the Court. A person who seeks equity must come with clean hands. He, who comes to the Court with false claims, cannot plead equity nor the Court would be justified to exercise equity jurisdiction in his favor. No sympathy and equitable consideration can come to his rescue. In Ram Saran Vs. I.G. of Police, CRPF and Others, - Supreme Court held that no leniency can be shown to a person who has obtained appointment on the basis of forged documents, otherwise it shall amount to giving premium to a person who committed forgery.

11. A perusal of the Award shows that Tribunal has not considered the fact that respondent had entered into service by unlawful means. If a person claims to be in employment of a department, onus is on him to prove this fact by cogent evidence. It was obligatory on the Tribunal to frame an issue as to how the workman entered into service. Instead the Tribunal placed the onus on the management to prove negative. The Tribunal observed that on the basis of evidence before him workman had obtained temporary status in the railways after completing his continuously more than 120 days service. Therefore, he cannot be removed from the service without following the due procedure of rules and regulations. The decision of the Tribunal seems to be based on another Award of CGIT Kanpur whereby some other workmen were reinstated in service. The Tribunal was not bound by the Award pronounced by CGIT Kanpur and the Tribunal could not have over looked the fact that the petitioner had conducted an investigation into the matter and only after investigation it found out the names of those persons who have entered into service by fraud.

12. Another factor which has not been considered by the Tribunal is that industrial dispute was raised after nine years of the termination of respondent

while respondent has stated that after his termination, he got demoralized and went away to his village, the petitioner's counsel has argued that in fact respondent absconded out of fear that he may not be arrested by the Police in the case of fraud and he preferred industrial dispute only after another Award was passed by CGIT, Kanpur. In *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, , Supreme Court observed as under: -

6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers u/s 10 of the Act, it is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject matter of reference u/s 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made u/s 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial dispute was ex- facie bad and incompetent.

13. In *U.P. State Road Transport Corporation v. Babu Ram* 2006 LLR 896, Supreme Court held that there was no formula of universal application in considering the delay as fatal in seeking reference of Industrial Disputes Act. The respondent in this case was terminated on 19.3.1983. Dispute was referred to Labour Court in 1998. Court held that it was a case of delayed reference of Industrial Disputes Act and it was for the workman to show that dispute was raised within a reasonable time and that he was not responsible for delay. Court allowed the appeal.

14. It is apparent that there was no dispute in existence which could have been referred by State. Where a person after termination of services, does not raise an industrial dispute, either immediately or within a reasonable time, it has to be assumed that no dispute exist. No rigid formula can be laid down about reasonable time, but everyday is precious for an unemployed person. His unemployment would compel him to raise dispute immediately. If he is unable to raise industrial dispute immediately, there must be valid reasons for the same. Non application of Limitation Act to the disputes under Industrial Disputes Act, does not give workman a right to sleeps over the matter. If he sleeps over the matter, the dispute becomes stale and no dispute in the eyes of law.

15. The Tribunal in this case has granted 50% back wages to the respondent

despite the fact that he preferred reference after more than 9 years of his termination and without their being a pleading in the statement of claim that he had not been able to get a job despite his efforts. No justification has been given by the Tribunal as to why respondent was entitled for back wages despite the fact that he has not approached the Tribunal immediately and approached Tribunal only after 9 years of his termination. I consider that even if Tribunal has found that the respondent was entitled for reinstatement there was no reason to grant him back wages. Respondent was working only as a daily wager. He could have got employment anywhere during interval when he was not working with the railways.

16. The Tribunal has reinstated the respondent on the basis of fact that respondent had worked for 120 days and as per rules of railways, he was to be considered as temporary railway employees after he had worked for 120 days. I consider Tribunal was not entertaining the dispute of the respondent under railway services rules. If the dispute was to be entertained under Railway Service Rules, the Tribunal should have gone into the question whether there was an authority in the railway management to terminate a person who was found fraudulently employed and if there existed such a power, that would be the end of matter. In fact respondent had not approached the Tribunal under Railways Services Rules. He approached Tribunal under Industrial Disputes Act. Under Industrial Disputes Act respondent was liable to prove that he had worked for 240 days in the preceding 12 calendar months before his termination. There is no evidence or discussion made by the Tribunal about the respondent having worked for 240 days. The Tribunal had only arrived at conclusion that respondent had worked for 120 days. The writ petition is liable to be allowed even on this ground.

17. I consider that Tribunal miserably misdirected itself in directing reinstatement of the respondent with 50% back wages. The respondent was not a workman in the sense that he entered into service by fraudulent means. There was no reason with the Tribunal to disbelieve enquiry conducted by the Vigilance of the railways and consequently termination of all those who have obtained appointment by fraud. The Award of the Tribunal is perverse.

18. For the reasons stated above, the Award dated 10.12.2003 is set aside in toto. Writ petition stands allowed. No orders as to cost.