

(2005) 01 CAL CK 0048

In the Calcutta High Court

Case No : A.P.O. No. 366 of 2003 and W.P. No. 1387 of 2003

Union of India (UOI)

APPELLANT

Vs

Tapas Chakraborty and Others

RESPONDENT

Date of Decision : 13-01-2005

Acts Referred:

Citation : (2005) 2 CALLT 256

Hon'ble Judges : Altamas Kabir, Acting C.J.;Asit Kumar Bisi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Altamas Kabir, A.C.J.

1. The respondent Nos. 1 to 103 are the company paid staff in the office of the Official Liquidator, High Court at Calcutta. The service conditions of the said respondents are such that they are working in the said office without any service benefits as admissible to Central Government employees in similarly situated conditions. Sometime in November, 1999 the said respondents were served with notices to appear for an interview for being absorbed in the office of the Official Liquidator, High Court at Calcutta in group "C" posts consequent upon a judgment delivered by the Hon'ble Supreme Court on 27.8.99. It is the case of the said respondents that on coming to learn of the judgment delivered by the Hon'ble Supreme Court they also came to learn that similarly situated staff in the office of the Court Liquidator of this Court and that of the Delhi High Court and Kerala High Court had prayed for regularisation of their services and had also prayed to be absorbed with equal status as that of Central Government employees. According to the said respondents, the Hon'ble Supreme Court disposed of the pending applications by giving an opportunity to the appellants in those appeals to absorb the company paid staff working both under the Court Liquidator in the Calcutta High Court and the Official Liquidator in other High Courts by framing a scheme to be modelled on a similar scheme published in 1978. Inasmuch as, the said respondents were not parties to the said

proceedings before the Hon''ble Supreme Court, they filed a separate writ application for being absorbed as both group "C" and group "D" staff respectively in the office of the Official Liquidator, High Court at Calcutta. Inasmuch as, the scheme as framed in terms of the directions given by the Hon''ble Supreme Court did not, according to the said respondents, conform to the said directions of the Hon''ble Supreme Court, they filed a fresh writ application, being W.P. No. 1387 of 2003, which was disposed of by the learned single Judge by his judgment and order dated 27.11.2002. By virtue of the said judgment the learned single Judge, while allowing the writ application, directed the State respondents to reconsider the scheme framed by them in 1999 after ascertaining whether all company paid staff in the office of the Official Liquidator, Calcutta High Court, could be absorbed as Group "C" staff within three years to be reckoned from the date of coming into force of the said scheme of 1999. The State respondents were directed to consider de novo the impugned panel which had been prepared in terms of the scheme with regard to the eligible company paid staff in group "C" strictly in order of seniority and upon absorption of such company paid staff on the basis of such list the seniority in the cadre of Group "C" was to be maintained. The learned single Judge noticed that purportedly in terms of the scheme the respondent Nos. 5 to 26 in the said writ application had already been absorbed in group "C" in the office of the Official Liquidator, High Court at Calcutta. The learned Judge directed that since the said respondents had already been appointed they should not be disturbed but the seniority was to be maintained even in respect of the said respondents.

2. As regards group "D" staff the State respondents were directed to take steps for regularisation of such of the said respondents who might be eligible and qualified according to the rules to be absorbed as group "D" staff within a period of three months from the date of the judgment. It was stipulated that such regularisation was to be made strictly in order of seniority, viz., length of service in the organization. The learned Judge injuncted the respondents from filling up any post in Group "C" or Group "D" by direct recruitment until the directions given by the learned Judge were carried out in full. It is interesting to note that the scheme of 1978 provided for regularisation of staff as against 50% of the vacancies and the scheme framed in 1999 also provided for filling up of 50% of the vacancies by absorption in terms of the Scheme and the remaining 50% by direct recruitment. The learned Judge took note of the said fact and since according to him all the staff in the office of the Official Liquidator, High Court, Calcutta, were required to be absorbed, the learned Judge directed that in the event the company paid staff could not be regularized against the 50% vacancies reserved for them, then it would be necessary to reconsider the increase of quota from 50% or by creating supernumerary posts so that subject to reservation policy all the company paid staff could be absorbed as Central Government Staff.

3. Aggrieved by the said judgment and order of the learned single Judge the Union of India has preferred the instant appeal.

4. In support of the appeal it was submitted that the learned single Judge had misconstrued the directions given by the Hon''ble Supreme Court since the direction given by the Hon''ble Supreme Court was for the framing of a scheme on the model of the 1978 scheme which provided for filling up of 50% of the vacancies by way of absorption from amongst the company paid staff. It was submitted that since the scheme of 1999 was to be framed in terms of the said model, the same had been framed keeping in mind the ratio of the vacancies to be filled up by absorption. It was submitted that in the said process it is possible that some of the company paid staff may not be accommodated, but the scheme could not be faulted in such a contingency.

5. It was submitted that it was not the intention of the Hon''ble Supreme Court that all the company paid staff would have to be absorbed but that steps should be taken to frame a scheme which could accommodate as many of the employees as possible in terms of the ratio of vacancies to be filled up by absorption. In this regard reference was made to the decision of the Hon''ble Supreme Court in the case of State of Haryana and others Vs. Piara Singh and others etc. etc., , in which it was observed that with regard to regularisation of service the Court should exercise extreme caution, particularly since every such direction not only tells upon the public exchequer but also has the effect of increasing of cadre strength of a particular service, class or category.

6. Reference was also made to another decision of the Hon''ble Supreme Court in the case of Vinodan T. and Others Vs. University of Calicut and Others, and State of Orissa and Others Vs. Balaram Sahu and Others, etc. etc., , wherein similar sentiments have been expressed.

7. It was submitted that inasmuch as the appellant had, in fact, acted in terms of the direction given by the Hon''ble Supreme Court the learned single Judge had erred in directing the appellants to reconsider the scheme which they had framed in terms of the model of the 1978 scheme.

8. On behalf of the respondents/writ petitioners it was contended that as would appear from the judgment of the Supreme Court, it was in fact the intention of the Hon''ble Supreme Court that all the company paid staff should be absorbed in a phased manner against the vacancies that would arise from time to time. It was submitted that the submissions made on behalf of the appellant before the Hon''ble Supreme Court were not accepted and the positive findings of the different High Courts of Delhi, Kerala and this Court were confirmed by the Hon''ble Supreme Court.

9. It was submitted that in all the three judgments delivered by the High Courts of Delhi, Kerala and Calcutta it was observed that the company paid staff deserved similar treatment as meted out to the similarly situated employees in the year 1978, and therefore, were entitled to regularisation of their services in the establishment of the Official Liquidator. The Hon''ble Supreme Court also observed that ultimately the learned Judge had allowed the respective writ

petitions and had directed the appellants before the Hon''ble Supreme Court to absorb the company paid staff as regular Lower Division Clerks in the office of the Official Liquidator with effect from their respective dates of appointment as estate clerks. It was also pointed out that the learned single Judge whose order has been impugned in the instant appeal was of the view that the direction of the Hon''ble Supreme Court upholding the decision of the High Courts of Delhi, Kerala and Calcutta visualised absorption not only of a particular section, but all the company paid staff who had been appointed in the office of the Official Liquidator's of the different High Courts up to the cut-off date, namely, the date of the judgment of the Hon''ble Supreme Court.

10. It was pointed out that the learned single Judge had gone one step further in directing regularisation of the employment of the Group "D" staff as well since they had been left out from the scheme as prepared in 1999 on the ground that the 1978 scheme did not make provision for them.

11. Since the matter regarding the right of the company paid staff of the office of the Official Liquidators has been decided and confirmed up to the Hon''ble Supreme Court, all that needs to be worked out is the manner in which such employees are to be absorbed in the offices of the different Official Liquidators of the different High Courts.

12. We are in agreement with the sentiments expressed by the learned single Judge that not a section but all the company paid staff working in the office of the Official Liquidator up to the cut off date as provided in the 1999 scheme are to be absorbed in the office of the Official Liquidator, High Court at Calcutta, even if it means by creation of supernumerary post as observed by the learned single Judge. Needless to say, such posts will be personal to those appointed and will cease to be in existence upon the incumbent attaining the age of superannuation.

13. We see no reason therefore to interfere with the directions given by the learned single Judge and the appeal is accordingly dismissed, but without any order as to costs.

Stay as prayed for of this judgment is considered and refused.

Let urgent xerox certified copies of this judgment and order be given to the parties, if applied for, on the usual undertaking. All parties to act on a xeroxed signed copy of the operative part of this judgment and order on the usual undertakings.