

(2008) 01 AHC CK 0100
In the Allahabad High Court

Union of India (UOI), Divisional Railway Manager, North
Eastern Railway, Varanasi Division and Station
Superintendent, North Eastern Railway

APPELLANT

Vs

Hari Nath Yadav and Central Administrative Tribunal,
Allahabad Bench

RESPONDENT

Date of Decision : 07-01-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2008) 2 UPLBEC 1162

Hon'ble Judges : B.S. Chauhan, J;Arun Tandon, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.S. Chauhan and Arun Tandon, JJ.—Heard Sri V.K. Goel, learned Counsel for the petitioners and Sri D.B. Yadav, learned Counsel for respondent No. 1.

2. This writ petition has been filed challenging the judgment and order of the Central Administrative Tribunal dated 16th January, 2006 rejecting the review application as well as the Judgment and order dated 21st March, 2005 passed in Original Application No. 1300 of 2000 filed by respondent No. 1, Hari Nath Yadav, which had been allowed by issuing a direction for re-engagement and regularization of his services in Group-D.

3. Facts giving rise to the present writ petition are that respondent No. 1 had worked as an unauthorised substitute for certain periods between 1984 to 1987. In 1984, he worked for 40 days, in 1985 and 1986, 75 days and in 1987, 44 days. He filed Original Application No. 1300 of 2000, claiming the relief for re-engagement as casual labour from the date persons junior to him have been re-engaged and then to regularize him against Group-D vacancy. Learned Central Administrative Tribunal, under the impugned judgment and order dated 21st March, 2005, has allowed the original application without considering the issue of limitation, as the original application had admittedly been filed after expiry of 13

years of his disengagement and without considering as to whether he had been an authorised substitute or had been appointed after following the procedure prescribed by law or not. The original application has been allowed by merely placing the reliance upon its earlier judgment and order dated 21st August, 2000 passed in Original Application No. 1193 of 1996; *Jamuna v. Union of India* through General Manager, North Eastern Railway, Gorakhpur and Ors., wherein same relief had been granted.

4. Petitioners have earlier filed writ petition No. 57242 of 2006 challenging the order dated 21st March, 2005. This Court vide judgment and order dated 6th September, 2005 disposed of the writ petition giving liberty to the petitioners to file a review application. As it was contended before this Court that in the case of *Jamuna (Supra)* relief had been granted by the Tribunal on a concession made by the department illegally, though, in law such concession could have been given and that no person had subsequently been given the same relief, which issue had not been noticed by the Tribunal. Present petitioners accordingly filed review application. However, the learned Tribunal dismissed the same vide Judgment and order dated 16th January, 2006. Hence this writ petition.

5. Three things remain undisputed, (a) that the respondent No. 1 had not worked subsequent to 1987, (b) he approached the learned Tribunal after expiry of 13 years, and (c) the learned Tribunal has allowed the original application filed by respondent No. 1 only giving reference to its earlier Judgment and order passed in the case of *Jamuna (Supra)* and not on merits. In case, the respondent No. 1 had not been in service subsequent to 1987, the question of grant of the relief of regularization would not be arise or could not be considered by the learned Tribunal, as it is settled legal proposition that relief of regularisation can be claimed by a person, who is working continuously for a very long period and is not being made permanent. In such eventualities, the action of the employer becomes arbitrary and is hit by Article 14 of the Constitution of India. A person not in service can never claim his re-engagement or regularization, unless he has first challenged the order of disengagement/termination, as held by the Apex Court in the case of *H.P. Housing Board v. Om Pal and Ors.* 1997 (1) SCC 289 , and *Ramchander and Others Vs. Additional District Magistrate and Others*,

6. Secondly the issue of limitation was very relevant to determine the controversy as no person can claim the benefit of the Judgment rendered by any Court or Tribunal in favour of a person, who has prosecuted his case diligently and approached the appropriate forum within time.

7. If some person has taken a relief from the Tribunal by filing a writ petition immediately after the cause of action had arisen, others cannot take the benefit thereof by filing a belated original application. Such negligent persons cannot claim similar relief at such a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.

8. In *State of Karnataka and Others Vs. S.M. Kotrayya and Others*, the Hon''ble Supreme Court rejected the contention that a petition should be considered ignoring the delay and laches on the ground that he filed the petition just after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. The Court observed that such a plea is wholly unjustified and cannot furnish any ground for ignoring delay and laches.

9. Same view has been reiterated by the Hon''ble Supreme Court in *Jagdish Lal and others Vs. State of Haryana and others*, , observing as under:

Suffice it to state that appellants may be sleeping over their rights for long and elected to wake-up when they had impetus from Veerpal Chauhan and Ajit Singh''s ratio...desperate attempts of the appellants to re-do the seniority, held by them in various cadre...are not amenable to the judicial review at this belated stage. The High Court, therefore, has rightly dismissed the writ petition on the ground of delay as well.

10. In *Rup Diamonds and Others Vs. Union of India and Others*, the Hon''ble Supreme Court considered a case where petitioner wanted to get the relief on the basis of the judgment of the Supreme Court wherein a particular law had been declared ultra vires. The Court rejected the petition on the ground of delay and laches observing as under:

There is one more ground which basically sets the present case apart. Petitioners are re-agitating claims which they have not pursued for several years. Petitioners were not vigilant but were content to be dormant and close to sit on the fence till somebody else''s case came to be decided.

11. Recently the Hon''ble Supreme Court of India in the case of *Chairman, U.P. Jal Nigam and Anr. v. Jaswant Singh and Anr.* 2006 (10) JT 500 had refused to grant the similar relief to the incumbent of Jal Nigam on the ground that they were not vigilant and had slept over his rights for considerable period. In paragraph-13, it was held as follows:

...Therefore, whenever it appears that the claimants lost time or while away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted....

12. In such a fact situation, it was the duty of the Tribunal to address the application on the issue of limitation and it could not have granted the benefit which had been granted to Jamuna, who might have challenged the order within time. Thus, we are of the considered opinion that the learned Tribunal has failed to appreciate that the original application ought to have been dismissed only on the ground of limitation.

13. So far as the affidavit/undertaking given by the present petitioners in case of Jamuna (Supra) is concerned, the Court must examine as to whether the undertaking was inconsonance in law, as it is settled law that any judgment or decree, which is not inconsonance of law is a nullity.

14. It has also consistently been held that a wrong concession by a Counsel on question of law does not bind the client or any person as there can be no estoppel against the Statute. Vide Dr. H.S. Rikhy and Others Vs. The New Delhi Municipal Committee, Bank of Bihar Ltd. Vs. Mahabir Lal and Others, Union of India and another Vs. K.S. Subramanian, ; Dr. Ashok Kumar Maheshwari Vs. State of U.P. and Another, ; Uptron India Limited Vs. Shammi Bhan and Another, ; B.S. Bajwa and Another Vs. State of Punjab and Others, M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others, ; Jagdish Lal Vs. Parma Nand, ; Smt. Laxmibai Vs. Karnataka State Road Transport Corporation, Bangalore, Union of India (UOI) and Others Vs. Mohanlal Likumal Punjabi and Others, and Union of India and Anr. v. S.C. Parashar 2006 AIR SCW 2068 .

15. Any judgment or decree, which is not inconsonance with the statutory requirements is void and cannot be executed. Any compromise contrary to the statutory rules is void.

15.1 In Smt. Nai Bahu Vs. Lala Ramnarayan and Others, specifically para-14, the Hon"ble Supreme Court has held as follows:

14. It is true that a decree for eviction of a tenant cannot be passed solely on the basis of a compromise between the parties see K.K. Chari Vs. R.M. Seshadri, The Court is to be satisfied whether a statutory ground for eviction has been pleaded which the tenant has admitted by the compromise. Thus dispensing with further proof, on account of the compromise, the court is to be satisfied about compliance with the statutory requirement on the totality of facts of a particular case bearing in mind the entire circumstances from the stage of pleadings upto the stage when the compromise is effected.

In Netaji Studios (P) Ltd. v. Navrang Studios and Anr. AIR 1981 SC 537, specifically Paragraph-17, the Hon"ble Supreme Court has held as follows:

17. The Bombay Rent Act is a welfare legislation aimed at the definite social objective of protection of tenants against harassment by landlords in various ways. It is a matter of public policy. The scheme of the Act shows that the conferment of exclusive jurisdiction on certain Courts is pursuant to the social objective at which the legislation aims. Public policy requires that contracts to the contrary which nullify the rights conferred on tenants by the Act cannot be permitted. Therefore, public policy requires that parties cannot also be permitted to contract out of the legislative mandate which requires certain kind of disputes to be settled by special Courts constituted by the Act. It follows that arbitration agreements between parties whose rights are regulated by the Bombay Rent Act cannot be recognized by a Court of law.

In *Ferozi Lal Jain Vs. Man Mal and Another*, specifically paras-6 and 7, the Hon"ble Supreme Court of India has held as follows:

6. From the facts mentioned earlier it is seen that at no stage, the Court was called upon to apply its mind to the question whether the alleged subletting is true or not. Order made by it does not show that it was satisfied that the subletting complained of has taken place, nor is there any other material on record to show that it was so satisfied. It is clear from the record that the court had proceeded solely on the basis of the compromise arrived at between the parties. That being so there can be hardly any doubt that the court was not competent to pass the impugned decree. Hence the decree under execution must be held to be a nullity.

In view of the above, we are of the considered opinion that if the present petitioners had not given an undertaking in-consonance with the statutory requirement it will not be binding on the Courts or Tribunal.

16. In view of the Constitution Bench Judgment in the case of *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, relief of regularization cannot be granted to a person who has not been appointed in consonance in accordance with law or rules. It has been held that any appointment made in contravention of Articles 14 and 16 of the Constitution of India is void and cannot be given effect to. A person not in service and further who has not been appointed under any procedure prescribed by law, cannot seek remedy of regularization. In the instant case, admittedly respondent No. 1 had been appointed unauthorizedly and without following procedure prescribed by law. Once the learned Tribunal had reached the said conclusion that respondent No. 1 was an unauthorized substitute, no relief could have been granted to respondent No. 1 on merit.

17. Thus in view of the above, the writ petition succeeds and is allowed and the impugned order dated 21st March, 2006 and dated 16th January, 2006 passed by the Central Administrative Tribunal are hereby quashed. There shall be no order as to costs.