

(2014) 03 DEL CK 0216

Delhi High Court

Case No: Writ Petition (C) 6852 of 2009

The Director General (Works),
CPWD

APPELLANT

Vs

Suresh Pal and Another

RESPONDENT

Date of Decision: March 7, 2014

Acts Referred:

- Constitution of India, 1950 - Article 14 16 226 32

Citation: (2014) 141 FLR 808 : (2014) 2 LLJ 313

Hon'ble Judges: V. Kameswar Rao, J

Bench: Single Bench

Advocate: R.V. Sinha and Mr. P.K. Singh, for the Appellant; Varun Prasad, for the Respondent

Final Decision: Allowed

Judgement

V. Kameswar Rao, J.

The challenge in this writ petition is to the award dated July 21, 2005 passed by the Central Government Industrial Tribunal-cum-Labour Court (Industrial Tribunal in short), whereby the Industrial Tribunal has answered the reference by directing, that the respondent be regularised from the date of grant of temporary status to the respondent with effect from September 01, 1993. At the outset, it may be stated here that the petitioner has challenged the award qua two persons namely S/Shri Suresh Pal and Man Singh. Later, on May 13, 2009, the counsel for the petitioner had submitted that he is confining the relief only against the respondent No. 1, Suresh Pal. Thus, the writ petition shall be considered qua Suresh Pal only.

2. It was the case of the respondent before the Industrial Tribunal that he was engaged as Beldar on hand receipt basis on January 01, 1986 in M-Division upto May 31, 1986 and again engaged on June 21, 1986 and was continuously working in Pushp Vihar, Maintenance Division, Pushp Bhawan, New Delhi. According to him,

the work of the petitioner was to maintain the buildings owned by the Central Government and is an industrial establishment governed by the Industrial Employment (Standing Orders) Act, 1946. The respondent has been doing unskilled work but, his services have not been regularised by the petitioner till the date when he raised the Industrial Dispute. According to him, after the orders of the Supreme Court in the matter of [Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others,](#), he has been getting wages in the basic pay of Rs. 750-940/- with all allowances. It was also his case that the persons junior to him have been regularised. He claimed regularisation with effect from January 01, 1986.

3. The petitioner contested the claim before the Industrial Tribunal and sought dismissal of the claim petition. Suffice to say, the petitioner admitted the fact that the respondent was engaged and working as Beldar. On the basis of the evidence adduced by the parties, the Industrial Tribunal had come to the following conclusion:

7. During the course of arguments Mr. B.K. Prasad A/R of the workman pointed out that Man Singh has already been regularised w.e.f. 29.10.96 by Superintending Engineer which fact has not been disputed by the A/R of the management and as such there remains no controversy about Man Singh as he has already been as regularised during the pendency of this reference which is admitted by the management. It has been stated by MW1 during his cross examination that the case of Suresh Pal has been referred to the Scheduled Castes Coordination Committee which is appointing authority in this case. Similar contention is adopted by Mr. Atul Bhardwaj Id. A/R for the management. The statement of MW was recorded on 30.9.97 when he stated that the case of workman Suresh Pal has been sent for regularisation to the Coordination Committee. It appears that his case has been referred for regularisation even prior to 1997 before 96 and prior to 30.9.97 and that no action has been taken so far, after a lapse of about a decade. I do not see any impediment in the regularisation of Suresh Pal also as nothing against the workman has been pointed out to me nor there exist anything against him on record. It is stated by Mr. B.K. Prasad Id. A/R for the workman that workman was granted temporary status w.e.f. 1.9.93 and it would be appropriate if he is made regular from the said date. Nothing against the workman has been pointed out to me. It would be appropriate if he is also regularised from the date of his grant of temporary status i.e. 1.9.93. It is ordered accordingly. Award is thus made.

4. It is contended by Mr. R.V. Sinha, learned counsel appearing for the petitioner that the Industrial Tribunal has erred in giving direction for regularisation of the respondent with effect from September 01, 1993. He states that the grant of temporary status has no connection with the grant of regularisation. He would further submit that the respondent stands regularised with effect from December 11, 2006 in terms of a policy decision taken by the petitioner pursuant to the Judgment of the Supreme Court in the case of [Secretary, State of Karnataka and](#)

Others Vs. Umadevi and Others, The respondent having been regularised as a regular employee of the CPWD, the award of the Industrial Tribunal need to be set aside.

5. Mr. Varun Prasad, learned counsel appearing for the respondent would submit that the respondent would limit his regularisation with effect from 1996 instead of September 01, 1993. According to him, his co-worker namely Man Singh, who was also one of the claimant before the Industrial Tribunal has been regularised with effect from October 29, 1996. He pleads the discrimination as services of Man Singh have been regularised from a much prior date. He would rely upon the Judgment of the Division Bench of this Court in Sh. Bhoop Singh Vs. Director General, CPWD, L.P.A. No. 686/2013 decided on September 17, 2013 to contend that the Division Bench, on similar facts, had granted the appellant in that case regularisation from the date the co-workers of the appellant was regularised.

6. Pursuant to the order of this Court dated April 04, 2013, the petitioner filed an additional affidavit in response to the affidavit filed by the respondent, wherein the petitioner had justified the regularisation of Man Singh with effect from October 29, 1996 on the ground that Man Singh, being an OBC candidate was regularised in a special drive for OBC.

7. It is also the stand of the petitioner in the additional affidavit that the respondent is a Scheduled Caste candidate and Man Singh is a OBC. No response has been filed by the respondent to the additional affidavit filed by the petitioner. Suffice to say that the respondent cannot equate himself with Man Singh as his services were regularised pursuant to a special drive for OBC candidates. It is not the case of the respondent that such a process was also held for S.C. candidates, but was overlooked. I note that during the cross examination, MW1 has stated that the case of the respondent was referred to Scheduled Castes Coordination Committee, but, no action has been taken thereafter. The Industrial Tribunal, noting the said particular fact, has directed that the respondent be regularised not from 1996, but, a date prior to it i.e. September 01, 1993. The relevancy of September 01, 1993 is that, on that date, the Department of Personnel and Training, Government of India issued instructions for grant of temporary status. Grant of temporary status would not entail the respondent an automatic regularisation from that date inasmuch as the regularisation pre-supposes availability of a vacancy and the adherence to the process laid down in the Recruitment Rules. It is also a settled law that the Courts and Tribunals must not give directions of regularisation of casual employees as such a process need to be undertaken by the administration in accordance with the Recruitment Rules. It is also settled law in terms of the Judgment of the Supreme Court in the case of Secretary, State of Karnataka Vs. Uma Devi (supra) that regular employment must adhere to Recruitment Rules, which are in vogue in a particular department. The Supreme Court has come strongly against the Courts and Tribunals granting regularisation de hors the Recruitment Rules. The relevant

paragraphs of the Judgment of the Supreme Court in *Secretary, State of Karnataka Vs. Uma Devi (supra)* are as under:

12. In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the Union or of the State Government cannot but be recognised and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognised and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for the Courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme.

XXX

43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment

has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

8. Since the services of the respondent have been regularised with effect from December 11, 2006 by invoking para 53 of the Judgment of the Supreme Court in the case of Secretary, State of Karnataka Vs. Uma Devi (supra) wherein the Supreme Court has held as a one time measure that the persons who have been irregularly appointed and have been working for the last ten years be considered for regular appointment, I do not see any illegality in the said action of the petitioner.

9. I find that the order of the Industrial Tribunal is without any reasoning, overlooking the settled position of law.

10. In view of the above conclusion, I find that the respondent is not entitled to regularisation with effect from September 01, 1993 as directed by the Industrial Tribunal. I, accordingly, allow the writ petition and set aside the award of the Industrial Tribunal in I.D. No. 55/95. No order as to costs.