

(1995) 03 SC CK 0108

Supreme Court of India

Case No: Writ Petitions (C) Nos. 5140-48, 3516, 5149-52 Of 1983

Mahendra Raj Marg Karamchari
Union and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: March 24, 1995

Citation: (1996) 1 AD 276 : (1996) 1 ALD(Cri) 56 : (1995) 4 Crimes 787 : (1995) 7 SCALE 193 :
(1996) 1 SCC 432 : (1995) 6 SCR 300 Supp

Hon'ble Judges: N. Venkatachala, J; K. Ramaswamy, J

Bench: Division Bench

Advocate: Gobinda Mukhoty, Senior Advocate (Naresh Kaushik and Ms Lalitha Kaushik, Advocates, with him) for the Petitioners; V.C Mahajan, Senior Advocate (Ms Sushma Suri and Ms Binu Tamta, Advocates, with him) for the Respondents.

Final Decision: Disposed Of

Judgement

@JUDGMENTTAG-ORDER

1. The SE petitions are disposed of by a common order since the questions raised are the same. Pursuant to a bilateral agreement between the government of India and the government of Nepal various works in Nepal were undertaken by the government of India on behalf of Nepal government, in particular, the road construction. In execution of the said projects several persons including these petitioners came to be appointed. They are of four categories, namely, (1 Nepal-based muster-roll workers, (2 Nepal-based regular establishment comprising of LDCs (Classes III and IV) such as khalasis, Jamadars, Cooks etc., (3 Nepal-based regular classified staff, and (4 Nepal-based work-charged establishment. After the completion of the projects when termination notices were issued, they filed the writ petitions under Article 32 seeking to quash them and also for declaration that they belong to the Nepal-based category of CPWD employees of the government of India. That they are entitled to equal terms on a par with CPWD employees working in India in particular of continuity of service and right to promotion etc. on an

integrated basis and consequential benefits that would ensue therefrom. Pending writ petitions this court had given certain directions which were implemented. When the matter had come up on 15/11/1994 for hearing, this court directed the respondents to file an affidavit by a competent officer stating on oath as to what are the reliefs as originally asked for remain for consideration after complying with the directions given by this court from time to time. Pursuant thereto, Mr P.K. Majumdar, Suptd. Engineer (Head Qrts.) CPWD (Food Zone) filed an affidavit on behalf of the respondents. Therein he had stated that with a view to put an end to the ongoing agitation between the Nepal-based workmen and the government, MRM Karamchari Union which had espoused the case was called for settlement. After prolonged negotiations the Union had entered into initial settlement with the government of India on 25/10/1981 and final settlement on 9/6/1983. In furtherance thereof directions were given to the appropriate officers to comply with the terms of the settlement. It was also stated that subsequently representation was made to the government of India that the President and the secretary of the Union were not competent to make the settlement on behalf of the workmen and that, therefore, the settlement entered into by them does not bind the workmen. It was also stated that at the time when the settlement was entered into, the President and the secretary were the competent persons- Since the settlement is beneficial to them. all the benefits were confirmed except in respect of five persons, who despite notices had not turned up even after the directions given by this court. It is not known whether they had also presented themselves before the Chief Engineer pursuant to the second direction issued by this court on 20/5/1984. The terms of the settlement also have been enclosed as part of the record.

2. SHRI Mukhoty, learned senior Counsel for the petitioners contended that the Chief Engineer working in Nepal had written in letter of the year 1966 to the Chief Engineer, CPWD, New Delhi wherein he had admitted that the workers working in Nepal are part of the establishment of CPWD and they are also entitled to overtime payment. since from the inception they were treated to be CPWD employees. The CPWD manual gets attracted to the employers though they are working in Nepal. In support thereof, he placed reliance, in particular on Section 1 of Ch. 3 and also the Recruitment Rules of the CPWD employees in Appendix 5 of the manual at p. 206. It is his contention that since the construction of the highways in Nepal were undertaken by the CPWD and the new zone in that behalf had been established in the year 1964. The petitioners having been recruited from time to time in that zone and having been allowed to continue them till the execution of the works, they became members of the CPWD under government of India's control and that therefore, they are regular employees and their services cannot be terminated on completion of the works in Nepal.

3. SHRI V.C. Mahajan, learned Senior Counsel for the respondent has contended that the petitioners were never treated as members of the establishment within the Indian territory. They were recruited to construct the works in Nepal undertaken

pursuant to bilateral agreement between the government of India and the government of Nepal and they were always treated as a separate class. On completion of the construction work termination orders were issued. They were no longer to be treated as members of the establishment of CPWD working in India and that therefore they cannot get the reliefs sought for. However, with a view to put an end to the prolonged agitation by the Union, an agreement was entered into. Pursuant thereto all the terms and conditions were implemented. Since many of the Indian employees who were regularly recruited are seniors or permanent employees, the petitioners working in Nepal in the work-charged establishment, etc., cannot be treated as regular employees of the CPWD, and if 50 done the seniority of the Indian employees would be adversely affected. Therefore in para 7 of the settlement to obviate such piquant situation for the purpose of seniority, appointments are treated to be fresh ones. For all other purposes they were given the benefits like pension etc, as mentioned in the settlement. Therefore, practically the reliefs sought for have been granted to them under the settlement.

4. HAVING given our anxious consideration to the respective contentions, we are of the considered view that there is considerable force in the contention of the Union of India. It is true that many of the petitioners were appointed by me Chief Engineer concerned from local people for execution of the work, as explained in the counter-affidavit filed by the Union or India from lime to time while the works were in progress in particular to lay the roads and they continued till the works were completed. It is also true that for the purpose of recruitment in CPWD in India. Nepali citizens were treated as Citizens of India. The construction of National Highways in Nepal was also treated as part of the work to be done by the CPWD. But the question is whether they can be treated as if they are the regularly recruited Candidates of the Indian establishments. The very prayer itself clearly indicates that they are conscious that at no time they were treated as members of the Indian establishments. They remained only as Nepal-based employees appointed for execution of the works in Nepal undertaken pursuant to the bilateral agreement between the government of India and the government of Nepal. Normally, when the works are completed the establishment gets closed. Then the persons employed therein also would lose their jobs. But, with a view to facilitate their continuance in India, with benevolent attitude the government of India reached an agreement with their Union. But for the agreement they have no right to the posts. We have also independently examined the terms and conditions of the settlement. Only a condition which would have effect on the continuity of the service is in para 7(vii) thereof. It states that the workers who accept the post offered in India will be treated as fresh entrants and their past service will not count for seniority. However, their past service will count for other admissible purposes including pensionary benefits provided they surrender their retrenchment compensation. Their past service in Nepal will be counted as past experience for promotion or appointment for higher posts. The period of break in service on their joining the MRM Project,

PHR EWR Projects will be regularised. Other conditions are not material for the purpose of this order, therefore, they are omitted, though all the terms are treated as part of this order.

5. THUS the agreement would clearly indicate that all the benefits except the seniority was given. It is stated in the counter-affidavit filed by Mr Majumdar that if seniority is given, the regularly recruited Indian candidates would adversely get affected. Therefore, with a view to see that the regularly recruited Indian employees will not have any adverse effect on the absorption of Nepal- based employees, their appointments are treated as fresh appointments so that their seniority will be counted from the date of fresh appointment. We think that the stand taken by the government of India is just and fair. To treat the regularly recruited employees of the CPWD in India and those who are sought to be absorbed by bilateral agreement like the writ petitioners, is to treat unequals as equals, and the latter would get unfair advantage over the former who would be adversely affected. Under these circumstances clause 7(vii) is just and fair and calls for no interference. The settlement covers all the disputes and has given them more than what they had asked for in the writ petitions.

6. WE, therefore, find that no further directions need be given except approving the settlement entered into by the government of India with the Union which is now part of the record which we have upheld.

7. The writ petitions are accordingly disposed of. No costs.

8. PURSUANT to the direction given by this court, the petitioner has already been taken into and is continuing in the service. The respondents are directed that the period of his absence from duty will be treated as continuous but without back wages which would ensue for all other purposes. The WF is accordingly disposed of. No costs.