Government of National Capital Territory of Delhi Vs Delhi Development Horticulture Employees Union

Court: Delhi High Court

Date of Decision: Sept. 23, 2009

Hon'ble Judges: Madan B. Lokur, J; A.K. Pathak, J

Bench: Division Bench

Advocate: Avnish Ahlawat, for the Appellant; K.M.M. Khan, for the Respondent

Judgement

Madan B. Lokur, J.

CM No. 10572/2009 (for preponement)

Dismissed.

WP (C) No. 4660/2008

Rule D.B.

CM Nos. 8985/2008 (Stay) & 2223/2009 (Vacation of Stay)

1. The Respondents (hereinafter referred to as employees) had filed original applications before the Central Administrative Tribunal praying, inter

alia, for a direction to the Petitioner (State) to grant age relaxation for employing them on the available Group D. posts under its various

establishments and units/branches, etc.

2. The necessary and relevant facts are that writ petitions came to be filed in the Supreme Court in respect of some daily wage employees claiming

absorption as regular employees in the Development Department of the Delhi Administration and for an injunction prohibiting the termination of

their services and difference in wages paid to them and those paid to the regular employees. The Petitioners in the Supreme Court were employees

of the District Rural Development Agency (DRDA) and the petitions were filed by a union of employees called the Delhi Development Horticulture

Employees Union (Respondent No. 1 before us).

3. The writ petitions came to be disposed of by the Supreme Court by an order dated 4th February, 1992 reported as Delhi Development

Horticulture Employees'' Union Vs. Delhi Administration, Delhi and others,

4. In the operative portion of the order, the Supreme Court held as follows:

In the circumstances, it is not possible to accede to the request of the petitioners that the respondents be directed to regulairse them. The most that

can be done for them is to direct the respondent-Delhi Administration to keep them on a panel and if they are registered with the Employment

Exchange and are qualified to be appointed on the relevant posts, give them a preference in employment whenever there occurs a vacancy in the

regular posts, which direction we give hereby.

5. It appears that despite the decision of the Supreme Court, the employees were not considered for employment. Therefore, they filed a contempt

petition which came to be disposed of by the Supreme Court by an order dated 8th September, 1995 in which it was directed that the employees

shall approach the Development Commissioner for such relief as they seek in the matter. The Development Commissioner was directed to look

into the issues raised and pass an order in accordance with law within a period of six weeks. The contempt petition was disposed of on this basis.

6. It appears that notwithstanding the orders passed by the Supreme Court, many employees did not get any relief from the State. Accordingly,

they preferred an original application in the Tribunal, being OA No. 1431/1999. This OA was disposed of by the Tribunal by an order dated 31st

May, 2000 in which it was held that the only direction that could be given was to call upon the State to take appropriate steps to ensure that the

directions given by the Supreme Court are complied with in letter and spirit and the persons taken on the panel are duly considered by the

Respondents for appointment under Class-IV vacancies subject to their availability as and when such a vacancy occurs, as per the rules and

instructions on the subject.

7. Other employees filed another original application in the Tribunal being OA No. 2686/2000 and this was disposed of by an order dated 27th

November, 2001 on the same lines as the earlier original application with the additional direction that the employees should cooperate with the

State and furnish all the relevant service particulars required.

8. The matter should have ended there but it did not. Some other employees approached the Industrial Tribunal for reinstatement. In one such

matter being ID No. 1228/1990, the Industrial Tribunal in its order dated 1st May, 1996 came to the conclusion that since the employees had put

in more than 240 days service, they are deemed to be regularized and, therefore, the termination of their services was held to be illegal.

9. The decision rendered by the Industrial Tribunal was challenged by way of a writ petition in this Court being Civil Writ No. 208/1997. This writ

petition was disposed of by one of us (Madan B. Lokur, J) on 16th September, 2002 following the decision of the Supreme Court. It was noted

therein that learned Counsel for the employees had stated that in view of the fact that DRDA has since closed down, he would be satisfied if the

direction given by the Supreme Court in the earlier decision is given effect to in that case also. In view of this, a direction was given to keep the

names of the employees on a panel and if they are registered with the employment exchange and are qualified to be appointed against some other

posts, they may be considered as and when a vacancy arises. It was noted that the employees should be given preference in employment.

10. Much later, a miscellaneous application being CM No. 4862/2003 was filed in the disposed of writ petition. While deciding that application on

13th September, 2004 the statement of learned Counsel for the State was recorded to the effect that the case of the employees would be

considered for employment since they were registered with the employment exchange. However, it was added in the order that the employees

would be entitled to claim benefit of the period that they have worked with the State for the purposes of age relaxation.

11. It is submitted before us by learned Counsel for the State that the question of age relaxation was never before the Supreme Court or before the

Industrial Tribunal or in the writ petition in this Court and, therefore, there was no occasion to grant age relaxation in CM No. 4862/2003 decided

on 13th September, 2004. Prima facie, we are in agreement with what is stated by learned Counsel. It does appear that the issue of age relaxation

was not raised at any point of time and if at all it was raised, no relaxation was given even by the Supreme Court. It does appear, therefore, that

while passing order on 13th September, 2004 the direction given by one of us (Madan B. Lokur, J.) had gone beyond what was postulated by the

Supreme Court.

12. Learned Counsel for the employees submits that in Smt. Pushpa Sharma v. Union of India CW No. 4111/1991 decided on 16th March, 1993

a Division Bench of this Court had also taken the view that the age bar would not stand in the way of the employees being recruited. We find that

in Smt. Pushpa Sharma the employees were temporary employees and were not casual labour as in the present case. In any event, there is again

no discussion for granting age relaxation which, as we have already noted above, was not even granted by the Supreme Court.

13. The employees re-agitated the same issue in the Tribunal. One more original application came to be filed in the Tribunal being OA No.

928/2005 which was decided on 19th September, 2006. In that case also, the Tribunal noted the orders passed by the Supreme Court and made

it clear that the qualification of age as prescribed by the Recruitment Rules would be applicable in so far as the employees are concerned.

14. It is in this background that some more original applications (out of which the impugned order arises) came to be filed before the Tribunal being

OA Nos. 1705/2005, 800/2006 and 95/2006. These original applications came to be decided in favour of the employees in respect of age

relaxation by the Tribunal by an order dated 17th December, 2007.

15. While deciding this latest group of original applications, the Tribunal noted the view taken by this Court in CM No. 4682/2003 decided on

13th September, 2004 and decided to follow that view while giving a go-by to the view expressed by the Tribunal in several other cases.

16. As we have noted above, the view expressed in CM No. 4862/2003 decided on 13th September, 2004 is not necessarily correct because it

goes beyond the relief that was granted even by the Supreme Court in Delhi Development Horticulture Employees Union. This being the position,

in our view, the Tribunal was prima facie in error in granting age relaxation to the employees for consideration for appointment against vacancies

that may arise.

17. In our opinion, the direction given by the Supreme Court is binding on all of us. If the Supreme Court did not grant age relaxation, it is with

good reason. Prima facie, we cannot (or at least should not) travel beyond what has been granted by the Supreme Court.

18. Under the circumstances, since the Tribunal has given more to the employees than what was given by the Supreme Court, there is no option

but to stay the operation of the impugned order dated 17th December, 2007. Accordingly, the interim order passed on 2nd July, 2008 is made

absolute till the disposal of the writ petition and the application for vacation of stay is dismissed.

19. Both the CMs are disposed of.