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Delhi High Court

Case No: Writ Petition (Civil) No. 11495 of 2009

Union of India (UOI) and Others	APPELLANT
Vs	
Ishwar Singh	RESPONDENT

Date of Decision: Sept. 23, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226

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

Bench: Division Bench

Advocate: Ansul, for the Appellant; Manjeet Singh Reen, for the Respondent

Final Decision: Dismissed

Judgement

A.K. Pathak, J.
Respondent was initially appointed as a casual labour under Delhi Division of Northern Railway sometime in the year 1982. Later on he acquired the temporary status of a Gangman. Subsequently Respondent was put under the construction organization on the post of Blacksmith, a group "C" post, in the pay scale of 950-1500 (Grade-III) purely on ad hoc basis in the year 1984 where he worked upto 1995, when he was declared as surplus.

2. Vide order dated 2nd May, 1996 Respondent was absorbed in the parent division as Khalasi, a group D post. It was further ordered that the intervening period will be treated as waiting for orders i.e. as if spent on duty.

3. Respondent made representations, requesting the Petitioner to absorb him in the group "C" post and also to protect his pay. Finding no response to his representations, Respondent filed O.A. No. 145/2009 before the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as Tribunal) praying therein that the Petitioner be directed to protect the pay of Respondent from 13th June, 1995 onwards with all

consequential benefits.

4. Vide the impugned order dated 1st June, 2009, Tribunal by following the decision of the Supreme Court in Badri Prasad and Others Vs. Union of India (UOI) and Others, directed the Petitioner to protect the pay of Respondent as Blacksmith with effect from 13th June, 1995 and also to pay arrears. It was further ordered that Respondent be considered for promotion on group "C" post as per his turn.

5. Aggrieved by this order, Petitioner has approached this Court by way of present writ petition under Article 226 of the Constitution of India praying therein that the impugned order dated 1st June, 2009 passed in O.A. No. 145/2009 be quashed.

6. In Badri Prasad"s case (Supra), Supreme Court held as under:

Without disturbing, therefore, orders of the Tribunal and the High Court the appellants are held entitled to be following additional reliefs. The pay last drawn by them in group "C" post shall be protected even after their repatriation to group "D" post in their parent department. They shall be considered in their turn for promotion to group "C" post. The period of service spent by them on ad hoc basis in group "C" post shall be given due weight age and counted towards length of requisite service, if any, prescribed for higher post in group "C". If there is any bar of age that shall be relaxed in the case of the appellants.

7. Facts of the present case are more or less similar to the facts involved in the Badri Prasad"s case (supra). Tribunal, by following above referred dicta of the Supreme Court, directed the Petitioner to protect the pay of the respondent as Blacksmith with arrears and consider his case for promotion, as per his turn and the rules in vogue in the division. In view thereof, we are not inclined to interfere with the impugned order, in exercise of our powers under Article 226 of the Constitution.

8. Petitioner has relied on an order dated 1st April, 2009 passed by the Supreme Court in Civil Appeal No. 6413/2002 titled as General Manager, Northern Railway and Ors. v. Jageshwar and Ors. to contend that the Tribunal/Court cannot direct for pay protection. We are of the view that this judgment is distinguishable, in the facts of this case. In Jageshwar"s case (supra), the persons working as Mate, a group "C" post, in construction organization, were absorbed in group "D" post in the main division, with their consent. In this case no such record has been placed before us to show that the respondents had given their consent for absorption on a group "D" post.

9. In view of the above discussions writ petition is dismissed.