

(2008) 12 DEL CK 0170

Delhi High Court

Case No: Writ Petition (C) 5332 of 1993

Hari Prasad and Others

APPELLANT

Vs

Trade Fair Authority of
IndiaRESPONDENT

Date of Decision: Dec. 8, 2008**Citation:** (2009) 107 DRJ 528**Hon'ble Judges:** Suresh Kait, J; Madan B. Lokur, J**Bench:** Division Bench**Advocate:** Rajeev Garg, for the Appellant; Raju Ramchandran and Ayushya Kumar, for the Respondent

Judgement

Madan B. Lokur, J.

The Petitioners who are about 50 in number were working with the Indian Trade Promotion Organization (ITPO) as Beldars. However, Petitioner No. 34 was not working as a Beldar but as a Safai Karamchari.

2. Some time in January, 1987 there was a general strike of the employees in the ITPO for better wages and service conditions. The Petitioners were among the striking employees. The strike continued for about a week or so and after it was over, the Petitioners and certain other persons were not allowed to rejoin duties.

3. This led the Petitioners and others to file a writ petition in the Supreme Court being WP(C) No. 271/1987. Learned Counsel for the parties tell us that the Supreme Court required the Labour Court in Delhi to go into the matter and to find out some possible solution and submit a report. The Labour Court submitted its report and on a perusal thereof, the Supreme Court framed a scheme to enable the ITPO to reinstate the workmen in a phased manner. We have been informed that the scheme framed by the Supreme Court has largely been implemented, but some persons could not be reinstated by the ITPO. Some of these unfortunate workmen are before us.

4. As a result of the failure of the ITPO to reinstate the Petitioners and other similarly placed persons, three writ petitions (including this one) came to be filed in this Court. The other two were filed by P. Ganeshan and others being WP(C) No. 1243/2005 and by Mohd. Jalees and others being WP(C) No. 1995/1993.
5. In the case of P. Ganeshan and others, a learned Single Judge of this Court felt that it would not be possible to reinstate the petitioners therein and so, compensation of Rs. 1 lakh per person was awarded in lieu of reinstatement.
6. Being aggrieved by the award of compensation, the ITPO preferred a Letters Patent Appeal being LPA No. 1284/2007. P. Ganeshan and others also filed a Letters Patent Appeal for enhancement of the compensation being LPA No. 1296/2007. Both the LPAs came to be decided by a Division Bench of this Court on 20th December, 2007. The Division Bench was of the view that each of the workmen should be paid compensation of Rs. 75,000/- and not Rs. 1 lakh as directed by the learned Single Judge. The decision rendered by the Division Bench has since become final and the compensation amount has been paid to the workmen.
7. In so far as the case filed by Mohd. Jalees and others is concerned, the ITPO and the workmen entered into a settlement, with the result that the writ petition was disposed of on 30th May, 1997 on certain terms which are not necessary to reproduce. However, it is of importance to note that all the workmen in the case of Mohd. Jalees and others are admittedly junior to the Petitioners in the present case as is apparent from page 179 of the paper book.
8. On these broad facts, learned Counsel for the Petitioners submits that since persons junior to the Petitioners have been reinstated (as in the case of Mohd. Jalees and others), there is no reason why the present Petitioners cannot be reinstated.
9. Learned Counsel for the Petitioners has also drawn our attention to the orders passed by this Court from time to time, particularly the order dated 20th January, 1994 in which it is recorded that learned Counsel for the ITPO has given an undertaking that no appointment from outside shall be made unless the Petitioners are absorbed. Subsequently, in the order dated 18th March, 1994 the earlier interim order was made absolute and it was clarified that in case of some vacancies arising, the ITPO should fill them up from amongst the Petitioners and other similarly placed persons on the basis of seniority depending upon the number of days of work. It is submitted by learned Counsel for the Petitioners that in view of the favourable interim orders, there is no reason for the ITPO to reinstate Mohd. Jalees and others while denying reinstatement to the present Petitioners, particularly since his clients are admittedly senior to each one of the persons in Mohd. Jalees and others.
10. To rebut this, learned Counsel for the ITPO has placed before us a chart giving the details of the Petitioners in the case of Mohd. Jalees and others. We find from a perusal

of the chart that the petitioners in Mohd. Jalees and others belong to various categories of workmen, such as Announcers, Assistant Projectionists, Attendants, Khallasis (Electrical), Safai Karamcharis, Security Guards, Senior Assistants and Ticket Sellers. Learned Counsel for the ITPO submitted that the services of these workmen were required by the ITPO and they cannot be considered at par with the present Petitioners who are Beldars.

11. We are, unfortunately, not in agreement with the submission of learned Counsel for the Petitioners. It is quite clear from the chart provided to us by the ITPO, which has not been disputed, that the workmen in Mohd. Jalees and others belong to various categories of employees and none of them were Beldars. If the ITPO finds it necessary to engage categories of workmen (other than Beldars) we cannot compel them to reinstate Beldars only on this basis. There is a clear functional demarcation between different categories of employees, and if the ITPO chooses to engage one or more such categories to the exclusion of any other category, no right of reinstatement enures in the excluded category (Beldars in this case) nor is there any violation of the orders of this Court. It is quite possible for the ITPO to require the services of one or more category of workmen for its day to day functioning but that does not mean that it requires every category of workmen for its day to day functioning. Since in our opinion, the distinction made by the ITPO between different categories of workmen vis-a-vis Beldars is valid, we do not think it proper to put the Petitioners at par with the workmen in Mohd. Jalees and others.

12. However, there is one Petitioner before us namely Ram Niwas who was also working as a Safai Karamchari and as we have noticed in the case of Mohd. Jalees and others, the ITPO had engaged some Safai Karamcharis and they are admittedly junior to Ram Niwas. Learned Counsel for the ITPO has not been able to give us any explanation at all (let alone a satisfactory explanation) why Ram Niwas has been excluded for reinstatement although he is better placed than the Safai Karamcharis in Mohd. Jalees and others. Learned Counsel for the ITPO states that he will take instructions in this regard and hopefully the ITPO may agree to regularize the services of Ram Niwas as has been done in the case of the Safai Karamcharis in Mohd. Jalees and others who are admittedly junior to Ram Niwas.

13. On an earlier occasion, it was submitted by learned Counsel for the Petitioners that a large number of Beldars were engaged by the ITPO from time to time while the Petitioners were denied reinstatement. We required the ITPO to inform us about this and to file a chart indicating if any Beldars have been engaged by the ITPO from time to time. Learned Counsel for the ITPO has since filed a chart and we find on a perusal thereof, that the last person so engaged by the ITPO is one Basant Lal and he was engaged on 1st August, 1984.

14. The admitted position is that Basant Lal was engaged on 1st August, 1984 that is after Neksy Ram (Petitioner No. 48) was engaged on 10th July, 1984. Similarly, there are other Petitioners such as Suresh Chand (Petitioner No. 4), Om Prakash (Petitioner No. 5) and Mohd. Hakimuddin (Petitioner No. 37) who were also engaged on 1st August, 1984

which is the same date as Basant Lal. Again learned Counsel for the ITPO has not been able to give us any explanation whatsoever why Basant Lal was favoured with regularization to the detriment of Neksy Ram (Petitioner No. 48), Suresh Chand (Petitioner No. 4), Om Prakash (Petitioner No. 5) and Mohd. Hakimuddin (Petitioner No. 37). Learned Counsel for the ITPO says that he will take instructions in this regard also and will hopefully be able to regularize the services of these four persons as has been done in the case of Basant Lal who is admittedly junior to Neksy Ram and was engaged on the same date as three others.

15. This leaves us with the Petitioners other than Ram Niwas, Neksy Ram, Suresh Chand, Om Prakash and Mohd. Hakimuddin who do not fall the same category of other workmen as in the case of Mohd. Jalees and others.

16. As we have already indicated above, the Petitioners being Beldars fall in a distinct category and cannot claim equal treatment with other workmen in Mohd. Jalees and others. We find that in somewhat similar circumstances, the Division Bench in LPA No. 1296/2007 decided on 20th December, 2007 awarded Rs. 75,000/- as compensation in lieu of reinstatement to each such workman. The decision rendered by the Division Bench is hardly about a year old and we do not think that the amount of compensation can be substantially increased merely because of the passage of time. However, we do find that since the present Petitioners (who are admittedly senior to the workmen in Mohd. Jalees & others), should in equity, get a slightly higher compensation than has been awarded to the workmen in Mohd. Jalees & others. Accordingly, following the view laid down in LPA No. 1296/2007 we award each one of these Petitioners Rs. 85,000/- as compensation which will be paid by the ITPO within four weeks from today and in any case before 31st January, 2009.

17. Learned Counsel for the Petitioners has orally brought to our notice that the ITPO keeps having some fair or other almost every month and over the last several years 15 of the Petitioners have been engaged from time to time on a daily wage basis in view of the undertaking given by learned Counsel for the ITPO, which we have adverted to earlier. He submits that these 15 persons are Hari Parsad (Petitioner No. 1), Ashok Kumar (Petitioner No. 10), Suresh Chandra (Petitioner No. 13), Nathu Singh (Petitioner No. 14), Ved Parkash (Petitioner No. 18), Mahesh Kumar (Petitioner No. 19), Braham Pal Singh (Petitioner No. 22), Ram Sumaj (Petitioner No. 24), Raj Kumar (Petitioner No. 29), Vijay Pal (Petitioner No. 32), Mahender Singh (Petitioner No. 33), Braham Singh (Petitioner No. 35), Rohtas (Petitioner No. 36), Ramaswamy (Petitioner No. 44) and Dinesh Kumar (Petitioner No. 45) and they should be regularized by the ITPO since work is clearly available. He submits that in addition Suresh Chand (Petitioner No. 4), Om Parkash (Petitioner No. 5), Ram Niwas (Petitioner No. 34), Mohd. Hakimuddin (Petitioner No. 37) and Neksy Ram (Petitioner No. 47) have also been engaged by the ITPO from time to time and they too should be regularized (without prejudice to the earlier submission made).

18. We are of the opinion that the regularization of these 20 workmen should be sympathetically considered by the ITPO given the facts and circumstances of the case, as well as the fact that they have been engaged by the ITPO from time to time on several dates. Moreover, all of them have been past employees of the ITPO for several years and they have apparently worked to the satisfaction of the management and there is no apparent reason why they cannot be absorbed by the ITPO. Learned Counsel for the ITPO says that he will take instructions from his client in this regard also and will get back to us within a week.

19. Consequently, to sum up, our conclusions are as follows:

1. The case of Ram Niwas (Petitioner No. 34), Neksy Ram (Petitioner No. 48), Suresh Chand (Petitioner No. 4), Om Prakash (Petitioner No. 5) and Mohd. Hakimuddin (Petitioner No. 37) should be considered by the ITPO for reinstatement and regularization in the light of what we have mentioned above.

2. The case of the 15 persons whom we have mentioned in paragraph 17 should also be sympathetically considered by the ITPO for reinstatement and regularization. If the reinstatement of Ram Niwas (Petitioner No. 34), Neksy Ram (Petitioner No. 47), Suresh Chand (Petitioner No. 4), Om Prakash (Petitioner No. 5) and Mohd. Hakimuddin (Petitioner No. 37) is not possible in terms of conclusion No. 1 above, their cases will also be sympathetically considered along with those of the 15 persons mentioned in paragraph 17 above.

3. The Petitioners other than the persons mentioned above, will each be paid compensation of Rs. 85,000/- by the ITPO within four weeks from today and in any case before 31st January, 2009.

List on 18th December, 2008 for directions on which date learned Counsel for the ITPO will inform us about the decision taken by the ITPO.

A copy of the order be given dasti under the signatures of the Court Master.