

(2019) 02 DEL CK 0051

Delhi High Court

Case No: Civil Writ Petition No. 9001, 12690, 12691 Of 2006

Babu Lal & Ors

APPELLANT

Vs

General Manager, Northern
Railway

RESPONDENT

Date of Decision: Feb. 8, 2019

Acts Referred:

- Industrial Disputes Act, 1947 - Section 2

Hon'ble Judges: Jyoti Singh, J

Bench: Single Bench

Advocate: Rajiv Agarwal, Geetanjali Mohan

Final Decision: Partly Allowed

Judgement

Jyoti Singh, J

1. The present writ petition has been filed assailing the award dated 01.06.2005 passed by the learned Industrial Tribunal-cum-Labour Court No.II in

ID No.31/2000 whereby the learned Labour Court answered the reference against the petitioners/workmen and has held that they are not entitled for

a "temporary status" under the Northern Railway as they were engaged as casual workers by the Northern Railway Sports Association

(hereinafter referred to as "NRSA") for working at Railway's Karnail Singh Stadium.

2. The petitioner no.1 was engaged as a peon on 01.05.1990 at initial salary of Rs.1900/- per month. The petitioner no.2 was engaged as a Gym

Attendant on 01.08.1994 at initial salary of Rs.1600/- per month and petitioner no.3 was appointed as a Safai Karamchari at initial salary of Rs.1650/-

per month on 01.07.1995.

3. The claim of the petitioners is that although they were engaged by NRSA but the NRSA is actually an instrumentality of the Northern Railway and

is functioning under the control, supervision and superintendence of the General Manager, Northern Railway. The petitioners have undisputedly,

continued to work from the dates of their respective appointments without any interruption or break, till the passing of the impugned award and are

working even today at the same stadium and are drawing monthly wages paid by NRSA.

4. Since the petitioners were working on casual basis and wanted a temporary status/regularization, petitioner no.1 made a representation dated

03.06.1992 to the Ministry of Railway, seeking regularization of his service. The Railway Board sought an opinion on the issue of regularization of the

services of the petitioner no.1 from General Manager, Northern Railway by a letter dated 20.08.1993.

5. Getting no response to their grievances for grant of temporary status, the petitioners espoused their cause with the General Manager, Northern

Railway through Delhi Labour Union, who sent a legal notice dated 28.04.1999 on their behalf. There was again no response to the legal notice and

subsequently, Delhi Labour Union raised an Industrial Dispute by preferring a statement of claim on 12.06.1999 before the Conciliation Officer. One

of the grounds raised in the statement of claim was that one Shri Kayam Ullah had been absorbed and regularized, having been employed on

01.08.1993, but the same treatment was not extended to the petitioners.

6. Northern Railway filed a reply before the Conciliation Officer on 06.09.1999 and admitted the factum of employment with NRSA but denied that

the petitioners were on the rolls of the Railways or were entitled to be regularized with the Railway. Northern Railway also filed a further reply on

22.10.1999 and stated that the petitioners were paid by NRSA from the earnings of the stadium and partly from the grants received from Staff Benefit

Fund but the Railways had no posts for absorption of the petitioners, there being no employer-employee relationship.

7. Failure report was submitted by the Conciliation Officer on 20.12.1999. The appropriate government thereafter made a reference of the Industrial

Dispute in respect of the petitioners. The reference order is extracted below:

“Whether workman Shri Ram Lal, Babu Lal and Hari engaged as casual Workers at Railway’s Karnail Singh Stadium by Northern Railways

Sports Association are entitled for temporary status under Railway Estt. After completion of 120 days continuous working.”

8. On 05.05.2000, the petitioners filed a statement of claim seeking temporary status/regularization with the Northern Railway and on 08.12.2000, a

written statement was filed by the Railways. A rejoinder thereafter was filed by the petitioners on 03.12.2001. The petitioners filed their evidence by

way of an affidavit in 2002. One Shri Randhir Singh, working as Sports Officer and Administrator at the Stadium, filed an affidavit on behalf of the

Northern Railway to lead his evidence on 22.04.2004. He was also cross-examined by the petitioner. The petitioners were cross-examined by the

respondent.

9. On 01.06.2005, learned Labour Court passed the impugned award holding that the workmen had failed to prove that they had been recruited by the

Railway Board or by the General Manager, Northern Railway and held that the workmen were not entitled to the temporary status claimed by them

and, accordingly, the reference was answered against the workmen.

10. Learned counsel for the petitioners/workmen contended that the petitioners had raised several grounds in support of their claim for grant of

temporary status but a perusal of the award would show that Labour Court only records the contention of both the parties and takes note of the

pleadings and the evidence but has not dealt with any of the contentions, pleadings or the evidence led and has mechanically answered the reference

in the last para of the award. The argument is that there is no reasoning in the award given by the Labour Court as to why it rejected the contentions

of the petitioners and in the absence of any reasoning, it is a non-speaking award and, therefore, same should be remanded back to the Labour Court

to pass a reasoned and speaking award. Learned counsel submitted that this would be without prejudice to the other contentions that he has raised in

the present petition on the merits of the case. Without prejudice to this preliminary submission, learned counsel for the petitioners has argued that the

petitioners had been working for over two decades at the Karnail Singh Sports Stadium, Delhi and whilst it may be true that the stadium is run and maintained by NRSA, the fact of the matter is that the said Association as well as the Sports activities at the stadium are under control and superintendence of the Northern Railway. He has drawn attention of this court, to the cross-examination of the management witness, which is at page 84 of the paper book in which Mr.Randhir Singh has clearly stated that staff of the stadium is appointed by the General Manager of the Northern Railway; the petitioners are employees of the Northern Railway. He submits that under the settled law, casual workers after having worked continuously for 120 days in a year are entitled to grant of "temporary status". He submits that in so far as the petitioners are concerned, they have been working continuously for over two decades and till date the temporary status has not been granted to them and even monthly wages being paid to them are far below the amount given under the Minimum Wages Act to an unskilled workman.

11. Ms.Geetanjali Mohan, learned counsel for the respondent vehemently argued that the petitioners have never been appointed by Northern Railway.

She submits that whilst it is true that the stadium is used by the Railway officers and the NRSA also is comprised of officers from the Northern

Railway, but the petitioners have been appointed by NRSA on its own and NRSA has been paying them. Her contention is that the Northern Railway

has nothing to do with the petitioners, therefore, question of granting temporary status to them by the Northern Railway does not arise. In so far as

preliminary submission of the learned counsel for the petitioners is concerned, Ms.Mohan, learned counsel for respondent submits that the Labour

Court has given clear findings and reasons to answer the reference against the petitioners and it cannot be said that the award is a non-speaking award.

12. I have heard learned counsel for the parties.

13. I find force in the preliminary submission of the learned counsel for the petitioners that the impugned award is non-speaking and non-reasoned award.

14. Perusal of the award shows that both the parties had made detailed arguments. The pleadings were relied upon as well as evidence. Learned counsel for the petitioners/workmen had raised the issue of unfair labour practice under Section 2 read with Item 10 in Vth Schedule of Industrial Disputes Act, 1947 and pleaded that they were employed by the Railway Administration and having worked for several years continuously, they were entitled to temporary status. Reliance was placed in support of this, on the submissions made by the management witness in his cross-examination. A plea of discrimination was also raised and an example of co-workman was cited to state that while he had been regularized, the petitioners were left out.

15. Per contra, the management had pleaded that the petitioners were not employed by the Northern Railway and that they were part time workers working at the stadium and employed by the NRSA which had nothing to do with the Northern Railway. As they were not railway employees, they could not be granted temporary status with the Northern Railway.

16. I find that the Labour Court has recorded the contentions of both the parties in detail in most part of the award but there is no consideration of the stand of either of the parties. There is no reason in any part of the award indicating the basis on which the Labour Court has answered the reference against the workmen. After recording the contentions it has simply answered the reference in the last para. In my view that the impugned award is non-speaking and unreasoned award.

17. It has been held by the Apex Court in several decision that reasoning is the heart and soul of every decision. I am supported, in my view, by a judgment of the Honâ€™ble Apex Court in a decision State of Uttranchal & Anr. Vs. Sunil Kumar Negi, (2008) 11 SCC 205, wherein Honâ€™ble Apex Court had remanded the matter back to the High Court on the ground that a cryptic order cannot be sustained as requirement of indicating reasons has been judicially recognized as imperative. The Honâ€™ble Apex Court further held that right to reason is an indispensable part of a sound judicial system and reflects the application of mind on the part of the court. The Honâ€™ble Apex Court had in turn placed reliance on an earlier

judgment of the Apex Court in the case of Raj Kishor Jha vs. State of Bihar, (2003) 11 SCC 519 wherein it was held that reason is the heartbeat of

every conclusion and without the same, it becomes lifeless. Learned counsel for the petitioners is, therefore, right in his submission that in the absence

of reasoning in the award, he is not in position to address arguments against the award. The Award in my view deserves to be set aside.

18. I, therefore, set aside the Award dated 01.06.2005 and remand the matter back to the concerned Labour Court to pass a reasoned and speaking

award taking into account the pleadings and the evidence already on record. It is made clear that this court has not expressed any opinion on the

merits of the case and issues on merits are left open. Since the Award is of the year 2005, the Labour Court is requested to pass an award, afresh, as

expeditiously as possible and not later than three months from the date of receipt of the order.

19. With these observations, the writ petition is partly allowed with no orders as to costs. Needless to state that both parties are at liberty to take

recourse of remedies available in law, after the Award is passed.