

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

R.A.No.395/2001 in
O.A.No.864/2001

Hon'ble Shri Shanker Raju, Member(J)

Thursday, this the 16th day of May, 2002

Shri Sukhbir ... Applicant
Respondent in RA

(By Advocate: Shri U.Srivastava)

Vs.

Union of India & Ors. ... Respondents
Applicants in RA

(By Advocate: Shri R.L.Dhawan)

O R D E R (Oral)

By Shanker Raju, M(J):

Heard the learned counsel on either side.

2. Respondents have assailed, in this RA, an order passed by this Court on 19.10.2001 in OA 864/2001. Shri R.L.Dhawan, learned counsel appearing on behalf of the review applicants, has referred to the observations taken by this Court, contained in Para 5, which are reproduced as under:

"I have carefully considered the rival contentions of both the parties. The claim of the applicant is legally tenable and has to succeed. The applicant who had worked for the respondents in the year 1982 and 1984 and the same has been certified by the Chief Inspector of Works have to be treated as proper certificate issued to the casual labour and has been held to be good for the purpose of entering his name in the LCLR by the Full Bench of this Court in Mahavir's case supra. In recent decision in this Bench in OA 280/2001 supra after meticulously examining the limitation involved and having regard to the finding of High Court in Sishpal's case which has not been taken into consideration by the Full Bench, it has been held that no limitation applies to the Casual Labour for the purpose of LCLR as the same is a continuing cause of action."

(5)

3. In this back ground, it is contended that there exists an error apparent on the face of the record wherein this Court has concluded, relying upon the decision in OA 280/2001, that the finding of the High Court in Sishpal's case where it has been held that the incorporation of the name in the LCLR has a continuing cause of action and the Full Bench, in Mahabir Vs. Union of India, ATJ 2000(3) 1, has not been taken into consideration. The error is apparent on the ground that before Full Bench decision is pronounced, the learned counsel for applicant, Shri B.S.Mainee filed written arguments on 17.1.2000, wherein at Sl. No.16 mentioned about CWP No.5071/99 by Union of India Vs. Sishpal Singh & Ors., decided on 23.8.1999 wherein it has been mentioned that the cause of action has been observed to be continuous. In this back ground, it is stated that Full Bench has taken note and considered the decision of the High Court in Sishpal Singh's case and thereafter on the basis of the decision of the Apex Court in R.C.Samanta & Others, JT 1993(3) SC 418 has come to a conclusion that the limitation applies to a casual labour also.

4. Learned counsel Shri R.L.Dhawan also stated that in view of Para 179 (xiii)(c) of Indian Railway Establishment Manual Vol.I, prescribed for inclusion of the name of the Casual Labour in Live Casual Labour Register, the minimum period of 180 working days are required, whether in continuous or broken period. As applicant claims to have worked only 28 days in the year 1982 and 31 days in the year 1984 he has acquired eligibility to have inclusion of his name in the LCLR, which, according to the respondents, is not correct.

(7)

5. On the other hand, the review respondent has strongly denied the contentions and has stated that as the decision of this Court is based on a decision in Billo Singh Vs. Union of India & Others in OA No. 280/2001, which has attained finality and no appeal has been preferred against the same. Unless the aforesaid decision is set-aside and reviewed, the present order cannot be reviewed. It is also contended that in a review petition, it must be remembered that review application has a limited purpose and the respondents cannot be allowed to re-agitate the matter as if an appeal. According to him, the scope of judicial review is limited to the extent that a patent error apparent on the record or discovery of the new material which even after due diligence was not available with the either of the parties. In this background, it is stated that the decision arrived was conscious and on basis of a decision of the High Court which is more value in view of the Full Bench decision, the same has to be followed and as such the review application filed by the respondents is not maintainable.

6. I have carefully considered the rival contentions of both the parties and also perused the material on record. In my considered view, I have no hesitation to accept that there exists an error on the face of the record, where the finding with regard to the consideration of Sishpal's case of the High Court is per-incurium of the Full Bench. From the perusal of the Written arguments, attached as Annexure-II with the RA, the aforesaid decision was brought to the

notice of the Full Bench by the contested parties. The aforesaid decision was considered by the Full Bench and thereafter placing reliance on R.C.Samanatha's case supra, the reference has been decided to the extent that a casual labour also comes under the law of limitation as envisaged under Section 21 of the Administrative Tribunals Act, 1985. In this view of the matter, the present review petition is liable to be allowed as the decision of Sishpal's case of High Court was not per incuriam in the Full Bench decision of Mahabir's case supra.

7. I further find that the applicant failed to attain the eligibility as he had not worked 180 days as per Para 179 (xiii)(c) of the IREM Vol.I, he is not eligible to include his name in the Live Casual Labour Register for re-engagement and further regularisation.

8. In this view of the matter and for the reasons recorded above, RA is allowed.

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9. As the claim of the applicant is beyond limitation, and in view of the decision of the Full Bench the same cannot be dealt with by this Tribunal as well as having failed to attain the eligibility the claim of the applicant is not legally sustainable. The OA is accordingly dismissed. However, this order would not effect subsequent developments which might have taken place independent of the issue involved in the RA. No costs.

S. Raju

(Shanker Raju)
Member (J)

/rao/