NO Regularization

(11)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 219 OF 1988
~~T.A. No.~~

DATE OF DECISION 1-10-1991.

Bharat M. Vithalani & Ors. Petitioner s.

Mr. J.J. Yajnik, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. Mukesh Patel for Mr. Jayant Patel Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. Singh, Administrative Member,

The Hon'ble Mr. S.Santhana Krishnan, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

MGIPRRND—12 CAT/86—3-12-86—15,000

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1. Bharat M. Vithalani,
2. Ashok K. Vaida,
3. Ishwar B. Baraiya,
   All C/o. Bharat M. Vithalani,
   Opp. A.C.C. Main Gate,
   Birla Plot, Dwarka. .... Applicants.

(Advocate: Mr. J.J. Yajnik)

Versus.

1. Union of India
   (Notice of the petition to be served through the Director General of Door Darshan, Mandi New Delhi.)

2. Shri Patro,
   Director of Doordarshan Kendra,
   Thaltej, Ahmedabad.

3. Shri B.R. Patel,
   Station Engineer, Doordarshan,
   Kendra, Dwarka, ... Respondents.

(Advocate: Mr.Mukesh Patel for
Mr. Jayant Patel)

J U D G M E N T

O.A.No. 219 OF 1988

Date: 1-10-1991.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

This original application filed under section 19 of the Administrative Tribunals Act, 1985, by the three applicant casual labour employees of Doordarshan Kendra, Dwarka prayed for regularisation of the applicants from the date of their respective entry into service. Relying on Supreme Court decisions in cases of casual labourers of other departments and regularisation of similarly placed employees of Doordarshan, discriminatory treatment is alleged. It is averred that the applicants' names have been registered with the Employment Exchange. It is further averred that the applicants were interviewed for the post of helper but not selected. It is further averred

that when the respondents asked Employment Exchange, Jamnagar, to send names of candidates for the post of helpers, the employment exchange replied saying they were not in a position to forward names of candidates and that they had no objection to direct recruitment by respondents. It is further averred that the applicants came to be appointed helpers on ad hoc basis with effect from 12.2.1988 pending formalities which appointment, according to the terms stipulated in the appointment order, conferred no right to them for appointment against a regular post. It was latter alleged that the applicants' service came to be terminated during the pendency of the application despite their having put in more than 240 days of service. A relief against termination also came to be added at this stage. The names of all the three applicants coming to be referred by the Employment Exchange to the respondents, the respondents, by their letters of 8.5.1986 addressed to each, had called them to appear on 15.5.86 for recruitment for the post of helper.

2. The respondents' reply is to the effect that the applicants as casual labourers were given work when work was available and with recruitment of regularly recruited persons in interview held on 19.1.88, there is no work for the applicants who got themselves registered with the employment exchange in February 1988, July 1987 and May 1988 respectively. It is further the contention of the respondents that question of termination of service of daily rated employees does not arise.

3. In the rejoinder, date of commencement of engagement of applicants as casual labourers has been disclosed as 1.2.84, 24.7.85 and 26.2.85 respectively.

The averments of the respondents that the applicants were engaged on purely casual basis in a month as and when required is denied and it is alleged that the applicants were only being given break on Sundays of every month. It is also disputed that respondents have made any regular appointment against the vacant posts which, according to the rejoinder, still exist. Termination of service without complying with the provisions of Section 25 F of the Industrial Disputes Act has been alleged and status of applicants as workmen and of the respondents as industry claimed and attributed. It is alleged that though the Tribunal directed the respondents to consider the representation for regularisation of the applicants, the representations were not considered and, on the contrary, their services terminated.

4. The learned counsel of the applicant made written submissions of his arguments claiming work from 1.2.84, 24.7.85 and 26.2.86 respectively on the basis of certificates produced at pages 21,23 & 25 respectively. We notice that these certificates issued by Station Engineer are on the lines that so and so is working as helper on temporary workcharge basis for the last so and so number of years, that so and so is a hardworker and his conduct and work is satisfactory and best in the career wished. The signatory is B.R. Patel, Station Engineer. It is clear from the contents of the certificates that the same are not intended to be official papers and do not furnish details of number of days of engagement of each applicant. Service upto 1.6.88, the date of termination of the three applicants, has been claimed. It is further argued that the regularisation of service of persons whose names have been given by the applicant

is not denied. Benefit of application of provisions of circular dated 7.5.85 instructing that casual labourers be regularised even though their names not sponsored by the employment exchange is claimed. Reliance has been placed on the judgment in M.M. Unnikrishnan Vs. Supdnt. of Post Offices (1990) 13 ATC 250 in which is stated to have been held that the condition of being recruited before 7.5.85 in Government of India's office memorandum of 7.5.85 for regularisation of service is unsustainable, arbitrary and illegal. It is also argued that two persons were recruited after termination of service of the applicants which is violative of Section 25 H of the Industrial Disputes Act as held in Bharat Pandya Vs. State of Gujarat, 87 (1) GLR 387.

5. Mr. Mukesh Patel, learned counsel for the respondents, argued that no evidence has been produced by the applicantsto prove 240 days of engagement to claim application of the provisions of the Industrial Disputes Act. He argued that the Industrial Disputes Act contains no provision for regularisation of employees and prayer in that connection in the application is not legal. He submitted that the applicants are daily wagers for whom no posts exist. He also said that the applicant No.1 has been appointed after consideration on a regular post after following due procedure. We find corroboration to this in the respondents' counsel so informing this Tribunal on 8.3.1991 and also informing it is likely that other two applicants also would be taken back. This figures in the proceedings dated 8.3.1991 of this Tribunal in this case.

6. It is clear from the rival pleadings and arguments that this is a case of engagement of three applicants as casual labourers. Appointment letters of the applicants as casual labourers not produced, we have no material

to know the terms and conditions of appointment of the applicants. May be, for the engagement of casual labour for casual work arising on day to day basis, no appointment letters are issued and they are hired as available and work given when available. From this apparent nature of the engagement of the applicants, service security relying on the provision of the Industrial Disputes Act against termination claiming engagement of more than 240 days is sought. In the provisions of section 25B of Industrial Disputes Act, continuous service has been defined as consisting of a period of uninterrupted service including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman and for a person of the category of the applicants completion of 240 days during a period of 12 calendar months preceding the date with reference to which calculation is to be made. In the case before us, as the date of termination is alleged to be 1.6.88, engagement on work of 240 days in a period of one year backwards from 1.6.88 has to be shown. No such material to support such engagement has been placed before us. Orders of appointment dated 12.2.88 as helper in payscale 800-15-1010-EB-20-1150 have been produced. Counting days from such appointment upto termination date of 1.6.88, it would be seen that the applicants have not even put in four months of service as regular employee. The order says that the appointment is on ad hoc and provisional basis for the time being pending completion of formalities.

6. No clear case is thus made out for us to exercise jurisdiction of the nature of Article 226 of

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the Constitution in which respect alone, as held by a five member bench of this Tribunal in A.Padmavalley V/s. CPWD & Ors. III(1990)CSJ(CAT) 384 (FB), this Tribunal may exercise jurisdiction in cases seeking protection of provisions of Industrial Disputes Act and not in other cases where applicants should exhaust remedy of approaching the Industrial/Labour Court. Part of para 38 of this judgment is reproduced below:

> " In our view, one such situation would be where the competent authority ignores statutory provisions or acts in violation of Article 14 of the Constitution. Further, where either due to admission made or from facts apparent on the fact of the record, it is clear that there is statutory violation, we are of the opinion, that it is open to the Tribunal exercising power under Article 226 to set aside the illegal order of termination and to direct reinstatement of the employee leaving it open to the employer to act in accordance with the statutory provisions. To this extent we are of the view that alternate remedy cannot be pleaded as a bar to the exercise of jurisdiction under Article 226."

To begin with the petition filed was for regularisation. The step of regularisation has to be taken on the basis of seniority of persons eligible for regularisation. No evidence has been produced to show the relative position of the applicants if eligible for regularisation with others eligible. The names of some persons regularised have been given but without producing evidence of relative seniority position. But in such a case, the allegation, the nature of relief and pleadings should be of the nature of supersession for regularisation from the date any juniors are regularised.

8. In view of the above, the applicants have not substantiated their claims or allegations. The applicants are free to approach the concerned Industrial/Labour Court with required evidence and the Labour/Industrial Court can also collect required evidence to come to proper conclusions on such evidence to give proper relief to the applicants.

9. The application thus has to be dismissed. We hereby do so without any order as to costs.

10. We should clarify that irrespective of the above order, the respondents are at liberty to grant regularisation to two applicants as granted to one of the applicants.

(R.Santhana Krishnan)
Judicial Member

(M.M. Singh)
Administrative Member