

19
xx

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NOS. 434 & 450 of 1989.

Date of decision : June 29, 1990.

In O.A.434/89 Pankaj Kumar Pradhan and another ... Applicants.

Versus

Union of India and others .. Respondents.

In O.A.450/89 Duryodhan Barik and others ... Applicants.

Versus

Union of India and others ... Respondents.

In both the cases: For the applicants ... M/s.A.K.Bose,
P.K.Giri, Advocates.

For the respondents ... Mr.P.N.Mohapatra,
Addl. Standing Counsel (Central).

C O R A M:

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR.N.SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? No
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT

B.R.PATEL, VICE-CHAIRMAN,

Since the facts and points of law involved are similar, these two cases were analogously heard. This common order will govern both the cases.

2. In O.A.434 of 1989 there are two applicants. They were appointed as Beldars (casual labourers) in the Telecom.

Amul

29 V

Civil Division, Bhubaneswar in the year 1986. The three applicants in O.A.450 of 1989 were appointed on different dates in the year 1985. The applicants of O.A.434 of 1989 were retrenched by the order dated 2.11.1989 and those of O.A.450 of 1989 on 8.4.1989. They contend in their applications that the order of retrenchment is illegal and should be quashed and they should be reinstated and absorbed on regular basis and that they should be given back wages.

3. The respondents have maintained in their counter that there being no work and there being a policy decision not to engage casual labour from 1.4.1985 onwards, the appointment of these persons in 1986 was ab initio irregular and they are not entitled to the relief that they have sought for in their applications.

4. We have heard Mr. A. K. Bose, learned counsel for the applicants and Mr. P. N. Mohapatra, learned Additional Standing Counsel (Central) for the respondents and have perused the relevant papers. Mr. Bose has maintained that these casual labourers are workmen as defined under the Industrial Disputes Act and entitled to the reliefs granted by Section 25 of the aforesaid Act. Since the provision of the Industrial Disputes Act has not been complied with, their retrenchment is illegal. In this connection, Mr. Bose drew our attention to a judgment of the Jodhpur Bench of the Tribunal in the case of Bharatiya Daktar Mazdoor Manch v. Union of India and others (O.A.296 of 1988) decided on 30.6.1988. In the case before the Jodhpur Bench the workmen had filed an original application and in that case

Arshad

the provisions of Section 25 F of the Industrial Disputes Act had not been complied with. In this context, the Jodhpur Bench observed;

" The impugned order and the termination of the services of the members of the applicant specified in Schedule 'A' are hereby set aside and the respondents are directed to reinstate the 10 workmen with full back wages within a week of the date of receipt of copy of the order. "

He also drew our attention to " Casual Labourers (Grant of Temporary Status and Regularisation) Scheme in the Department of Telecommunication vide Annexure-6 of O.A.450 of 1989.

This scheme came into force with effect from 1.10.1989.

Mr. Bose has referred to paragraph 5 which deals with temporary status and pleads that as the applicants fulfilled the conditions they ought to have been conferred the temporary status. Mr. Bose has also drawn our attention to paragraph 8 which reads as follows :

" Despite conferment of temporary status, the services of a casual labourer may be dispensed with in accordance with the relevant provisions of the Industrial Disputes Act, 1947, on the ground of non-availability of work. "

As the relevant provisions of Industrial Disputes Act have not been complied with Mr. Bose pleads that the applicants should be reinstated and they should be paid the back wages. A judgment of the Principal Bench of this Tribunal in a similar case i.e. O.A.529 of 1988 decided on 4.5.1988 (Sunder Lal & others v. Union of India and others) was also placed before us. This judgment is based on the

judgment of the Hon'ble Supreme Court in a case reported in AIR 1987 SC 2342. The Principal Bench have held as follows:

" The administrative decision to retrench all those that were employed after 1.4.1985 can, therefore, no longer hold good. Infact, all those that are employed after 1.4.1985, even if they had continued for one year, are entitled for absorption in view of the orders of the Supreme Court. "

Mr. Mohapatra has informed us that the Department has also prepared a scheme in the light of the observations of Their Lordships of the Supreme Court in the case quoted in the judgment of the Principal Bench and the case of the applicants will be duly considered for their regular absorption. In view of this Mr. Mohapatra contends that there is no further relief to be granted to the applicants.

5. In view of the judgment of the Hon'ble Supreme Court in the case of Daily Rated Casual Labour employed under P & T Department through Bharatiya Dak Tar Mazdoor Manch. v. Union of India, reported in AIR 1987 SC 2342 referred to above and Principal Bench and that of the Jodhpur Bench there is absolutely no scope for the Department to retrench the applicants and as such ~~the~~ ^{the} ~~orders~~ ^{orders} of retrenchment are set aside. and direct that the applicants should be immediately reinstated and their absorption on regular basis should be taken up at once.

6. As regards the question of ~~back~~ ^{back} wages Mr. Mohapatra ^{against} vehemently protested ~~for~~ ^{for} payment of back wages to the ^{back} applicants from the date of retrenchment to the date of

reinstatement, when they have not done any work and as such they are not entitled to back wages. On behalf of the applicants, Mr. Bose with equal vehemence contended on the basis of the judgment of the Jodhpur Bench that as the order of retrenchment has been patently illegal and the applicants have been retrenched without their fault, it would be unfair nay illegal to deprive them of their back wages. It is no doubt true that the retrenchment is unsupportable but all the same as we are told, the retrenchment was for non-availability of work. In such circumstances, in our considered view, the ends of justice would be adequately met if the period from the date of their retrenchment to 1.7.1990 counts towards their seniority and this period is taken into account while absorbing them as regular employees of the Department. We order accordingly.

7. These two applications are disposed of accordingly.
No costs.

No. 29690
.....
Member (Judicial)

No. 29690
.....
Vice-Chairman

