

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 243/2007

This the ²³ day of March, 2012

Hon'ble Sri Justice Alok Kumar Singh, Member (J)

Rajeev Kumar Sahu aged about 42 years son of late Shiv Prasad Sahu r/o 43, Shiva Bhawan, Jai Narain Road, Hussainganj, Lucknow.

Applicant

By Advocate: Sri A.Moin

Versus

1. Union of India through Secretary, Ministry of Information and Broadcasting, Govt. of India, New Delhi.
2. Broadcasting Corporation of India, Doordarshan Bhawan, Copernicus Market, New Delhi through Director General.
3. Director, Prasar Bharti Broadcasting Corporation of India, Doordarshan Lucknow.

Respondents

By Advocate: Sri Alok Trivedi for Sri G.K. Singh

(Reserved on 16.3.2012)

ORDER

HON'BLE SHRI JUSTICE ALOK KUMAR SINGH, MEMBER (J)

This O.A. has been filed for the following reliefs:-

- a) to quash the impugned order dated 27.7.2005 as contained in Annexure A-1 to the O.A.
- b) to direct the respondents to regularize the services of the applicant on any group 'C' post within a specified time.
- c) to direct the respondents to pay the cost of this application.
- d) any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case be also passed.

2. The case of the applicant is that the applicant was initially appointed on casual basis as Production Assistant in the office of Respondent No.3 on 22.1.1989. The name of the applicant finds place at Sl. No.1 in the seniority list prepared by the Department (Annexure A-2). But ignoring the claim of the applicant, his juniors were being regularized. Therefore, he filed O.A. No. 679/94. That O.A. was decided on 23.5.2000, directing the respondents to consider the claim of the applicant for regularization in the light of Scheme dated 9.6.92 and calculate the working period as per office Memo dated 17.3.94 and thereafter pass appropriate orders (Annexure A-5). As per above scheme dated 17.3.94, the number of

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days for the purpose of regularization have to be computed on the basis of actual wages given to the casual staff artists in a month divided by the minimum wages prevalent in the State during the relevant time of booking (Annexure A-6). Thereafter, another O.M. dated 5.7.94 was issued clarifying that the crucial date for calculation of age would be 9.6.1962 and that a casual artist who had worked for 120 days in any calendar year as per revised scheme ending 31.12.1991 would be considered for regularization (Annexure A-7). In view of both the above scheme dated 17.3.94 and clarification dated 5.7.1994, the number of working days of the applicant up to 16.12.89 were 215 days and therefore, he is entitled to be regularized. But the respondents rejected the claim of the applicant in an arbitrary manner. The applicant, therefore, filed O.A.No. 163/2002. This O.A. was also partly allowed on 27.9.2004 and the order of rejection dated 27.2.2001 passed by the respondents was set aside. The respondents were directed to recalculate the working period of the applicant for regularization in accordance with the above O.M. dated 17.3.1994 (Annexure A-10). The respondents again rejected the claim of applicant on 27.7.2005 (Annexure A-1). A contempt petition No. 3/2005 was therefore, filed which was however, rejected. Hence this O.A. The applicant has also filed the contract notices issued to him by respondents for the year 1989 indicating that the applicant worked for 215 days in 1989 i.e. prior to the cut off date of 31.12.1991.

3. The claim has been contested by filing a detailed Counter Affidavit saying that the applicant was engaged as Casual Artist for purely casual nature of work on contract for short spells for programme requirement. A seniority list was prepared of such persons with a view to give them booking for casual assignments. The case of the applicant was considered for regularization in view of the revised/ modified scheme dated 17.3.94 after scrutiny of

records from payment vouchers as well as contracts and it was found that the applicant has completed only 63 days in the year 1989 and therefore, he was not found eligible for regularization. His case was considered afresh in compliance of Hon'ble Central Administrative Tribunal's judgment dated 27.9.2004 passed in O.A. No. 163/2002. The respondent No. 3 asked the applicant to produce the relevant documents in support of his claim vide letter dated 17.12.2004 but he failed to produce any documents. However, the whole exercise was carried out in the light of Directorate Modified Scheme dated 17.3.1994. Lastly the competent authority vide letter dated 27.7.2005 re-calculated the working days of the applicant and found him to be not eligible for regularization. Feeling aggrieved, the applicant filed contempt petition No. 3/2005 which was dismissed on 10.1.2007. The applicant has however, then filed the present O.A. challenging the aforesaid order dated 27.7.2005. In respect of letters of contracts furnished by the applicant as contained in Annexure -12 of the O.A., it has been said that the same are totally wrong.

4. R.A. has also been filed in this case.

5. From the side of the respondents, a Supplementary C.A. has also been filed. Besides an affidavit dated 5.4.2010 of Director Doordarshan Kendra has also been filed.

6. A Supplementary RA. has also been filed on behalf of the applicant on 6.2.2009 and another Supplementary RA. on 23.9.2011 enclosing copies of O.M. dated 9.6.92, Scheme for regularization, O.M. dated 17.3.1994, O.M. dated 5.7.94.

7. From the side of the official respondents also, on 13.10.2011 again an affidavit has been filed giving details of calculation of the working days of the applicant.

8. I have heard the rival submissions and thoroughly perused the entire records.

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9. This is really unfortunate that it is the third round of litigation that has come up before us for the same matter. According to the applicant, the respondents are not calculating his working days correctly in accordance with the relevant O.M. dated 17.3.94. This time the applicant has again filed a calculation chart on the basis of which, his working days upto December, 1989 were 215 days which are much more than 120 days which are required for regularization.. This chart is contained as Annexure A-3. In the earlier O.A. No. 679/94 also, this chart was filed which according to applicant was not denied by the respondents. A pleading to this effect is contained in para 3 of the O.A. In reply to this pleading, it has been said by the respondents in their C.A. that the averments contained in para 3 of the O.A. call for no reply. Thus there is neither any specific nor any general denial of the above pleading. It is needless to say that a specific pleading which is admitted or even if not specifically denied, stands admitted and proved. Therefore, the above averment/ pleading has also to be construed as proved in favour of the applicant. Here it would also be appropriate to mention the relevant portion of the above scheme dated 17.3.94 which is as under:-

“The number of days for the purpose of regularization will be computed on the basis of actual wages given to the Casual Staff Artist in a month, divided by the minimum wage prevalent in the State during the relevant time of booking. For example, if a Casual Staff Artist has been paid an aggregate sum of Rs. 1500 in a month where for working for 10 days or for 2-3 assignments in a month and the minimum wage prevalent in the state at the relevant time was Rs. 50, the staff Artist would be deemed to have worked for 30 days in a month (i.e. Rs. 1500 divided by 50) subject to the

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condition that the days so computed would not exceed 25 days in a month."

10. The perusal of the above chart (Annexure A-3) shows that in the first column, a detail amount paid is mentioned in respect of a particular month. In the second column, month/ year is mentioned. In the third column, number of working days are mentioned. In all there are 13 monthly entries starting from January 1989 to December, 1989. This number is 13 because in June there are two entries dated 9.6.89 and 16.6.89. The minimum wages at the relevant time has been shown to be Rs.20/- per day which is not disputed anywhere. The entries of this chart are further substantiated by all the relevant letters for those periods, except for the month of October, which were sent to the applicant by the respondents inviting for the purpose of work indicated in these letters. These letters are also 13 in number which have been filed as Annexure A-12. About this annexure, the averment/pleadings have been made in para 18 of the O.A. which has been replied in para 22 of the C.A. saying that these averments are misconceived and incorrect and also that contracts furnished as Annexure A-12 are totally wrong. But it has not been explained as to how these letters of contracts are said to be wrong. The perusal of these letters shows that these have been issued by the respondents under the signature appended on behalf of the Director. Authenticity of these letters have not been challenged by the respondents. Therefore, these letters deserve to be taken as proved. In fact, out of these 13 letters, 4 letters have already been admitted in the chart prepared by the respondents themselves as mentioned in para 3 of the Affidavit dated 13.10.2011 by the then Director General, Doordarshan. It is noteworthy that as said above in para 22 of the CA, initially, the respondents took a stand that all the letters of contract contained in Annexure 12 are totally wrong. But contrary to this, in the above affidavit, they have admitted the

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veracity of at-least 4 letters. Thus, the averments/ pleadings of the official respondents on the above point are self contradictory and not worth believing. Therefore, this Tribunal has no hesitation in observing that the applicant has established his claim as discussed above.

11. It was submitted on behalf of the applicant that earlier twice the matter was remitted to the respondents to do the needful which they are not doing. Therefore, it is requested that remand for third time would be futile in this case and therefore, this Tribunal may issue a mandamus directly. In support of this submission, the case of **Gyan Prakash Pathak Vs. State of U.P. and others reported in 2005 (23) LCD 1487** has been relied upon. In this case, it was held that *"Normally, the matter should have been remanded but in this case, in spite of two opportunities, the respondents have not only prejudged the case, but have employed questionable means to deny the relief to the Act. A Division Bench of this Court in the case of Dr. Sangita Srivastava Vs. University of Allahabad and others (2002 (3) UPLBEC 2502) has held that the court has jurisdiction to issue a mandamus directly where the facts of the case are such that remand would be futile."*

12. The jurisdiction and powers of this Tribunal are akin to Hon'ble High Court as has been laid down by Hon'ble the Apex Court in catena of decisions. It is also true that the applicant and the respondents have been litigating this matter from the year 1994 till date i.e. for about 18 years and this is the third round of litigation. The present O.A. is also pending for the last about 4 years.

13. Finally, therefore, in view of the above, O.A. is allowed with cost. The impugned order dated 27.7.2005 (Annexure A-1) is quashed. Respondents are directed to pass appropriate orders in respect of regularization of service of the applicant in the light of the observations made in this judgment /order within a period of 3 months from the date, a certified copy of this order is submitted by the applicant to the respondents.

Alok Kumar Singh
(Justice Alok Kumar Singh) 23.3.12
Member (J)