IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

A L L A H A B A D

****** Lko Circuit Bench

O.A.NO. 83 1989.(L)

~~T.A.NO.~~

DATE OF DECISION _____

V. R. Srivastava & another PETITIONER

Shri O. P. Singh. Advocate for the Petitioner(s)

VERSUS

U. O. I. & ors RESPONDENT

Shri D. Chandra. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice K. Nath, V.C.

The Hon'ble Mr. K. Obayya, A.M.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes

2. To be referred to the Reporter or not ? Yes.

3. Whether their Lordships wish to see the fair copy of the Judgement ? Yes

4. Whether to be circulated to other Benches ? Yes

Dinesh/

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(AS)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,

CIRCUIT BENCH AT LUCKNOW.

O.A. 83/1989(L)

Vivek Ranjan Srivastava & another ...Applicants.

Shri O.P. Singh ...Counsel for the Applicants.

versus

Union of India & others ...Respondents.

HON. MR. JUSTICE K. NATH, VICE CHAIRMAN.

HON. MR. K. OBAYYA, ADMINISTRATIVE MEMBER.

(Judgment delivered by Hon. K. Obayya, A.M.)

In this application filed under section 19 of the Administrative Tribunals Act, 1985, the applicants Shri Vivek Ranjan Srivastava and Shri Rudra Prakash Singh, who were former employees in Accountant General's office Lucknow, questioned their termination from service and sought a direction to opposite parties to regularise their services in the post of Typist. Their further prayer is that the applicant No. 1 be treated as a Quasi Permanent (Q.P.) Government servant since he has completed 3 years of continuous service and that both the applicants be given regular scale of the post.

2. Their case is that the applicant No. 1 is a Commerce Graduate; he came to know that there were some vacancies of Typist in Accountant General (Audit), Lucknow office and he applied for a post. After passing the typing test and interview he was selected as a casual typist on remuneration of Rs 20.00 per day and they were asked by the respondents

No. 1 to work with effect from 10.12.1986. He joined his duties on 10.12.86 and worked till 3.10.1988 but his services were dispensed with on 4.10.88. The applicant No. 2 is a Science Graduate. He also applied for the post of Typist and was appointed on same terms and conditions as applicant No. 1 and he worked during the periods from 29.4.87 to 9.2.88, 29.2.88 to 29.9.88. Thereafter, his services were dispensed with. The applicants alleged that their termination is arbitrary and wrongful since their work was found to be satisfactory while applicant No. 1 has completed 3 years of service; the applicant No. 2 has completed more than 240 days of service and their termination without following the provisions of section 25 F of the Industrial Disputes Act, 1947 is irregular. The applicant No. 1 also claims to have become Q.P. government servant, as he has completed 3 years of continuous service and as such the services should be regularised on the basis of instructions contained in Annexure 5.

3. In the counter the respondents stated that to cope up withthe increased load of work the applicants were engaged from time to time for typing work for short duration not exceeding five days in a week. This was on casual basis on payment of daily wages of Rs 20.00. According to them the applicant No. 1 worked for 15 days during the year 1986, 233 days in 1987 and 177 days in the year 1988, while the applicant No. 2 worked for 160 days in the year 1987 and 181 days in the year 1988. Their engggement was for broken period and there was no continuity in service. It is also further stated that the post of Typist is a Group C post and appointment is made on the recommendation of Staff

Selection Commission (S.S.C. for short) and the respondents are not competent to make the appointment without such recommendation. It is denied by the respondents that the applicants were appointed against any vacancy. They were only engaged on casual basis, liable to be terminated without any order.

4. In the rejoinder affidavit the applicants admit that they were engaged as Casual/Daily Wage Workers, though the nature of work they were called upon to do was regular. It is also admitted that the posts of Typist are Group 'C' posts and that recommendation of S.S.C. is necessary for regularisation of services. It is also stated that the applicants are entitled for salary on the principle "equal pay for equal work".

5. We have heard the learned counsel for the parties and have also perused the records. The learned counsel for the applicant assailed termination on the ground that it is not in conformity with the provisions of Section 25-F of the I.D. Act,1947. He contended that the applicants are entitled for the benefit under this Act on the basis of number of days they worked. He also relied on the decisions of the Allahabad High Court, Lucknow Bench, Lucknow in Naresh Chandra Srivastava v. Scooters India Ltd. (1986 (4) LCD 427) and of the Hon'ble Supreme Court in Workmen of American Express International Banking Corporation v. Management of American Express International Banking Corporation (AIR 1986 SC 458). In both the above decisions it was upheld that for calculation of continuous service, not only the actual working days but also Sundays and other holidays should be taken into account. The Hon'ble Supreme Court in the case of Workmen of American Express International Banking Corporation, referred to above, has observed as follows :-

> "The expression "actually worked under the employer" cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily

> comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc."

The proposition laid down in these decisions are well established and we have no disagreement with them. But the question is whether the applicants are "workmen" and the office of the Accountant General, U.P. (Audit) is an Industry/Industrial establishment for purposes of the I.D. Act,1947. The terms "workman" and "industry" are inter-related in this Act as there cannot be a workman without industry and vice versa. Section 25-F of the said Act provides that no "workman" can be retrenched without one month's notice being given or wages paid in lieu thereof, and compensation equivalent to 15 days average pay and service of notice on the appropriate Government or authority. The safeguards under this provision are applicable only to those workmen who have completed one year's continuous service. It is noticed in para 11 of the short counter-affidavit that applicant no.1 has worked for 15 days in 1986, 233 days in 1987 and 177 days in 1988. While applicant no.2 worked for 166 days in 1987 and 181 days in 1988. In both these cases the minimum required days, viz. 240 days to be eligible for protection under this Act has not been fulfilled. Further the main issue is whether the office of the Accountant General can be deemed to be an "industry". The definition of this term, as given in Section 2(j) of the Act, is as under :-

> "(j) "industry" means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not, -

(i) any capital has been invested for the purpose of carrying on such activity; or

(ii) such activity is carried on with a motive to make any gain or profit,.....

but does not include -

(1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.

.....

(6) any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence resarch, atomic energy and space; or ....."

From the above it can be seen that the term "industry" has wide import but departments/authorities exercising the sovereign functions are excluded from the definition. This position has also been upheld by the Hon'ble Supreme Court in Bangalore Water Supply and Sewerage Board v. A. Rajappa and others (AIR 1978 SC 548) wherein it was observed that "sovereign function strictly understood (alone) qualify for exemption".

6. The learned counsel for the applicant has not placed before us any decision or order to the effect that the office of the Accountant General, etc. is a deemed "industry". For the reasons stated above, we are of the view, inasmuch as the office of the Accountant General exercises sovereign powers, it does not fall within the definition of the term "industry" under the I.D. Act,1947, hence no infirmity is attached for termination of the services of the applicants for not following the provisions of Section 25-F, as the same are not applicable in this case.

7. The next point urged by the learned counsel for the applicant is on "equal pay for equal work". He relied on the decision in Surinder Singh & another v. The Engineer-in-Chief, CPWD and others (AIR 1986 SC 584) wherein it was held that persons employed on daily wage basis are entitled to same wages as permanent employees for doing identical work. Whether the work done by the applicants are identical as the work done by regular Typists is a point in dispute here. The stand taken by the respondents is that the applicants were engaged from time to time to cope up with the increased load of work. Their engagement was not against any vacancy and their work was of casual nature. In para 4 of the rejoinder affidavit it has been admitted by the applicants that they were engaged as and when required. The engagements were in broken spells. The learned counsel for the applicants brought to our notice O.M. No. 49014/2/86-Estt(C), dated 7.6.1988 containing policy guidelines regarding recruitment of casual workers and persons on daily wages. Paras (iv) & (v) of this O.M., which are relevant, are as follows :-

> "(iv) Where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day.
>
> (v) In cases where the work done by a casual worker is different from the work done by a regular employee, the casual worker may be paid only the minimum wages notified by the Ministry of Labour or the State Government/Union Territory Administration, whichever is higher, as per the Minimum Wages Act,1948. However, if a Department is already paying daily wages at a higher rate, the practice could be continued with the approval of its Financial Adviser."

8. The learned counsel for the respondents argued that these instructions are applicable only in the case of class IV employees and workers and not to Group 'C' posts and that the

daily wages was paid keeping in view the provisions in para (v) above. He also contended that the work done by the casual Typist was not the same as that of regular Typist. Apparently, the instructions have been given keeping in view the casual workers working in different Departments and not persons working temporarily or on ad hoc basis in Group 'C' posts. We are inclined to agree with the learned counsel for the respondents that in cases not coming under para (iv) the minimum wages should be as per the Minimum Wages Act,1948, as certified by local authorities.

9. The last point urged by the learned counsel for the applicants was for regularisation. Admittedly, the applicants were not issued any appointment order nor was there any termination order. The respondents state that no order were given as the services of the applicants were engaged for casual nature of work. It is also admitted that the posts are Group 'C' posts and are within the purview of the SSC. It is not the case of the applicants that they were selected by the SSC. Their plea that the permission of the SSC should have been obtained to appoint them on regular basis, in our view would be stressing matters too far. The objective of bringing the posts within the purview of the SSC is that the vacancies are notified in News Papers for wide publicity so as to enable all eligible candidates to appear for the said examination and those meritorious are selected and names of such selected persons are sent to the Departments depending on the vacancies notified. Even candidates appointed on temporary/ad hoc basis have to go through this channel of appearing for the competitive examination held by the SSC and only when they are successful in the said examination they have a right for regularisation. The applicants in this case were not even appointed against regular or temporary vacancies. They were only casual Typists and they have not come through any selection in competitive examination, though selections were made by the SSC during this period, as such their claim for regularisation is devoid of any merit.

10. For the aforesaid reasons we consider that the application must fail. It is accordingly dismissed without any order as to costs.

MEMBER (A). VICE-CHAIRMAN.

Dated: April 23 ,1990.

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