

Central Administrative Tribunal, Lucknow Bench,

Lucknow

T.A. No. 2 of 2009

This the 26th day of May, 2010

Hon'ble Dr. A.K. Mishra, Member(A)

Rahul Deo, Aged about 33 years, S/o Sri Ram Lakhan Sharma, R/o House No. 1290/14, Behind Feroz Gandhi, Indira Nagar, Rae-Bareilly

.....Applicant

By Advocate: Sri R.C. Singh.

Versus

1. Bharat Sanchar Nigam Limited through its Chief Managing Director, New Delhi.
2. Chief General Manager, Telecommunication, Bharat Sanchar Nigam Limited East Zone, Lucknow.
3. District Manager Telecommunication, Bharat Sanchar Nigam Limited, Rae-Bareilly.
4. Divisional Engineer (Admn), Bharat Sanchar Nigam Limited, Rae-Bareilly.
5. Sub Divisional Engineer (Planning), Telecommunication, Bharat Sanchar Nigam Limited, Rae-Bareilly.

.....Respondents

By Advocate: Sri G.S. Sikarwar

ORDER

This Transfer Application has come from High Court in respect of petition of the applicant seeking a direction in the nature of certiorari quashing the orders dated 31.10.2003 of respondent no.3 and 4 and praying for a direction to re-engage the applicant on same terms and conditions on which he was engaged earlier and permit him to join duties and further to pay him salary/wages regularly every month.

2. The applicant was orally appointed on 6.11.1998 as part time Steno-cum-Typist-cum-Computer on payment of consolidated salary of Rs. 2500/- per month. He commenced his work on the aforesaid

job on 25.11.1998. He alleges that after making a representation to respondent no.2 for regularization, his services were orally terminated by respondent no.3 on 3.8.2001. He filed Writ petition no. 8363 of 2001 in High Court on 3.10.2001, which was dismissed on the ground of availability of alternative remedy. Thereafter, he filed O.A. no. 710 of 2001 before this Tribunal and respondents were directed on 25.7.2003 to re-engage the applicant if 7 others, who were engaged after him, were still continuing. The applicant made a representation on 29.9.2003 alongwith a copy of judgment dated 25.7.2003. His representation was rejected by the respondent authority in the impugned order dated 31.10.2003 which says that as no-one out of seven mentioned in O.A. no. 710 of 2001 was working in the department on regular payment of salary/wages, therefore, it was not possible to re-engage the applicant; hence this Application.

3. At the time of hearing, the learned counsel for the applicant pleads that the representation of the applicant was rejected without taking into consideration the policy instructions of the government relating to conferment of temporary status of casual employees and subsequent regularization. In this connection, he drew my attention to the policy instructions of Telecom department of Government of India, which have been annexed to the Supplementary affidavit filed by the applicant. According to Government instructions, even casual workers working for four hours were also eligible to get temporary status and this circular had come into vogue prior to oral termination of the applicant. Since no test was held, it could not be claimed by the respondents that the applicant was unsuitable for the job.

4. He placed reliance on the judgment of High Court in Writ petition no. 4271 of 2007 in which action of respondent authorities in cancelling the regularization order of some of the employees under the pretext of judgment of Supreme Court in the celebrated Uma Devi's case was not sustained. On going through this judgment, I find that the facts of that case were different. In that case, some of the casual employees had already been regularized in pursuance of agreement between the Employees Federation and BSNL and since regularization had taken place pursuant to the specific policy decision, mechanical application of judgment of Uma Devi without considering the facts of the case was not appreciated by the High Court. In any case, that was about cancellation of regular appointment, which is not the case here.

5. The learned counsel also placed reliance on observations of Constitution Bench in the case of Secretary, State of Karnataka Vs. Uma Devi reported at 2006 (4) SCC 1. He drew my attention to paragraph 53 of this judgment, which says that if some illegally appointed employees continued in duly sanctioned vacant post for more than 10 years without intervention of order of any Court/Tribunal, regularization of their services could be considered on merits in the light of the principles enunciated by the Supreme Court particularly in that judgment. It also observed that any regularization, which was already made, but not sub-judice should not be re-opened on the basis of that judgment.

6. I fail to appreciate how these observations of the Constitutional Bench of Supreme Court can be of any help to the applicant. Admittedly, he had not worked as casual employee against a sanctioned post for more than 10 years. According to his own case, he was orally appointed and joined the post on 25.11.1998 and was terminated from service on 3.8.2001; therefore, on his own admission he does not come under the category of casual employee in whose favour observations were made in paragraph 53 of the aforesaid judgment of the Supreme Court.


7. The respondents have mentioned that none of 7 employees mentioned in O.A. no. 710 of 2001 was under their employment on a regular basis. Learned counsel for the applicant tried to argue that his prayer was not for employment on a regular basis, but for re-engagement on the same terms & conditions. The learned counsel for the respondents clarified that in reply to the averments made in Rejoinder Affidavit, the respondents have stated in their Supplementary Reply that none of 7 employees was engaged by the respondents as casual employee. But the work relating to that Section has been farmed out and managed by engaging contractor. According to him, non-engagement of regular worker in respect of some items work, which could be managed by the contractor, is a policy decision and could not be interfered with by the Court.

8. The learned counsel for the respondents further claims that there was no discrimination as none of seven employees mentioned in O.A. no. 710 of 2001 is now employed in the same terms & conditions

in which applicant was engaged earlier. Hence, the representation of the applicant was correctly dismissed in the impugned order. He further submits that there is no post against which the applicant could be adjusted, nor is there any policy anymore to engage such casual worker on part time basis.

9. By way of reply, the learned counsel for the applicant submits that the statement of respondents that there was no post available against which the applicant could be adjusted should be accepted with a pinch of salt in view of phenomenal increase in the work load of the Company.

10. From the discussions of rival contentions, it is clear that the applicant was not appointed on regular basis and had no right to hold the post. He had filed O.A. no. 710 of 2001 in which it was decided that in case 7 others were still continuing, the applicant should also be engaged on same terms and conditions on the ground that he was engaged prior to 7 others. The respondents have clearly stated that 7 others are not continuing in their employment as casual employees; therefore, they could not consider the representation of the applicant to be engaged as part time casual employee. It is a policy matter for the respondents-Company to farm out part of their work to other agencies. In this competitive world in which the respondent-Company has to face of fierce market competition unleashed by many other private telephone service providers, they have to adopt appropriate policy measures to survive in the market. The Constitution Bench decision in the case of Uma Devi (supra) had observed that the government agencies could not appoint employees which were in violation of principles of equality enshrined in Article 14 & 16 of Constitution of India. It says that the Court should not shut its eyes to persistent transgression of rules of regular recruitment. It further observed that the Court should not merely consider equity for handful of people who had approached the Court with a claim, while ignoring the equity for all the rest in the society seeking employment and expecting fair competition in the matter of public employment. It also observed that the Court should be careful in ensuring that they did not interfere unduly with the economic/financial arrangement of affairs of the State or its instrumentalities.



11. For the aforesaid considerations, it is difficult for me to grant the prayer of the applicant for a direction to the respondent-Company to engage the applicant.

12. In the result, O.A. fails and is accordingly dismissed.


(Dr. A.K. Mishra)
Member-A

Girish/-