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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 148/92

Transfar Application No:

DATE OF DECISION: 24.3.95

R.Gopalakrishnan and 30 others. Petitioner

Shri G.K. Masand Advocate for the Petitioners

Versus

Union of India and others Respondent

Shri V.G.Rege Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B.S. Hegde, Member (J)

The Hon'ble Shri P.P. Srivastava, Member (A)

1. To be referred to the Reporter or not ? ✓

2. Whether it needs to be circulated to other Benches of the Tribunal ?

(B.S. Hegde)
Member (J)

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No.148/92

R.Gopalakrishnan and 30 others. ... Applicants.

V/s.

Union of India, through the
General Manager,
Central Railway,
Bombay V.T. Bombay.

Finance Advisor and Chief
Accounts Officer,
Central Railway,
Bombay V.T. Bombay. ... Respondents.

CORAM: Hon'ble Shri B.S. Hegde, Member (J)

Hon'ble Shri P.P. Srivastava, Member (A)

Appearance:

Shri G.K. Masand, counsel
for the applicant.

Shri V.G. Rege, counsel
for the respondents.

JUDGEMENT Dated: 24.3.95

(Per Shri B.S. Hegde, Member (J))

This application is filed by the applicants for recovery from the respondents of difference in wages, leave salary, bonus etc. which they have made under Section 33 C(2) of the Industrial Disputes Act before the Central Government Industrial/ Labour Court. The applicants succeeded in their claim before the Labour Court vide its order dated 1.1.91 but the said orders of the Labour Court was set aside by the Tribunal by its order dated 27.6.91 in O.A. 261/91, there is no impugned order in this O.A.

...2...

gross amount of the pension and / or pensionary equivalent of other retirement benefits did not exceed pay before his retirement or Rs. 3000/- whichever was lower. It was further contended, that persuant to the scheme the re-employed employees are otherwise also entitled to equal pay for equal work in view of the decision of the Appex Court. Therefore, the respondents instead of acting as a Model employers have been taken advantage of the situation and appointed employees on contract basis with a view to deny to the employees concerned the benefits of the wages payable to regularly appointed employees including payments of salary in the regular pay scale. They state that they made representation, but the same was ignored. There is nothing to show on record that they made any such attempt.

4. In reply, the respondents have denied the contention raised by the applicants in this O.A. The learned counsel for the respondents, Shri V.G.Rege vehamently urged, that no existing right on which the applicants can found their claim and it is not open to them to claim parity with regular employees. They are governed by the contract between them and the Management which was reflected in their appointment letter. Further, he urged that the dues computed on this basis are admittedly received by the applicants. The reasons for which the engagements of the applicants were on account of the decision of the Supreme Court in D.S. Nakara's case and in view of the IVth Pay Commission, the work load of the respondents have increased temporarily in order to cope up with the work the applicants were taken on contract basis in terms and conditions prescribed in the said letter and as

2. The applicants have been working in the Central / Western Railway. After their retirement from service, the applicants were re-engaged in the accounts department of the Central Railway and the total period worked after their retirement comes to 2 to 3 years. They worked till 31.12.88.

3. The main thrust of arguments of the learned counsel for the applicants, is that they were re-engaged as Clerk Grade I / Junior Accounts Assistants in the pay scale of Rs. 330 - 560 (R) / Rs. 1200 - 2040(RP). Since the selection for filling up these posts had not taken place and Railway Administration was finding it very difficult to cope-up with the pending work, therefore the respondents were forced to take the services of the applicants and utilised by re-engaging them after their retirement. They were made to work for the full working hours of the office and in no way the performance of the work of the applicants was any way inferior to the work of regularly appointed employees. Neverthless, they were not paid the minimum of the pay scale of the post i.e. Rs.1200 - 2040. The applicants were appointed on daily wage rate of payment of Rs. 22.50 per day which was increased to Rs. 27/- per day with effect from 4.2.1987, thereby, they were denied the other service benefits such as Earned, Medical and Casual leave as well as the payment of Bonus, which were paid to all the regular employees. It was further contended, that they were re-employed as such they were governed by letter dated 31.3.59 issued by the Railway Board. By that scheme, the total amount of initial pay plus the

such normal rules and regulations which govern the same conditions and which are applicable to the Railway servants in active services till their retirement are not applicable to the cases of the applicants. Further, they contended that the applicants cannot be said to be similarly situated as the Regular Railway employees on the engagement to work in Railways after their retirement and they are totally a different class of people and as such from a different category / class. Therefore, the applicants are not at all entitled any relief under law and in fact they are estoped from claiming the amounts as prayed for by them.

5. Secondly, the amounts claimed by the applicants are in respect of and in relation to the years 1985 - 86 onwards from the date of engagements till the dates of termination of this engagements which occured in 1988 - 89. The present application is filed in the month of January 1992, therefore, in view of Section 21 of CAT Act, the application is grossly barred by time and further the applicants have not filed condonation application and hence it requires to be dismissed at the preliminary stage itself. Re-employment of retired Government employees is permissible only in the technical fields, and in view of the ban on recruitment Rules it had become necessary to over-come the difficulties in the speedy disposal of the work to engage retired Railway employees. In the instant case, the appointments were made by the General Manager, persuant to the directions of the Railway Board's letters dated 9.11.83 and 19.4.84 respectively and thus their appointments were not made in persuance of the scheme 1959.

of wages. In that event of the matter, they are estoped in seeking any further relief from the respondents. It is not in dispute, that the re-employment can be done only by the Government of India and not by respective General Managers. In the instant case, re-engagement of the applicants were made by the General Manager in persuance to the directions of the Railway Board and keeping in view of the exigency of work. It is clear that the Railway Board while conveying the sanction stated that the sanction was given for engagement of minimum number of retired Government employees on daily remuneration basis initially for a period of 6 months or till regularly selected employees are made available by the Railway Board whichever is earlier on the rates of daily wages specified in the letter. Therefore, the engagement of the applicant during the period 1985 - 1989 was in terms and conditions specified in the said letter and it is not persuant to the scheme of the Government of India, letter dated 31.3.1959. It is true, that the amount claimed are in respect of years 1985 - 86 onwards i.e. from the date of engagement till the date of termination, which was over in 1988-89. The present application is filed in January 1992. Keeping in view of Section 21 of CAT Act admittedly, the application is barred by time. It is not denied that the applicants have not filed application for condonation of delay and thus the facts are not disputed. Further, if it is to be treated as re-employment, normally such re-employment the employees would retire at the age of 60 or 62 whichever is earlier. However, on perusal of the record (Exhibit II) we notice that the applicants

(12)

6. In the rejoinder, the learned counsel for the applicants submitted, that if we are to interpret Exhibit III and IV together, the outer limit should be six months for such employment. Since the applicants have worked for more than six months it cannot be treated as re-engagement and hence sub-Rule 4(d) of the Central Civil Services (Fixation of pay of Re-employed Pensioners) order 1986 which came into force on 21.1.87 is not applicable to the present case as the applicants were worked for more than six months. The provision for engagement of a minimum number of retired Railway Employees on daily remuneration basis initially for six months or till regularly selected candidates are made available by Railway Recruitment Board whichever is earlier.

7. We have heard the arguments of the learned counsel for the parties and perused the pleadings. The only question for consideration is whether there is any merit or substance in the claim preferred by the applicant in this O.A. Admittedly, there is no impugned order in this case. Secondly, the appointment of the applicants were made in persuance of the respondents letter dated 31.5.85 (Exhibit I). The terms and conditions have been specifically mentioned therein. This offer was made persuant to their applications and it was open to the applicants either to agree to the aforesaid conditions or to reject it. The applicants having accepted the offer without any protest cannot agitate the matter on the ground of parity

(14)

have continued in service beyond the age of 62, that itself indicates that their continuity cannot be treated as re-employment which in fact worked more than the stipulated period of 62 years.

8. Earlier the question arose for consideration is whether the procedure adopted by the applicants in resorting to the Central Government Industrial Tribunal in filing an application under Section 33 C(2) of the Industrial Dispute Act is justifiable. In fact, the interim relief of Industrial Tribunal dated 1.1.91 was set aside by this Tribunal vide its order dated 27.6.91 in O.A. 261/91. This Tribunal has observed that the learned counsel for the Respondents, Shri G.K. Masand raised two preliminary objections, regarding maintainability of the application directed against the award of the Labour Court which according to him is final on the ground that the Tribunal cannot sit in appeal over award given by Labour Court even in exercise of Article 226 of the Constitution of India and secondly the Union of India not being a 'person' or aggrieved person within the meaning of Section 19 of the A.T. Act it has no right to invoke the jurisdiction of the Tribunal. Both these contentions have been rejected by the Tribunal.

9. The jurisdiction of the Labour Court even otherwise under Section 33C(2) of the Industrial Disputes Act is limited. Section 33 C(2) of the Industrial Disputes Act deals with the recovery of the amount which has already been assertained. Similarly Section 33 C(2) envisages, where any workman is entitled to secure from the employer any money or any benefit which is capable of being computed in terms of money. If any question

...8..

(13)

abates as to the amount of money due or the amount at which the benefit should be computed, the question has to be decided by the Labour Court which may appoint a Commissioner to submit a report and the decision of the Labour Court has to be sent to the Government. Therefore, unless the right to such claim is first adjudicated on reference under Section 10 of the Act, the claimant's application under Section 33 C(2) is not maintainable as the scope of Section 33 C(2) of the Industrial Dispute Act is more or less in the nature of execution, but not the question on the direction.

10. It is an admitted fact that the workmen claims under Section 33 C(2) cannot be disposed of, unless the right to such claim is first adjudicated on a reference under Section 10(1) such application made by the applicant under Section 33 C (2) is not maintainable. Accordingly the Tribunal held that the interim award passed by the Industrial Tribunal is without jurisdiction is a nullity in the eye of law. The defect of jurisdiction whether it is pecuniary or territorial or whether it is in respect of the subject matter of the action strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties. Therefore, they held that the order of the Labour Court being in excess of its jurisdiction and a clear encroachment upon the jurisdiction of Administrative Tribunal and otherwise also manifestly illegal. Persuant to this order the Industrial Tribunal vide its order dated 9.10.91 held that " this Court has no jurisdiction to entertain these applications under Section 33 C(2) of the

Industrial Disputes Act and allowed the Management's applications on that basis. Accordingly, these applications are disposed of without any orders for want of jurisdiction." It is incorrect on the part of the applicants to state that they were permitted to file fresh application to agitate the matter again.

11. The learned counsel for the applicant in support of his contention relied upon the decision of the Supreme Court in the case of Central Inland Water Transport Corpn. Ltd. V/s. Brogo Nath 1986 SC 1571. Wherein the Supreme Court held that:

> " This relates to service contract with Rule empowering Corporation to terminate services of permanent employees without giving any reason and by giving notice or pay in lieu of notice. It is void under Section 23 of Contract Act as being opposed to public policy. It is also ultra vires and violative of the Article 14 of the Constitution. It is also observed that Rule 9 is void under Section 23 of the Contract Act as being opposed to public policy and is also ultra vires under Article 14 of the Constitution to the extent that it confers upon the Corporation the right to terminate the employment of the permanent employee by giving him three months notice. "

The learned counsel for the applicant has also relied upon the decision of the Supreme Court in the case of Daily rated Casual Labour Employee under P &T Dept. V/s. Union of India 1987 SC 2342. In that case the Supreme Court held that :

> " The state cannot deny to casual labourers at least the minimum pay

(17)

in the pay scales of regularly employed workmen even though the Government may not be compelled to extend all the benefits enjoyed by regularly recruited employees. Such denial amounts to exploitation of labour. The Government cannot take advantage of its dominant position and compel any worker to work even as a casual labourer on starving wages."

With due respect to the learned counsel for the applicant, the facts and circumstances in the above mentioned cases are distinguishable from the facts and circumstances of the present case. Admittedly the applicants are retired employees and they were re-engaged with specific terms and conditions. Therefore, the ratio laid down in those cases is not applicable to the facts of this case.

12. For the reasons stated above, we see no merit in the O.A. This O.A. is required to be dismissed both on the point of limitation as well as on merits. As stated earlier, the dues of the applicants were already paid, there is nothing pending to be paid to the applicants. In the circumstances, we are of the view, that the application is devoid of merit and the same is liable to be dismissed. Accordingly, we dismiss the O.A. but no order as to costs.

(P.P. Srivastava)
Member (A)

(B.S.Hegde)
Member (J)

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