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CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No.O.A.215 of 2010

Date of order : 8.3.16

Present : Hon'ble Mrs. Bidisha Banerjee, Judicial Member

Hon'ble Mr. P.K. Basu, Administrative Member

KAMAL KRISHNA HALDER

VS.

UNION OF INDIA & ORS.
(B.S.N.L.)

For the applicant : Mr.P.C. Das, counsel

For the respondents : Mr. A.K. Gupta, counsel
Ms. M. Bhattacharyya, counsel

ORDER

Per Mr. P.K. Basu, A.M.

The applicant states that he was engaged as Casual Labour in the office of the Respondent No.5 on 03.09.1993. It is stated that the Department of Telecommunications introduced a scheme to absorb all casual labours on temporary basis/regularisation provided (1) they were currently employed as casual labour on 01.08.1998 and (2) they were appointed as casual labour prior to 01.08.1998 and have completed one year as casual labour with the minimum 240 days' service. The applicant claimed that he satisfied these conditions.

2. Per contra the respondents state the applicant is not eligible under the scheme as he does not satisfy the condition of completing 240 days in a year and also that he was not engaged as a casual worker at all and was actually working as contract labour engaged by a contractor and, therefore, there was no employer- employee relationship between the respondents and the applicants. The respondents rest their claim on the following grounds:-

A statement about the applicant indicating the days of work yearwise which is as follows:-

Year	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct.	Nov	Dec.	Total
1993	-	-	-	-	-	-	-	21	22	21	21	23	108.days*
1994	21	20	22	19	21	21	21	-	-	-	-	-	145days*
1995	-	-	-	-	-	-	-	-	-	-	20	29	49days
1996	23	23	-	20	-	20	-	-	-	-	-	-	86 days
1997	21	20	21	20	21	21	22	20	23	23	Not legible	21	146-252 days
1998	21	20	20	20	20	25	23	20	22	19	21	21	250 days
1999	19	21	21	16	22	-	-	-	-	-	-	-	99 days

*continuous 253 days

The applicant's claim is that in the year 1993 and 1994 put together starting from August, 1993 to July, 1994 he has completed 253 days and thus he satisfies one of the conditions of the aforesaid Scheme. He has also submitted the copies of authorization for payment on daily wages starting from August, 1993 onwards. However, we find that in all these documents it is mentioned that the applicant was engaged purely on "contract basis". Such internal notings indicating his entitlement to get paid on daily rate had been submitted upto August, 1994.

3. The Id. counsel for the applicant points out that vide letter dated 07.05.1999 (page 28, Annexure A-4) 285 casual labours were granted temporary status in which he was left out. It is further stated that vide letter dated 29.07.02 the Deputy Area Manager/ North, Calcutta Telephones had send a letter to the Assistant General Manager, Calcutta Telephones regarding regularisation of left out cases of casual labours of north area and in this letter the name of the applicant along with ten others have been forwarded. However, it is stated in this letter as follows:-

"They are still working from casual labour to contract labour as per G.M.(not legible) direction and thereafter from contract labourers to job contract in North area as per departmental order issued from time to time."

We may note here that they are mentioned as casual labour to contract labour. This is one bone of contention between the applicant and the respondents as the respondents claim that this proves beyond doubt that they were not appointed as casual labours but appointed through a contractor and, therefore, no employer-employee relationship exists between the respondents and the applicants.

4. A writ petition has been filed by the applicant bearing No.W.P. 8437(W)/04 and this was dismissed vide order dated 17.05.2004 directing the authority to pass a reasoned order after giving a reasonable opportunity of hearing to the petitioner.

5. In compliance, the respondents passed order dated 13.09.2004 in which the request of the applicant to confer him temporary status and or regularisation was rejected on the ground that the petitioner had not rendered continuous service of at least one year. Moreover, the order also indicates that a similar scheme of 1993 issued by the DOP & T was not applicable to the casual labours in Railways, Department of Telecom and Department of Post who already have their own scheme.

6. The applicant further states that vide memorandum dated 26.09.2000 certain casual labours who joined the department on engagement after the applicant i.e. after 01.08.1993 namely, Sri Rabindra Nath Mukherjee, Sri Biswajit Das, Sri Sanjib Banerjee, Sri Monotosh Shit, Sri Bhabotosh Halder, Sri Rajendra Kumar who joined on initial engagement on 05.01.1997, 01.05.1997, 01.10.1994, 01.08.1995, 01.03.1997 and 07.06.1997 respectively have been granted temporary status and another casual employe, namely, Sri Jadhupati Sarkar who also joined after the applicant as casual employee on 01.04.1995 was also granted temporary status, as such, the denial of such status to the applicant was totally arbitrary and discriminatory. It is also stated by the Id. counsel for the applicant that the respondents are completely silent on their reply to para 4.15 of the O.A. The applicants have, therefore, sought the following reliefs in this O.A.:-

- "a) A writ in the nature of Mandamus directing the respondents especially the Respondent Nos.5 and 6 to cancel, rescind and/or set aside the said order dated 13.9.2004 and thereby regularize his service;
- b) Direct the respondent authority to regularize the appointment of the applicant in terms of the department circular and instruction."

7. Respondent No.1 D.O.T filed an affidavit stating that all the establishment and staff matters which were earlier dealt by the Department of Telecommunications are now being dealt by BSNL after its creation on 30.09.2000. and all establishment and staff matters etc. were transferred to them w.e.f. 01.10.2000. In this light the Id. counsel for the respondents No.2 is supposed to file a reply.

8. The respondent No.2 in their reply have categorically denied that the applicant was a casual worker and it is stated that the applicant was engaged as casual labour from August,

1993 to July, 1997 in different spells for short period and as and when required for seasonal work and payment was made by the department, but was thereafter disengaged. However, the applicant started working as job contract labour through a contractor thereafter off and on.

9. It is stated that based on the judgment of the Hon'ble High Court in W.P. 8437(W)/04 dated 17.05.2004 a reasoned order has been issued on 13.09.2004 in this regard and no further action lies with the respondents.

10. As regards conferment of temporary status to 285 eligible casual workers vide order dated 07.05.1999, it is stated that these workers were actually casual labours and satisfied all the criteria of the 1989 Scheme and the applicant who was not a casual worker as on 01.08.1998 after July, 1997, is not entitled to such benefit.

11. The Id. counsel for the respondents contended that the applicant had filed two writ petitions one, W.P.21379(w) of 2000 which was withdrawn and later the Writ Petition No.8437/2004 in which the court passed the judgment dated 17.05.2004. It is contended that without obtaining the leave from the Hon'ble High Court fresh writ petition could not have been filed. Moreover, on the same cause of action the second writ or any other application is not maintainable and is liable to be dismissed. In this regard the Id. counsel relies on the judgment of the Hon'ble Apex Court in **Sarguja Transport Services Vs. S.T.A. Tribunal, Gwalior [AIR 1987 SC 88]**.

12. Another preliminary objection has been made that the applicant ought to have made his grievance before the Chief Labour Commissioner instead of this Tribunal as special remedy was available to him under Section 2A of the Industrial Disputes Act, 1947 to raise his grievances before the appropriate forum.

13. The Id. counsel for the respondents also states that the Hon'ble Apex Court in **Secretary, State of Karnataka & Ors. vs. Uma Devi & Ors. [AIR 2006 SC 1806]** has held that public employment as appointment de hors due process of selection envisaged by constitutional scheme and confers no right on employee for regularisation on daily wages.

14. The Id. counsel for the respondents also relies on the following judgments:-

(a) **General Manager, Telecom Vs. M. Krishnan & Anr.[Civil Appeal No.7687/2004]**

(b) **Unreported judgment of Hon'ble High Court, Calcutta in F.M.A.No.593/2013, M.A.T.No.475/2012 [Management of Calcutta Telephones vs. Sri Debnath Chakraborty & Ors.;**

(c) **Unreported judgment of Hon'ble High Court, Calcutta in F.M.A.No.1514/2011, B.S.N.L. Vs. Central Govt. Industrial Tribunal, Kolkata & Ors.;**

- (d) Unreported judgment of Hon'ble High Court, Calcutta in W.P.No.17620(W) of 2003(Ashish Mondal Vs. The Chairman & Managing Director, BSNL & Ors.);
- (e) Secretary, State of Karnataka & Ors. Vs. Uma Devi & Ors.[AIR 2006 Supreme Court 1806]
- (f) Karnataka State Road Transport Corporation & Another Vs. S.G. Kotturappa & Another

15. Heard the Id. counsel for the parties and perused the pleadings/written note.

16. We do not agree with the first contention of the Id. counsel for the respondents that this O.A. is not maintainable in view of the judgment in **Sarguja Transport Services Vs. S.T.A. Tribunal, Gwalior (supra)**. There was a specific direction of the Hon'ble High Court in Writ Petition No.8437(W)/2004. In its order dated 17.05.2004, while dismissing the petition the Hon'ble High Court had given a specific direction to the respondents to pass a reasoned order which is dated 13.09.2004. Therefore, this objection has to be overruled. As regards the other objection of the appropriate forum being the Chief Labour Commissioner. It is to be noted that the jurisdiction of this Tribunal is not debarred and therefore, this matter can well be heard by this Tribunal. In any case, this objections cannot be raised after six years of filing of the O.A. The question here is purely of facts. The letter dated 29.07.2002 (Annexure A-5) clearly states that the applicant along with other ten were working as "casual labour to contract labour" and therefore, this proves that they were actually not casual labours being paid by the respondents directly, but through a contractor. In fact, the applicant has not been able to show any document that establishes that he has been paid by the respondents beyond August, 1994. The Id. counsel for the respondents has also pointed out that from the paid vouchers annexed by the applicant it demonstrated that payment was directly made to the applicant till 1993-94 only. Clearly therefore, the applicant does not satisfy the condition that he was employed as casual labour as on 01.08.2008 and he does not meet the conditions of the Scheme of 1989 and, therefore, cannot claim benefits under that scheme. The Id. counsel for the respondents had also argued that in **Uma Devi(supra)**, the Hon'ble Supreme Court held that employment on daily wages does not confer any right of regularisation. In this case, however, the fact is that the respondents have formulated a scheme for regularisation of casual labours and the issue is whether the applicant qualifies under that scheme or not.

17. The respondents' counsel also drew our attention to the judgment of the Hon'ble Apex Court in **Union of India & Another vs. Kartick Chandra Mondal and Another [(2010)2 Supreme Court Cases 422]** in which the Hon'ble Apex Court held that "illegality or irregularity in appointment cannot be further perpetuated by regularising services of respondents".

18. From the facts of the case it would be clear that the applicant was not a casual labour on 01.08.2008 and in fact, he was not continued after July, 1997 and thereafter worked from time to time through a contractor and hence he is not eligible for the benefits under the scheme. Accordingly, the O.A. is dismissed. There shall be no order as to cost.

~~(P.K. BASU)~~
Administrative Member

~~(B. BANERJEE)~~
Judicial Member

s.b