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Court : Patna

Decided On : Feb-04-2003

Judge : Ravi S. Dhavan, C.J. and R.N. Prasad, J.

Acts : Service Law

Appeal No. : C.W.J.C. Nos. 8362 of 2000 and 1368 of 2001

Appellant : Union of India (Uoi) and ors.

Respondent : Manoj Kumar Pathak and ors.

Advocate for Def. : Amber Nath Banerjee, Adv.

Advocate for Pet/Ap. : Ajay Kumar Tripathy, Adv.

Disposition : Petition dismissed

Prior history : Ravi S. Dhavan, C.J. and R.N. Prasad, J. 1. The Court has before it two writ petitions. Both the writ petitions have been filed by the Union of India, Ministry of Information and Broadcasting. The writ petitions are against two different orders of the Central Administrative Tribunal. 2. CWJC No. 1368 of 2001 : Union of India v. The Central Administrative Tribunal Patna, arises out of an order of the Tribunal dated 28 July 2000 which itself arose out of the Original Application No. 606 of

Judgement :

Ravi S. Dhavan, C.J. and R.N. Prasad, J.

1. The Court has before it two writ petitions. Both the writ petitions have been filed by the Union of India, Ministry of Information and Broadcasting. The writ petitions are against two different orders of the Central Administrative Tribunal.

2. CWJC No. 1368 of 2001 : Union of India v. The Central Administrative Tribunal

Patna, arises out of an order of the Tribunal dated 28 July 2000 which itself arose out of the Original Application No. 606 of 1998 between Sweta Ghosh and eight others v. The Union of India. These applications before the Tribunal were working as casual artists engaged by Broadcasting Division of Ministry of Information and Broadcasting at Patna since 1993. The Tribunal has directed the Union of India that it ought to draw up a scheme in terms of its earlier order and the applicants before the Tribunal should be considered within the scheme for the regularisation of their services against appropriate vacant posts as per qualifications as and when they become available. The operative portion of the Tribunal's orders is in paragraph 12.

3. The Union of India challenged the order of the Tribunal by which there was an obligation upon it to draw up a scheme. Thus, CWJC No. 1368 of 2001 was filed. During the pendency of the writ petition an interlocutory application was filed by the Union of India that it be permitted to withdraw the writ petition as the Union of India has conformed to the order of the Tribunal by formulating a scheme for considering casual/empanelled artists for appointment as regular artist staff in song and drama division in terms of the order delivered by the Tribunal. The scheme is appended as Annexure '4' to the I.A. No. 4160 of 2002.

4. Normally a request of a party to withdraw its cause is permitted more so when it says that it has conformed to the order of the inferior tribunal or a quasi judicial tribunal or a Court below. In the circumstances, isolated to CWJC No. 1368 of 2001, the Court would have allowed the prayer for withdrawing the petition.

5. But before the Court there is a peculiar situation.

6. The Union of India had filed another petition. The context of the issues were virtually the same. This writ petition also challenged the order of the Central Administrative Tribunal dated 3 December, 1999 on proceedings recorded and registered as O.A. No. 541 of 1997; Manoj Kumar Pathak and 13 Ors. v. The Union of India and Ors. These applicants were also of casual artists working as announcer-cum-compere at the All India Radio. Circumstances of engagement were not different from those casual artists as in the other petition. In the circumstances, the Court declined the prayer for withdrawing the writ petition in which a scheme had been formulated, (CWJC No. 1368 of 2001) for the simple reason that while a scheme had been made for a casual artists in the song and drama division no scheme has been forthcoming for the other casual artists working as announcer-cum-compere at the All India Radio. Both staff artists were casual and were part of the staff of Ministry of Information and Broadcasting.

7. Fortunately, the standing Counsel, Central Government dealing with the two cases were fair enough that they would take instructions and convey to the Central Government that if a scheme has been framed for one set of staff artists then it ought to be considered for another set of staff artists as all are of Ministry of Information and Broadcasting. It is difficult for the Court to tell one set of the staff of the same department that you have a favourable scheme for considering regularisation and tell another batch of staff artists that you do not have the benefit of a scheme as proposed for their other colleagues.

8. It is not denied by any party, whatever be the conditions inviting the staff artist in their capacity as announcer/performer/producer or whatever may be the assignment when it comes to a breach of a contract even if a situation is involuntary to a casual artist the Union of India does not leave these casual artists except by seeking liquidated damages. This is condition 9 of their contract. Thus, should casual staff and artists not turn up, the Union of India considers the matter in commercial terms and given an occasion would sue these artists for the breach of the conditions of the contract and to pay liquidated damages which amount is a sum equal to the sum they would have received for appearances and performances. This is in addition to the costs to

All India Radio for providing a deputy and any other costs, damages and expenses incurred by All India Radio by reason of default of the artist. Thus, the entry of these casual staff artist and the exit of them, in a situation where they fail to appear, there is a penalty for default. May be it is a Corporation now. In the circumstances the Court fails to understand with what measure of equity regularisation will be granted to one set and denied to others.

9. This Court leaves this question unanswered. Simply, the writ petition has been filed against the decision of the Central Administrative Tribunal. This Court certifies on a writ of certiorari that the Tribunal has committed no error to occasion interference by High Court. The decision of the Tribunal is certified to be correct.

10. The situation of the anomaly for regularisation of one set of artist and denied to another, is now a matter of record. This is violative of the equality clause in services, Article 16. The Court expects that this will be remedied in terms of equality and it will be a common programme on a scheme which is standardised for all similarly situated staff artists.

11. Both petitions are dismissed.

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