

Anil Kumar Sheel Vs. Asst. Labour Commissioner and Anr.

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Court : Delhi

Decided On : Dec-15-2014

Judge : Suresh Kait

Appellant : Anil Kumar Sheel

Respondent : Asst. Labour Commissioner and Anr.

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on: December 15, 2014 + W.P.(C) 7317/2014 ANIL KUMAR SHEEL Represented by: Petitioner Mr. Rajiv Agarwal and Mr. Sachin Sharma, Advocates. ASST. LABOUR COMMISSIONER & ANR. Respondents Represented by: Mr.V.K.Tandon and Mr. Yogesh Saini, Advocates for Respondent No.1. Mr. Parvinder Chauhan, Advocate for Respondent No.2. CORAM: HONBLE MR. JUSTICE SURESH KAIT SURESH KAIT, J.

1. Vide the present petition, the petitioner seeks directions thereby directing the respondent No.2 to implement the award dated 20.09.2006 passed in I.D. No.41/06 (Old I.D. No.44/01) by the Industrial Tribunal No.I, New Delhi.

2. Mr. Rajiv Agarwal, learned counsel appearing on behalf of the petitioner submitted that petitioner joined the respondent No.2 as LDC w.e.f. 20.10.1995 on monthly paid/muster roll worker and accordingly paid wages as fixed and revised from time to time under the Minimum Wages Act, 1948. The services of the

petitioner were terminated in the month of June, 1997. Being aggrieved, the petitioner raised an industrial dispute, which was decided vide award dated 20.09.2006, whereby, the petitioner was held entitled to reinstatement in service with effect from June, 1997, with 50% of the back wages as per the Minimum Wages Act, 1948, with all consequential benefits and continuity of service. However, the said award has not been implemented in its letter and spirit.

3. Accordingly, the petitioner made a legal demand notice dated 26.01.2007 for implementation of the award. Neither any reply was sent nor award was implemented by the respondent No.2. Thereafter, the petitioner made complaint dated 27.12.2012 under Section 2(ra) read with Item No.13 of Schedule V of the Industrial Disputes Act, 1947, (for short the Act), punishable under Section 25U of the Act with the respondent No.1. However, till date neither the award has been implemented nor the respondent No.2 has filed any reply to the aforesaid complaint though a considerable period has already been lapsed since passing of the said award dated 20.09.2006.

4. Mr.Agarwal further submitted that the respondent No.1 has failed to appreciate that this Court in case of Vinay Kumar Vs. Govt. of NCT, 1996 (I) LLJ Page 698, held that failure to implement the award obliges the Government to decide a complaint filed by a workman under the Industrial Disputes Act.

5. Learned counsel for the petitioner has relied upon a judgment of this Court in the case of Municipal Corporation of Delhi Vs. Gauri Shankar and Ors. 1999 V AD (Delhi), 905, wherein it was held that there is a scheme of regularization according to which such casual workers are to be regularized as per their seniority as and when post becomes available.

6. Mr. Agarwal submitted that the respondent admitted that there is a phased manner programme policy of regularization with the Management, whereby the daily workers are being regularized as per their seniority. This fact has been recorded in Para 19 of the impugned award. Accordingly, respondent/Management the to learned consider Tribunal the directed case of the the petitioner/workman for regularization with effect from the date when his counterparts, appointed in the year 1995, were regularized.

7. On the other hand, Mr. Parvinder Chauhan, learned counsel appearing on behalf of the respondent No.2 submitted that as far as the regularization of the petitioner to the post of LDC is concerned, pursuant to the award, the petitioner was to be considered in terms of the policy for regularization of the work charged, staff and daily wage LDCs, which was approved by the Additional Commissioner of the respondent No.2 vide decision No.5366/GW/Cop. Dated 02.07.1996. In terms of the said decision, subject to other conditions of the Recruitment Rules, the candidate is required to qualify the departmental test.

8. Further submitted that as per the Recruitment Rules, for the post of LDC, a candidate should have passed Matriculation examination with aggregate 60% marks or equivalent from the recognized Board or should have passed Graduation, at least with 2nd Division, from a recognized University or equivalent and should know typing at the speed of 30 WPM in English or 25 WPM in Hindi. However, the petitioner had obtained less than 60% marks in the Matriculation Exam and has not completed his Graduation. Hence, the petitioner stood disqualified from being considered for regularization as he did not meet the eligibility criteria as per the Recruitment Rules. However, with effect from 20.09.2013, the Recruitment Rules for the post of LDC stands modified and the petitioner, now, qualifies the educational qualification in as much as he has passed 12th Class. In view of the above, as and when, a departmental test is conducted, the petitioner shall be allowed to appear in the exam and the regularization of the petitioner would be subject to success in the said exam.

9. To strengthen his case, learned counsel for the respondent No.2 has relied upon a case of State of Orissa & Ors. Vs. Prasana Kumar Sahoo, (2007) 15 SCC129 wherein the Apex Court held as under:

14. The circular letter dated 21.3.1995 even does not purport to lay a policy decision relating to regularisation or absorption of the census employees. It only provided for relaxation of age. Such relaxation was also subject to strict compliance of the recruitment rules. If by reason of some misconception or otherwise, the Tribunal had granted some relief in favour of some census employees, the same by itself, in our opinion, would not confer any legal right

upon a person for being absorbed in State services without compliance of the mandatory provisions of the recruitment rules and the constitutional scheme adumbrated under Article 16 of the Constitution of India.

10. Learned counsel submitted that if by reason of some misconception, the learned Tribunal had granted some relief in favour of the petitioner, the same by itself would not confer any legal right for being regularization the petitioner without complying with the mandatory provisions of the Recruitment Rules.

11. Learned counsel further submitted that the award had been implemented qua the reinstatement and payment of back wages and further steps are underway for regularization.

12. I have heard the learned counsel for the parties.

13. Vide the award dated 20.09.2006, the learned Industrial Tribunal directed the respondent No.2 to consider the case of the petitioner/workman for regularization with effect from the date when his counter-parts, appointed in the year 1995, were regularised. However, the petitioner has failed to establish that any of the workman, who was appointed in the year 1995, has been regularized without observing the Recruitment Rules, as have been relied upon by the respondents. Moreover, learned counsel for the respondent No.2 has stated that as and when the similarly situated workmen will be regularized, the case of the petitioner shall also be considered for the same. Therefore, I am not inclined to pass any directions thereto.

14. In view of the facts recorded above, the instant petition is dismissed with no order as to costs. Pending CM is dismissed as infructuous. SURESH KAIT (JUDGE) DECEMBER15 2014 Sb/jg

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