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Court : Delhi

Decided On : Sep-27-1999

Reported in : 1999VIAD(Delhi)1; 82(1999)DLT196

Judge : A.K. Sikri, J.

Acts : Constitution of India, 1950 - Article 226; Industrial Disputes Act, 1947

Appeal No. : CWP. No. 3030/97 & CM. 5944/97

Appellant : Ramesh Chand

Respondent : Union of India and Others

Advocate for Def. : Mr. Varun Goswami, Advocate

Advocate for Pet/Ap. : Ms. Asha Jain Madan Advocat

Judgement :
ORDER

A.K. Sikri, J.

1. Petition was engaged as a Peon-cum-Messenger on 21.1.1993 by Respondent No. 2-Hindustan Aeronautics Ltd. (hereinafter to be referred as 'HAL'). He was admittedly appointed as a daily wager. Petitioner submits that he made various representations to Respondent No. 2 for his appointment on regular basis. He

further submits that even his superior officers including Dy. General Manager of Respondent No. 2 had recommended the Corporate office at Bangalore for appointing the petitioner on regular basis and although there was regular vacancy of the Peon-cum-Messenger, petitioner was not regularised and in stead his services were terminated on 4.7.1997. At the time of termination of his services, he was getting Rs. 87/- per day. He says that he is fully eligible to be appointed to the post of Peoncum-Messenger on regular basis and this writ petition is filed challenging his disengagement/termination w.e.f. 4.7.1997 as illegal and seeking direction that he should be declared to be regular employee of the Respondent No. 2. He has also claimed reinstatement with all consequential benefits including back wages and continuity of service.

2. In support of petitioner's case, counsel for the petitioner referred to Office Note dated 25.6.95 as per which Dy. General Manager has mentioned that although the Office is in operation for more than six years, no messenger has so far been posted and it is further mentioned that petitioner is appointed as Daily Wage Worker who is doing necessary job and it is recommended that he should be recruited as permanent employee against Scheduled Caste quota. Similar request is made vide telegram dated 14.9.95 from the Delhi Office to Bangalore Corporate Office requesting to grant permanent employee/casual worker status to the petitioner. Petitioner has also relied upon letter dated 10.11.95 from Delhi Office to Corporate Office, Bangalore as per which Delhi Office has an authorised establishment of two messengers and one sweeper and one watch and ward guard. Reference is also made to Certificate dated 15.12.95 issued by. Dy. General Manager, Delhi office commending the work of the petitioner. On the basis of these documents and averments made in the petition, the petitioner argued that the post of Peon is available in Delhi Office of the Respondent and the petitioner is eligible for the said post and he already having worked for four years as the necessary experience. thereforee, petitioner should have been appointed on regular basis and in fact he is deemed to have been regularised. Accordingly, the services could not be terminated and the termination should be set-aside and he should be declared regular employee.

3. Respondents have filed the counter - affidavit refuting the averments made by the petitioner. Relying on these averments, counsel for the respondents argued that the Dy. General Manager, Delhi had no power or authority to make any appointment and, thereforee, engagement of the petitioner was without any authority. It was further contended that the petition raised disputed questions of facts, which could not be agitated in a petition under Article 226 of the Constitution of India. In any case, the petitioner had alternate efficacious remedy available to him under the provisions of Industrial Disputes Act. It was further contended that there was no question of automatic regularisation merely because the petitioner had worked on daily wage basis for certain period when he was engaged by the officer who was not the appointing authority. Counsel for the respond-ents relied upon the Personal Manual of the HAL to contend that Dy. GeneralManager was not the appointing authority. He further contended that the post of Peon on regular basis could be filled only as per the Recruitment Rules and after following proper procedure. Petitioner wanted establishment of his rights by way of this writ petition, although no such right existed in his favour.

4. I have perused the record and given my thoughtful consideration to the respective submissions made by both the parties.

5. Admitted facts are that petitioner was engaged on daily wage basis and before engaging him, neither advertisement was issued nor any procedure was followed in accordance with the Recruitment Rules, According to the Rules relating to the recruitment as contained in the Personal Manual, in fact, the correspondence replied upon by counsel for the petitioner shows that petitioner was working on daily wage basis and was not even treated as ad hoc employee. Requests for appointing him on permanent basis was made by Delhi Office to the Corporate Office but there is nothing on record to show that any reply was given to these communications or Corporate Office ever agreed to make him permanent. Thus, it cannot be said that patitioner would have acquired the right to become regular employee automatically merely because he worked for certain period. Counsel for the respondents has relied upon the following judgments to contend that the petitioner has no right to get his services regularised.

1. State of U.P. and others Vs . Ajay Kumar : (1997)ILLJ 1204 SC

2. Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. Vs . Devendra Kumar Jain and others : (1995)1SCC638

3. State of U.P. and others Vs . U. P. State Law Officers Association and others : [1994]1SCR348 .

4. All India Institute of Medical Science Employees Union & Ors. Vs . All India Institute of Medical Science & Ors. : (1999)IILLJ1184 Del .

5. Sanjeev Kumar Narula v. Union of India & Others 1995 (2) AISLG 307.

6. On the other hand counsel for the petitioner has relied upon the following judgments claiming regularisation :

1. Jacob M. Puthuparambil and others Vs . Kerala Water Authority and others : (1991)IILLJ65SC

2. H. C. Puttaswamy and Ors. Vs . The Hon'ble Chief Justice of Karnataka High Court, Bangalore & Ors. : AIR 1991 SC295 .

7. However, I am not dilating on this aspect any further because as discussed in the later part of judgment, I am going to hold that the appropriate remedy for the petitioner is to raise industrial dispute under the Industrial Disputes Act and, thereforee, this point can be taken by the petitioner in such a dispute.

8. There is, however, force in the submission of counsel for the respondents that Dy. General Manager is not the appointing authority and, thereforee, any appointment made by him cannot confer any right on the petitioner that too when such engagement was on daily wage basis and based on that petitioner is claiming to be regular employee. Rule-2(b) of the Recruitment and Promotion Rules of the HAL defines Appointing Authority to mean as under :

Rule-2(b)

'`Appointing Authority' means the President of India, the Board of Directors, the Chairman, the Managing Directors, the whole time Directors, the Executive Directors, the General Managers of the Divisions and/or any other officer of the Company to whom the powers in this regard have been specifically delegated'.

9. There is no delegation in favor of Dy. General Manager, Delhi and, thereforee, he is not appointing authority. Annexure-1 to these Rules stipulates the appointing authority in respect of various categories of employees and as per which it would be Managing Director/Executive Director/General Manager and other officers to whom the powers of appointment to the post of Peon has been specifically delegated who can be the appointing authority in case of person like the petitioner. thereforee, any such engagement of the petitioner by the Dy. General Manager would not confer any right on the petitioner. In fact, it was contended by counsel for the respondents that Dy. General Manager, Delhi engaged the petitioner on daily wage basis in his personal capacity to take help from him and the petitioner was never even treated as employee of the HAL even on daily wage basis. According to the respondents, payment made to the petitioner was not shown under the Head 'Salary' or 'Wages' Counsel in support of its submissions relied upon the judgment of Supreme Court in the case of The Employers in relation to Punjab National Bank Vs . Ghulam Dastagir : (1978)ILLJ312SC and in case of M/s. Singer Sewing Machine Co. v. P.O. Labour Court IV. Kanpur and others 1998 LLR 813. However, it is not necessary to go into this aspect in the absence of proper and sufficient materials on record.

10. There is also a substance in the contention of the respondents that efficacious alternate remedy is available to the petitioner under the provisions of Industrial Disputes Act. Our High Court also has in various cases particularly relating to casual labourers, taken the view that appropriate course for such persons would be to raise industrial dispute under the provisions of Industrial Disputes Act. It would be sufficient to mention the recent judgment of this Court (delivered by K. Ramamoorthy, J.) in CW. 5066/99 entitled Modern Food Industrial Employees v. Modern Food Industry decided on 1st May, 1999. In the said case after considering the entire case law on the subject the Hon'ble Judge held that writ petition was not maintainable and the petitioner was given liberty to raise industrial

dispute. In the following cases also this Court has taken the same view.

(1) Shri D. P. Singh v. Engineering Project India Ltd. 1995 A. D. Delhi 478.

(2) Chet Ram v. Union of India 1998 4 A.D. Delhi 816.

(3) Layak Ram v. Quarter Master General & Ors. CWP. No. 4220/97 Decided on 30.7.1999.

11. Counsel for the petitioner contended that before terminating the services of the petitioner no notice was given to him and thus there is violation of Principle of Natural Justice. In support of the submission, she relied upon the judgment of Supreme Court in the case of Basudeo Tiwary Vs . Sidho Kanhu University & Ors. : (1999)ILLJ200SC . On the other hand counsel for the respondents argued that said judgment is not applicable in view of nature of appointment of the petitioner. However, I am not deciding this issue as well in this petition in view of my finding that the petitioner may raise the industrial dispute under Industrial Disputes Act and it would be permissible for the petitioner to raise this contention also in the said dispute.

12. Writ petition, which is devoid of any merit, is accordingly dismissed. However, it will not preclude the petitioner to raise industrial dispute, if petitioner is so advised.

13. There shall be no orders as to costs.

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