

Sumer Singh, Sunil Kumar and Others Vs. Delhi State Mineral Development Corporation Ltd. and anr.

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Court : Delhi

Decided On : Jan-21-2000

Reported in : 2000IIAD(Delhi)200; 2000(52)DRJ715

Judge : N.G. Nandi, J.

Acts : [Constitution of India](#) - Article 226; Delhi State Industrial Development Corporation Limited (Staff Service) Rules, 1978 - Rule 3

Appeal No. : CW. No. 4868 of 1993 With CW. No. 3158 of 1993

Appellant : Sumer Singh, Sunil Kumar and Others

Respondent : Delhi State Mineral Development Corporation Ltd. and anr.

Advocate for Def. : Ms. Anusuya Salwan and ; Mr. Sanjay Poddar, Advs.

Advocate for Pet/Ap. : Mr. G.D. Gupta and; Mr. Pramod Gupta, Advs

Judgement :

ORDER

N.G. NANDI, J.

1. In both these writ petitions under Article 226 of the [Constitution of India](#), the petitioners pray for the relief of quashing of the Office Order dated 30.6.1993 contained in Annexure-E and for a direction to the respondents to treat the petitioners in service in the Corporation and to pay their salary and allowances with all annual increments of salary to which the petitioners have become entitled during the course of their service.

2. In Civil Writ No.4868/93, the say of the petitioners is that petitioner No.1 was appointed as Roneo Operator, petitioner No. 2 as Dresser and petitioner No. 3 as Messenger against the existing vacancies on temporary and ad hoc basis. After the petitioners had taken charge of their posts and started working, the respondent issued Part-II Office Order dated 6.10.1989, confirming the appointment of the petitioners on their respective posts. Petitioner No. 2 and 3 were also issued similar Office Order on the same day. The respondent issued Office Order dated 27.3.1990, showing the petitioners' appointment for a period expiring on 30.4.1990; that the petitioners' appointments were not for a fixed period expiring on 30.4.1990 even so in the Office Order dated 27.3.1990 it was so indicated. Even though the said Office Order was illegal and unilateral, the petitioners could not possibly raise any objection to it as their position was quite subservient; that on the expiry of the period mentioned in the Office Order dated 27.3.90 i.e. 30.4.90, the petitioners were allowed to work in their posts in the Corporation; that the petitioners have been working on their posts without any break whatsoever till date and have become entitled to the status of quasi permanent employees of the Corporation and to regular appointment. On 5.1.1993 the respondent issued another Office Order dated 5.1.1993 purporting to extend the petitioners' services till 31.3.93 or till the post is filled up on regular basis, whichever is earlier, further stating that on the expiry of the said period the petitioners' services will automatically stand terminated; that no regular appointment to the posts has been made. As a matter of fact, the respondent can not legally make any regular appointment to the posts, on which the petitioners are working. They have acquired the status of quasi permanent employees of the Corporation and to regular appointment to the posts. Respondent issued another Office Order dated 30.6.1993 (Annexure-E) purporting to terminate the services of the petitioners along with some employees of the Corporation from the afternoon of 3.6.1993; that

the said office order is wholly illegal and arbitrary inasmuch as the services of the petitioners have been terminated without giving any notice and assigning any reason and without affording them any opportunity of being heard; that besides the illegal termination of petitioners' services, the respondent has illegally denied annual increments of salary to the petitioners without any reason even though it has allowed the increments to other employees; that the petitioners are governed by Delhi State Industrial Development Corporation Limited (Staff Services) Rules, 1978; that Rule 3(iv) provides that 'Temporary Employee' is an employee who has not completed three years continuous service in the Corporation'. Thus, the petitioners have been challenging the order dated 30.6.1993 terminating their services as illegal, arbitrary and against the principles of natural justice.

3. In C.W.3168/93 the say of the petitioner is that he was appointed as Assistant Store Keeper against an existing Vacancy on temporary and ad hoc basis with effect from the afternoon of 12.7.1989 in the Corporation vide letter dated 12.8.1989. The said appointment letter further stated that the petitioner will be further entitled to other admissible allowances. The petitioner took the charge and started working as Assistant Store Keeper; that the respondent issued Part-II Office Order, dated 6.10.1989, confirming the appointment of the petitioner as Assistant Store Keeper; that the respondent issued Office Order dated 27.3.1990, showing the petitioner's appointment for a period expiring on 30.4.1990; that the petitioners' appointments were not for a period expiring on 30.4.1990' even though in the Office Order dated 27.3.1990 it was so indicated. Even though the said Office Order was wholly illegal and unilateral, the petitioner could not possibly raise any objection to it as his position was quite subservient; that on the expiry of the period mentioned in the Office Order dated 27.3.90 i.e. 30.4.90, the petitioner was allowed to work in his post in the Corporation. In fact, the petitioner has been working on his post without any break whatsoever till date and has legally become entitled to the status of quasi permanent employee of the Corporation and to regular appointment; that on 5.1.1993 the respondent issued another Office Order dated 5.1.1993 purporting to extend the petitioner's service till 31.3.93 or till the post is filled up on regular basis, whichever is earlier, further stating that on the expiry of the said period the petitioner's service will automatically stand terminated; that no regular appointment to the post has been made. As a matter of fact, the

respondent can not legally make any regular appointment to the post, on which the petitioner is working. The petitioner has acquired the status of quasi permanent employee of the Corporation and to regular appointment to the post of Assistant Store Keeper; that the Respondent issued another Office Order dated 30.6.1993 purporting to terminate the services of the petitioner along with some employees of the Corporation from the afternoon of 3.6.1993; that the said office order is wholly illegal and arbitrary inasmuch as the service of the petitioner has been terminated without giving any notice, assigning any reason and without affording any opportunity of being heard; that besides the illegal termination of petitioner's service, the respondent has illegally denied annual increment of salary to the petitioner without any reason even though it has allowed the increments to other employees. Thus, the petitioner has been challenging the order dated 30.6.1993 terminating his service as illegal, arbitrary and against the principles of natural justice.

In both these writ petitions. The Delhi Administration respondent No. 2 has been joined subsequently.

4. Respondent No.1-Delhi State Mineral Development Corporation Limited (DSMDC) refuted the say of the petitioners by filing counter-affidavit stating that respondent No.1 was earlier a department of Delhi State Industrial Development Corporation, primarily involved in carrying on mining activities in the Union Territory of Delhi and that carrying out certain other incidental works; that as the Corporation had substantial work, certain appointments were made on adhoc to meet the day-to-day work of the Corporation as well as keeping in view the nature of work, which was required to be done by the Corporation. The respondent-Corporation intended to fill up these posts, earlier on permanent basis and consequently keeping in view of the urgency and to tie up the situation as it existed in the year 1989, certain adhoc appointments were made. The petitioners were appointed purely on temporary adhoc basis vide letter dated 12.9.89. As the follow-up of the said letter, Part-II Office Order was issued on 6.10.1989; that as the work existed and the respondent-Corporation needed some staff, the appointment of these temporary and adhoc employees was extended from time to time for a very short intervals and with a clear stipulation that their appointment will

be co-terminus with the time fixed even with the posts filled up earlier than that. As such the appointments were clearly automatically terminable by efflux of time. The last extension was issued to the petitioners on 5.1.1993, and seeing the gravity of the situation of there being no much work for such kind of employees, the respondent-Corporation terminated the services, implicate as ad hoc and temporary employees by order dated 30.6.1993; that the Corporation's activities have been curtailed by the Government to a very large extent. In the end of 1992; the activities of the respondent-Corporation in Bhatti Mines were completely barred/banned by the Government and the area was taken outside the jurisdiction of the Corporation for mining activities. As such, even the Delhi Administration has taken the decision to direct the said Corporation to be looked after by DSIDC in the meanwhile as there was not even sufficient funds to pay the salary of the permanent staff of the Corporation. Being in economic crisis, when there was no regular source of income and when the corporation had no work, which could be assigned to the petitioners, the order of termination dated 30.6.1993 was passed, which is otherwise valid, proper and free from any challenge; that the petitioners being temporary and adhoc employees have no right over the posts in question. The respondent-Corporation has no intention to fill up the posts on regular basis; that the petitioners can not draw any benefit and claim to regularisation on the basis of the appointment, which was made purely on temporary and adhoc basis and especially in view of the facts and circumstances, stated above; that the temporary contract of service has already been terminated and put to an end and therefore, the petitioners can not be reinstated in service and, therefore, not entitled to the relief claimed in the petition.

Respondent No. 2-Delhi Administration filed the counter-affidavit in both these writ petitions and contended that on petitioners' own say they were appointed by respondent No.1 purely on temporary basis; that these ad hoc appointments were extended by respondent No.1 and finally their services were terminated vide order dated 30.6.1993, thus, all the petitioners have rendered less than four years temporary service to respondent No.1; that the activities of respondent No.1-Corporation were curtailed due to various reasons and number of posts were abolished; that the staff of respondent No.1 was declared surplus by it and their list was sent to the Services Department of respondent No. 2; that these staff were

thus treated in accordance with CCS (Redeployment of Surplus Staff) Rules 1990; that the names of the petitioners have not been sent to the services department of respondent No.2 as they were not covered under the said Rules, as they had neither rendered regular services of more than 5 years nor they were permanent civil servants as the petitioners were appointed purely on adhoc basis. Under Rule 2(g) of the Rules the surplus staff means 'Central Civil Servants (other than those employed on adhoc, casual, work charge or contract basis), who are permanent or if temporary have rendered not less than five years regular/continuous service. As a matter of fact, they have not been declared surplus by respondent No.1 itself, thereforee, absorbing these employees by the answering respondent in accordance with the said Rules does not apply; that the right to hold a post is available to an employee till the said post exists. In the present case, there was no post on which the petitioners were appointed, thus, the question of their claiming any right does not arise. Further, the absorption of these employees in the Government Department is not in the public interest because recruitment to various posts in the government is done through open competition and candidates are selected on merits by absorbing these adhoc employees of DSMDC.

The petitioners have filed rejoinder to the counter filed by respondent No.1 and 2 denying the averments in the counter-affidavit and reiterating their earlier stand.

5. It is submitted by Ms. Anusuya Salwan, learned counsel for respondent No. 1 that as the petitioners were on temporary/adhoc employment, they have not been declared surplus on closing of the mining operations by respondent No. 1 and their names cannot have been sent to respondent No. 2 for absorption in service of respondent No. 2. That respondent No.1 has not made any regular appointment and the petitioners do not have any legal right.

Mr. Sanjay Poddar, learned counsel for respondent No. 2 has submitted that the petitioners are not entitled to be absorbed in the service of respondent No. 2 as they were not the permanent employees of respondent No.1 and not rendered as surplus by respondent No.1 on closure of the mining operation and the petitioners having not completed five years regular/continuous service with respondent No.1 and were only temporary/adhoc employees, the petitioners would not be entitled to

the relief of absorption in service of respondent No. 2.

6. The question that arises in these writ petitions is what was the status of the petitioners whether 'Temporary' or 'Regular' employees on the date of the impugned order.

Mr. Gupta, learned counsel for the petitioners has referred to the Delhi State Industrial Development Corporation Limited (Staff Service) Rules, 1978 and contended that since the petitioners have completed more than three years in the service of respondent No. 1. the petitioners can not be regarded as temporary employees and that they are entitled to be shown as surplus on the closure of the mining activity by respondent No.1 and their names ought to have been sent to respondent No.2 for absorption in service of respondent No.2. Sub-Rule (h) of Rule 2 of the said Rules defines 'employee' to mean a person who is in the whole time regular services of the corporation, but does not include a person employed by the Corporation on daily wage, adhoc and consolidated pay including persons employed under Apprenticeship Training Scheme, and subsidised Scheme. Sub-Rule (iv) of Rule 3 defines 'Temporary Employee' to mean a person who has not completed 3 years continuous service in the corporation.

It is not in dispute that in C.W. 4668/93 petitioner No.1 was appointed as Roneo Operator, petitioner No. 2 as Dresser and petitioner No. 3 as Messenger on temporary adhoc basis vide Office Order dated 12.9.1989 whereas petitioner in C.W.3158/93 was appointed as Assistant Store Keeper on temporary and adhoc basis vide Office Order dated 12.9.1989 and all these petitioners joined their duties respectively. Part-II Office Order dated 6.10.1989 does not refer to their appointment for any fixed period. The appointment of all the petitioners was extended from time to time. Vide Office Order dated 5.1.1993 (Annexure-D), the term of appointments of these petitioners, stated to have been appointed on purely temporary and ad hoc basis, were lastly extended up to 31.3.1993 or till the post is filled up on regular basis, whichever is earlier. Vide Office Order dated 30.6.1993 (Annexure-E) the services of all these petitioners came to be terminated and relieved by respondent No.1.

Learned counsel for respondent No. 2 has referred to the Central Civil Services (Redeployment of Surplus Staff) Rules, 1990. Clause (g) of Rule 2 of the said Rules reads as under:-

(g) 'Surplus staff' and 'surplus employee or employees' means the Central Civil Servants (other than those employed on ad hoc, casual, work-charged or contract basis) who -

(a) are permanent or, if temporary, have rendered not less than five years' regular continuous service: and

(b) XXXXXX XXXXXX XXXXXX

7. As seen above, the Staff Service Rules of respondent No.1 define a temporary employee to mean an employee who has not completed three years continuous service in the corporation. In the instant case all the petitioners were appointed vide office order dated 12.9.89 and they joined their respective duties pursuant to the said appointment order. Office Order dated 6.10.89 suggests the initial pay of the petitioners in the scale of Rs. 950-20-1150-EB-25-1400 w.e.f. 13.9.89 in respect of the petitioners in CW No. 4868/93 and w.e.f. 14.9.1989 in respect of petitioner in C.W. No. 3158/93 and term of these petitioners has been extended from time to time and latest by Office Order dated 5.1.1993 and the term of appointment of petitioners is extended up to 31.3.93 or till the post is filled up on regular basis whichever is earlier. Thus, all these petitioners were working on their respective posts for a period of more than three years and nine months with respondent No.1 on the date of the impugned termination order dated 30.6.1993.

8. It may be noticed that the Rules of respondent No.1 at the same time do not provide that after completion of temporary service of three years the employee would automatically become regular employee or that he would be entitled to regularisation of his service. Respondent No.1, in counteraffidavit, has specifically stated that the petitioners were appointed in 1989 in view of the urgency and to tie up the situation, as it existed then, on ad hoc/temporary basis: that these temporary/ad hoc appointments were extended from time to time for short intervals: that the respondent Corporation's activities have been curtailed by the

Government to a very large extent and in the end of 1992 the activities of the respondent-corporation in Bhatti Mines were completely barred/banned by the Government and the area was taken outside the jurisdiction of the corporation for mining activities and the said area has been earmarked for Wildlife Sanctuary, which is a different department of Delhi Administration. There is no denial of the fact that Bhatti Mining operations/activities of respondent No.1 came to be banned/barred by the Government, leading to the termination of the services of the petitioner vide impugned order (Annexure-E). The petitioners completing three years as temporary employees by itself will not clinch the issue. It need hardly be said that the regularisation of an ad hoc/temporary employee has to be against the existing regular vacancies. When there is complete ban imposed by the Government against the Bhatti Mining operations by respondent No.1, there will be no question of filling up any regular vacancy because respondent No.1 could not have filled up any regular vacancy. The only right of the petitioners subject to other things would be to be considered for regularisation. In the instant case, the question of regularisation otherwise also would not arise since the Bhatti Mining Operations by respondent no.1 have been completely banned/barred by the Government and the project came to be closed by respondent No.1, culminating into the termination of the services of the petitioners. It need hardly be said that a non-existing concern (respondent No. 1) can not be directed to create a permanent/regular post and absorb the petitioner. Thus, there is no question of any regular vacancy existing much less filling up of the same by respondent No. 1.

9. In the case of State of Himachal Pradesh, Through The Secretary, Agricultural to the Govt. of Himachal Pradesh Vs . Nodha Ram and Others, : [1996]1SCR54 , it has been held that 'no vested right is created in temporary employment. Directions to regularise the temporary employee or continue them in other places would amount to creating of post and continuing them despite non-availability of work. Such directions not proper.'

In the case of Director, Institute of Management Development, U.P. Vs . Smt. Pushpa Srivastava, : (1993)ILLJ190SC it has been held that 'the appointment is purely on adhoc basis and is contractual and by efflux the appointment comes to an end, the person holding such post can have no right to continue in the post.

This is so even if the person is continued from time to time an adhoc basis for more than a year. He can not claim regularisation in service on basis that he was appointed on adhoc basis for more than a year.'

In the case of State of Haryana & Ors. Vs . Piara Singh & Ors., : (1993)IILLJ937SC , it has been held that 'ad hoc/temporary Government employees eligible and qualified and continuing in service satisfactorily for long period have a right to be considered for regularisation and long continuance in service gives rise to a presumption about need for a regular post but more continuance for one year or so does not in every case raise such a presumption and the High Court would not be justified in issuing blanket direction to the Government for regularisation of service of all those completing one year's service.'

10. In view of the principle laid down in the case of State of Himachal Pradesh through the Secretary, Agriculture v. Nodha Ram & Ors, (Supra) the petitioners cannot claim regularisation of their service by respondent No. 1 and so long as their service are not regularised by respondent No. 1, the question of declaring the service of the petitioners surplus, would not arise and consequently the sending of the names of the petitioners to respondent No. 2 for absorption of the petitioners in the service of respondent No. 2 and the petitioners despite having completed more than three years as temporary/adhoc employees, will continue to be the temporary/adhoc employees on the date of the passing of the impugned Order (Annexure-E) liable to be terminated on the closure of the project of Bhatti Mining Operations by respondent No. 1.

11. In the above view of the matter, the petitioners would not be entitled to the relief claimed and the petitions are liable to be dismissed with no orders as to costs. Order accordingly.