

Rajender Singh Vs. Uoi

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Court : Delhi

Decided On : Dec-11-2014

Judge : Suresh Kait

Appellant : Rajender Singh

Respondent : Uoi

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on: December 11, 2014 + W.P.(C) 8200/2011 RAJENDER SINGH Petitioner Represented by: Mr.Rajiv Aggarwal and Mr. Sachin Kumar, Advocates. Versus UOI Represented by: Respondent Mr.S.M.Arif, Advocate. CORAM: HON'BLE MR. JUSTICE SURESH KAIT SURESH KAIT, J.

1. The present petition is directed against the impugned award dated 30.09.2010, passed by Id. Central Government Industrial Tribunal No.1, Delhi, in I.D. No.28/2009, whereby the Id. Tribunal has not directed the respondent / Management to regularize the services of the petitioner after taking into account his initial date of joining.

2. The petitioner joined the services of the respondent / Management w.e.f. 03.04.1984 as a daily wager, however his services were terminated on 08.03.1996.

3. Being aggrieved, the petitioner raised an industrial dispute and vide first award dated 07.07.2000, petitioner was reinstated in service with continuity of service and full back wages.

4. Pursuant thereto, the respondent / Management did not reinstate the petitioner in service and therefore, he was compelled to file an application under Section 33C(1) of the Industrial Disputes Act, 1947, (for short the Act) claiming difference of salary from the period from 03.04.1984 to 08.03.1996 and back wages for the period from 09.03.1996 to 30.09.2000. However, the Regional Labour Commissioner vide order dated 04.12.2000, directed the petitioner / workman to get the amount computed from the Central Government Industrial Tribunal under Section 33C (2) of the Act.

5. The petitioner preferred a Writ Petition against the order dated 04.12.2000 passed by Regional Labour Commissioner and this court vide order dated 13.01.2005 passed in W.P.(C) No.1311/2003 set aside the aforesaid order and further directed the respondent / Management to reinstate the petitioner / workman.

6. Thereafter, the petitioner was allowed to join duties w.e.f. 19.04.2005 with continuity of his earlier service. The petitioner was also paid the back wages amounting to Rs.2,91,948/- for the period from 08.03.1996 to 15.07.2005 in July, 2005.

7. Thereafter, the petitioner sent a legal demand notice dated 17.12.2007, whereby demanding his regularization in the post of Beldar with retrospective effect from the initial date of his joining, i.e., 03.04.1984 and also for payment of the entire difference of salary on the principle of equal pay for equal work from 03.04.1984 onwards.

8. Being aggrieved with the inaction on the part of the respondent/ Management in regularizing his services, petitioner raised an industrial dispute, which was referred for adjudication by Govt. of India, Ministry of Labour vide order dated 29.05.2009 with the following terms of reference:

Whether the demand of the Delhi Labour Union for regularization of services of Shri Rajinder Singh by the management of All India Radio, C.E. (N.Z.), Jamnagar House, is legal and justified?. If yes, what relief the workman is entitled to?.

9. Consequently, vide impugned order dated 30.09.2010, Id. Tribunal passed order as under:

(a) The claimant has not been able to establish that unfair labour practice was being adopted and the management was under an obligation to purge the mischief. (b) The Tribunal cannot proceed to command the Government to create a post for absorption of the claimant against it; (c) All these circumstances make it clear that the demand raised by the union for regularization of the services of the petitioner, w.e.f 03.04.1984 is neither legal nor justified; (d) With a view to do social justice, this Tribunal has to command the management to grant wages to the claimant at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus Dearness Allowances applicable to regular employees of his category of 8 hours a day, since the date of reinstatement in service. (e) In view of the decision in Secretary, State of Karnataka v. Uma Devi 2008 (4) SCC1 I do not find it to be a case where the management should be commanded to absorb the claimant on the post on which he is working since long.

10. Mr. Rajiv Aggarwal, Id. Counsel appearing on behalf of the petitioner / workman submitted that the Id. Tribunal failed to appreciate that the petitioner has been working with the respondent / Management since 1984 and vide the award, which became enforceable w.e.f. 07.07.2000, he has been awarded continuity of service with all attendant benefits and therefore, keeping in view such a long tenure of his employment with the respondent / Management he is entitled to be regularized in service.

11. Mr. Aggarwal, further submitted that the Id. Tribunal while holding the petitioner not entitled to any relief has heavily relied upon the judgment of Secretary, State of Karnataka v. Uma Devi and Ors. 2006 (4) SCC1 which is not applicable to the facts and circumstances of the present case as the petitioner has invoked the provisions of Industrial Dispute Act, wherein Section 22 (ra) read with Item No.13 (2) has provided to employ persons as casual / daily wager / muster roll and treat

them as such for years together amounts to unfair labour practice, which is punishable under Section 25 (T) and (U) of the Act. Thus, the Id. Tribunal failed to appreciate that Uma Devis case (supra) arose in the context of power of Writ Court to direct regularization of the employees and Court had no occasion to consider the provisions of Industrial Disputes Act. Therefore, the case of Uma Devi (supra) could not be construed as having obliterated the Industrial Disputes Act and the rights thereunder applicable to a workman. It was rendered in the context of service law and the court had no occasion to address the special powers of the Industrial Adjudicator.

12. Thus, the Id. Adjudicator has failed to appreciate that even in respect of the rights of regularization, the decision in Uma Devis case would be inapplicable as the case arisen in the context of Industrial dispute. The said case also does not notice the special powers of the Industrial Adjudicator to alter, create and modify contracts of employment. The Schedule-V of the Act deals with the unfair labour practice and includes continuity of temporary employee with the objection of depriving them right to permanency.

13. To strengthen his arguments, Id. Counsel has relied upon a case of Maharashtra State Road Transport Corporation and Anr. v. Casteribe Rajya P. Karmachari Sanghatana (2009) 8 SCC556 wherein the Honble Supreme Court held that Uma Devis case is an authoritative pronouncement for the proposition that the Supreme Court under Article 32 and High Court under Article 226 of the Constitution of India should not issue directions of absorption, regularisation or permanent continuance of temporary, contractual, casual, daily wage or ad-hoc employees. The judgment does not denude the Industrial and Labour Courts of their statutory power to order permanency of workers, who have been victim of unfair labour practice on the part of the employer.

14. The Honble Supreme Court further held that the Uma Devis case cannot be held to have overridden the powers of Industrial and Labour Courts in passing appropriate order once unfair labour practice on the part of the employer is established.

15. Id. Counsel has further relied upon a case of State of Karnataka and Ors v. M.L. Kesari and Ors. AIR 2010 SC2587 wherein the Apex Court held as under:

Umadevi casts a duty upon the concerned Government or instrumentality, to take steps to regularize the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of courts or tribunals, as a one-time measure. Umadevi, directed that such one-time measure must be set in motion within six months from the date of its decision.

16. Mr. Aggarwal further submitted that the Id. Industrial Tribunal while holding that the petitioner is entitled to wages @ 1/30th of the pay at the minimum of relevant pay scale + dearness allowance applicable to regular employees for 8 hours a day since the date of his reinstatement in service, has failed to appreciate that 1/30th of the same is even less than the minimum wages being paid to the petitioner at present.

17. It is further submitted that Industrial Adjudicator although has claimed to do social justice with the petitioner, yet in fact, injustice has been done to the petitioner while giving him 1/30th of the pay at the minimum of relevant pay scale.

18. On the other hand, Mr. S.M. Arif, Id. Counsel appearing on behalf of the respondents submitted that the petitioner was appointed in Group D as a casual labour and thereafter he was terminated from the service on 08.03.1996, to which the Id. Tribunal held that his termination was neither just and proper and accordingly, set aside his termination order. Thereafter, the petitioner raised industrial dispute for his regularization in the service from the date of his initial appointment.

19. First of all there was no vacancy, with the respondents. Moreover, the post of Beldar does not exist. The Group D Post has to be filled up through Staff Selection Commission and as per the recruitment rules, the requisite educational qualification earlier was 8 th pass and after amendment, the qualification for appointment of Group D staff has been fixed as 12th pass.

20. Ld. Counsel submitted that though the petitioner was appointed as casual Beldar in Group D post, however, he was working as peon with the respondents. He does not have the requisite qualification. Therefore, the Id. Tribunal rightly not directed the respondents to regularize the petitioner in service.

21. I have heard Id. Counsels for the parties.

22. In the case of Uma Devi (Supra), it is held that the employees will not lose their rights to be considered for regularization merely because one-time exercise was completed without considering their cases or because six months period mentioned thereof has been expired. The one-time exercise should consider all daily wages/ad- hoc/those employees who had put 10 years of continuous service as on 10.04.2006 without availing the protection of any interim orders of courts or tribunals.

23. The object behind the said direction was to ensure that those who have put more than 10 years of continuous service without protection of any interim orders of courts or tribunal was rendered / are considered for regularization in view of their long service.

24. It is further held that the departments do not perpetuate the practice of employing person on daily wage for a long period and then periodically regularized them on the ground that they have served more than 10 years. The right to be considered for regularization in terms of the directions in Uma Devis case was an one-time measure.

25. In the case of Chief Conservator of Forest and Anr, etc. etc. v. Jagannath Maruti Kondhare an Anr. etc. etc. (1996) 2 SCC93 the Full Bench of the Supreme Court held as under:

18. This takes us to the second main question as to whether on the facts of the present case could it be held that the appellants were guilty of adopting unfair labour practice. As already pointed out, the respondents alleged the aforesaid act by relying on what has been stated under item 6 of Schedule IV of the State Act which reads as below: To employ employee as "badlis", casuals or temporaries

and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees.

19. The Industrial Court has found the appellants as having taken recourse to unfair labour practice in the present cases because the respondents-workmen who had approached the Court had admittedly been in the employment of the State for 5 to 6 years and in each year had worked for period ranging from 100 to 330 days. Ms. Jaising draws our attention in this context to the statement filed by the appellants themselves before the Industrial Court, a copy of which is at pages 75 to 76 of C.A. No.4375/90. A perusal of the same shows that some of the respondents had worked for a few days only in 1977 and 1978, though subsequently they themselves had worked for longer period, which in case of Gitaji Baban Kadam, whose name is at serial No.4 went upto 322 in 1982, though in 1978 he had worked for 4-1/2 days. (Similar is the position qua some other respondents).

21. Shri Dholakia would not agree to this submission as, according to him, the item in question having not stopped merely by stating about the employment of persons as casuals for years being sufficient to describe the same as unfair labour practice, which is apparent from what has been in the second part of the item, it was the burden of the workmen to establish that the object of continuing them for years was to deprive them of the status and privileges of permanent employees. Ms. Jaising answers this by contending that it would be difficult for any workmen to establish what object an employer in such a matter has, as that would be in the realm of his subjective satisfaction known only to him. She submits that we may not fasten a workman with such a burden which he cannot discharge.

22. We have given our due thought to the aforesaid rival contentions and, according to us, the object of the State Act, inter alia, being prevention of certain unfair labour practices, the same would be thwarted or get frustrated if such a burden is placed on a workman which he cannot reasonably discharge. In our opinion, it would be permissible on facts of a particular case to draw the inference mentioned in the second part of the item, if badlis, casuals or temporaries are continued as such for years. We further state that the present was such a case

inasmuch as from the materials on record we are satisfied that the 25 workmen who went to Industrial Court of Pune (and 15 to Industrial Court, Ahmednagar) had been kept as casuals for long years with the primary object of depriving them the status of permanent employees inasmuch as giving of this status would have required the employer to pay the workmen at a rate higher than the one fixed under the Minimum Wages Act. We can think of no other possible object as, it may be remembered that the Pachgaon Parwati Scheme was intended to cater to the recreational and educational aspirations also of the populace, which are not ephemeral objects, but par excellence permanent. We would say the same about environment-pollution-care work of Ahmednagar, whose need is on increase because of increase in pollution. Permanency is thus writ large on the face of both the types of work. If, even in such projects, persons are kept in jobs on casual for years the object manifests itself; no scrutiny is required. We, therefore, answer the second question also against the appellants.

26. The fact remains that vide first award dated 07.07.2000, petitioner was reinstated in service with full back wages from his initial appointment, however, still he has not been made as permanent. The petitioner has been continuously working with respondent for the last 30 years, thus the claim of the respondent that there is no Group D vacancy itself is an unfair practice on the part of the respondent / Management. An employee cannot be kept temporary throughout his life if the nature of work is perennial whatever the circumstances are there. The employer has a power to relax the educational qualification and other terms keeping in view the facts and circumstances of the case. The petitioner has a unique case. Since his initial appointment, i.e., 03.04.1984, he is still working as a temporary worker and not given the benefit of regularization.

27. As admitted by the respondent, the petitioner has been working as a peon, which is a Group D Post. Therefore, the respondent / Management is directed to regularize the petitioner in service from the date his Juniors were regularized in Group-Dpost with back wages.

28. I hereby make it clear that while regularizing the petitioner, the competent authority shall relax the eligibility conditions, if any, and create one Group-D

supernumerary post if required.

29. Accordingly, the instant petition is allowed on above terms. SURESH KAIT
(JUDGE) DECEMBER11 2014 jg/sb

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