

Devinder Vs the Institute for the Physically Handicapped and ors.

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Court : Delhi

Decided On : Jul-01-2010

Judge : Mr. Rajiv Sahai EndLaw. J.

Appeal No. : W.P.(C) 3700/1996

Appellant : Devinder

Respondent : The Institute for the Physically Handicapped and ors.

Advocate for Def. : Mr. Rajiv Bansal, Adv.

Advocate for Pet/Ap. : Mr. U. Srivastava, Adv.

Judgement :

1. Whether reporters of Local papers may be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported No in the Digest?

ORDER

1. The petitioner seeks a writ of mandamus commanding the respondent no.1 The Institute for the Physically Handicapped to reinstate him as a casual labourer with all consequential benefits and back wages and further to confer on the petitioner, the status of a temporary workman in accordance with the Office Memorandum dated 10th September, 1993 of the Government of India, Ministry of Personnel and a further direction for considering him for absorption as a regular employee of the respondent Institute. It is the case of the petitioner that he has worked as a casual labourer in the respondent Institute for a period of about two years continuously without any sort of technical break at all and is entitled to the benefit of the Office Memorandum aforesaid. The petitioner filed this writ W petition in the year 1996 relying on State of Haryana v. Piara Singh (1992) 4 SCC 118 and Gujarat Electricity Board v. Hind Mazdoor Sabha JT 1995 (4) SC 264.

2. Upon notice of the writ petition being issued, the respondent Institute filed a counter affidavit contending that under the Office Memorandum aforesaid, the status of temporary would be granted to those casual labourers who were in employment on the date of issue of the same and who had rendered continuous service of at least one year i.e. for a period of 240 days or 206 days as per the Industrial Disputes Act, 1947. It was contended that the petitioner who as per his own averments joined the respondent Institute as a casual labourer after the date of the said Office Memorandum is not entitled to the benefit thereof. It was pleaded that the engagement of the petitioner was only seasonal and on contract basis; that the petitioner at no stage worked for the respondent Institute for a continuous period of 240 days or more.

3. The petitioner in the rejoinder of course controverted the averments in the counter affidavit.

4. In view of the factual dispute aforesaid of the number of days for which the petitioner has worked, the adjudication thereof in writ jurisdiction in any case is not possible and the remedy, if any, of the petitioner would be before the Industrial Adjudicator. However, since the writ petition has remained pending for long, partly owing to dismissal for non prosecution at least on two occasions, and in view of the subsequent development in law, it is also deemed necessary to consider the other aspects.

5. The Constitution Bench of the Supreme Court in *Secretary, State of Karnataka v. Umadevi* 2006 (4) SCC 1 has since overruled the judgment in *Piara Singh* (supra) relied in the writ petition. It was held that the Court should not issue directions for absorption, regularisation or permanent continuance of temporary, contractual, casual daily wage or ad-hoc employees appointed/recruited and even if continued for long. It was held that it is erroneous for the Courts to consider equity merely for the handful of people who have approached the Court with a claim, at the cost of the teeming millions seeking employment and a fair opportunity for competing for employment. The claim of the petitioner in the present case is in the teeth of the said judgment.

6. The counsel for the petitioner however, seeks to rely on *U.P. State Electricity Board v. Pooran Chandra Pandey* (2007) 11 SCC 92. The Supreme Court in that case notwithstanding the judgment in *Umadevi* (supra) directed regularisation on the ground that the services of others similarly placed as the workmen in that case had already been regularized. The Supreme Court observed that *Umadevi* had not considered the aspect of Article 14 of the Constitution and held the workmen in that case to be entitled to regularisation so as not to be discriminated as against others. The workmen in that case had been working for about 22 years.

7. The counsel for the petitioner to build the case on the basis of *U.P. State Electricity Board* (supra), in the hearing on 17th December, 2002 contended that one Harish Kumar Sharma was also engaged as a Waterman by the respondent Institute on 30th August, 1994 i.e. after the engagement of petitioner and had been absorbed by the respondent Institute in regular employment. On the said submissions, the respondent Institute was directed to produce records and an affidavit in that regard has been filed. The respondent Institute has contended that the petitioner cannot be compared with Harish Kumar Sharma because Harish Kumar Sharma was sponsored through Employment Exchange, is a matriculate and was absorbed while still in ad-hoc employment. The counsel for the petitioner has contended that the averment in the writ petition of the petitioner being sponsored through the Employment Exchange has not been controverted in the counter affidavit. However, no document in this regard has been produced. The pleas with respect to Harish Kumar Sharma did not find mention in the writ petition. There are no complete pleadings in that respect. A contentious plea of discrimination cannot be dealt with in such summary fashion as is sought to be urged. The petitioner would be well advised to take appropriate remedies with respect to that also.

8. Be that as it may, the Supreme Court subsequently in *Official Liquidator v. Dayanand* (2008) 10 SCC 1 after noticing that certain judgments including that in *U.P. State Electricity Board* had attempted to dilute *Umadevi*, held that the same is not permissible. Thus even if a case of discrimination were to be made out, the petitioner cannot be granted relief as sought. The only distinction made out in *Maharashtra State Road Transport Corporation v. Casteribe Rajya P. Karamchari Sangathan* (2009) 8 SCC 556 is with respect to the powers of the Industrial Adjudicator under the ID Act. Prior to *Umadevi* the Courts were issuing directions for regularisation of temporary/ad-hoc/daily wage employees. If arguments as forming the basis in *U.P. State Electricity Board* were to prevail, then notwithstanding *Umadevi* the Courts would continue to grant relief of regularisation owing to another ad-hoc/temporary employee in the past having been granted the same relief. This cannot be permitted.

9. As far as reliance on the Office Memorandum dated 10th September, 1993 (supra) is concerned, the same merely provides for grant of temporary status to casual employees "presently employed" who had rendered one year of continuous service. The language of the Office Memorandum clearly suggests that the benefit thereof was to be extended or given only to those who stood employed as on 10th September, 1993 and which the petitioner was admittedly not. Such absorption as a temporary employee was to be under the

Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993. The said Scheme also talks of grant of such status to those in employment on the date of issuance of the Office Memorandum. The grant of temporary status as per the Scheme also does not vest a right of absorption/regularisation. The Scheme itself provides that the temporary status will not ensure a permanent status "unless selected through regular selection process for Group-D posts". In the present case, there is a factual dispute as to whether the petitioner had worked continuously for at least 240 days or not and even if that were to be established, the entitlement under the Scheme also is only to a temporary status. The petitioner on the basis of the said Office Memorandum also, is not entitled to any relief.

10. The writ petition, therefore, fails and is dismissed, however with liberty to the petitioner to pursue such other remedies as may be available to him in law. No order as to costs.

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