

Shriom Dalal Vs. All India Council for Technical Education and anr.

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Court : Delhi

Decided On : Dec-06-2010

Judge : Pradeep Nandrajog; Siddharth Mridul, Jj.

Acts : All India Council for Technical Education Act,(AICTE)

Appeal No. : W.P.(C) 1359/2010

Appellant : Shriom Dalal

Respondent : All India Council for Technical Education and anr.

Advocate for Def. : Mr.Rakesh Dwivedi; Mr.Amitesh Kumar And Anr.

Advocate for Pet/Ap. : Mr.Gainilung Panmei;Mr.Parthiv Goswami, Advs.

Judgement :

1. In both afore-noted writ petitions, writ petitioner is the same i.e. Shriom Dalal. He has engaged two different counsel to WP(C) Nos.1359/2010 & 6660/2010 Page 1 of 7 litigate on his behalf. Whereas Mr.R.K.Gupta is the counsel engaged in WP(C) No.1359/2010, the counsel engaged in WP(C) No.6660/2010 is Mr.Parthiv Goswami. The two writ petitions were listed for disposal today. It may be noted that the previous date of hearing was 30.9.2010.

2. Whereas Mr.R.K.Gupta, Advocate who appears in WP(C) No.1359/2010 is keen to argue the writ petition filed by him and insists the petition to be heard, learned proxy counsel who appears for Mr.Parthiv Goswami, Advocate in WP(C)

No.6660/2010 seeks an adjournment. It is apparent that the same writ petitioner is having a personal conflict of interest evidenced by the fact that one counsel engaged by him is keen to argue the writ petition filed and so insists, but the other is not.

3. Be that as it may, we have declined to adjourn WP(C) No.6660/2010 for the reason the decision challenged in the said writ petition is impacted by whatever we would decide as regards WP(C) No.1359/2010.

4. AICTE, a statutory body constituted under AICTE Act was manning its affairs by taking people either on contract or on deputation for a term fixed.

5. On 1.11.2007, AICTE notified the All India Council for Technical Education (Group A, B and C Posts) Recruitment Regulations 2007. Regulation 6 whereof reads as under:- "6. Absorption of deputationists:- Existing incumbents working on deputation basis, who have completed at least one year service in AICTE, shall be given one opportunity for consideration for permanent absorption in their respective posts against direct recruitment quota. The absorption rules shall be notified by the Council separately."

6. Applicant Shriom Dalal who was working under AICTE as an Assistant Director on deputation sought his permanent absorption as an Assistant Director and needless to state, WP(C) Nos.1359/2010 & 6660/2010 Page 2 of 7 predicated a claim with reference to Regulation 6 of the 2007 Regulations.

7. Not getting a favorable response he filed a writ petition in this Court which got transferred to the Central Administrative Tribunal and where it was registered as TA No.312/2009. The reason being a notification issued as per which service disputes between employees and AICTE had to be decided by the Central Administrative Tribunal.

8. There were a large number of persons who were appointed on contract basis to the post of Assistant Director and Deputy Directors. They had filed writ petitions in this Court stating that having worked for years together on contract, their services should be regularized by AICTE. Even said writ petitions got transferred to the

Central Administrative Tribunal.

9. Vide judgment and order dated 12.1.2010 all Transfer Applications including TA No.312/2009 filed by Shriom Dalal came to be decided.

10. The impugned decision passed by the Tribunal highlights the facts with reference to TA No.138/2009 filed by Dr.Narinder Dey & Ors. who were appointed on contract as Deputy Directors in AICTE.

11. The Tribunal has noted the promulgation of the 2007 Regulations and has highlighted Regulation 7 which deals with the initial constitution of the service. The Tribunal has thereafter referred to the decision of the Supreme Court reported as (2006) 4 SCC 1 Secretary, State of Karnataka & Ors. vs. Umadevi (3) & Ors. In para 12 of the decision the Tribunal has noted that under the previous Regulations framed in the year 1995 appointment was permissible under deputation and contract. Thereafter, the Tribunal, at page 38 of the decision has noted the language of Regulation 6 and Regulation 7, but has held that the applicants before it have no case for being WP(C) Nos.1359/2010 & 6660/2010 Page 3 of 7 regularized in service. However, noting that having worked for a number of years some equity has come into effect in favour of the applicants and in respect whereof directions have been given by the Tribunal in para 23 which impacts the interest of the applicants before the Tribunal with reference to the benefit being given to them i.e. the experience gained by them while working under AICTE.

12. A perusal of the impugned decision passed by the Tribunal shows that notwithstanding the Tribunal noting that in the past appointment were being made on deputation as also on contract and that the existing Recruitment Rules pre 2007 did not permit regular absorption through process of deputation; noting Regulation 6 of the 2007 Regulations, the Tribunal has decided the matter as if all claimants before it were contract appointees and were claiming a right to be appointed; predicated on the plea that having worked for years together they have equitable right to be regularized in service.

13. Indisputably, the Tribunal has not decided the claim with reference to Regulation 6.

14. Learned counsel for the petitioner urges that his client had urged the claim with reference to Regulation 6 and in respect whereof had highlighted that the respondent had sought his option for being regularized and he had replied affirmatively.

15. Learned counsel for respondent No.1 urges that the petitioner never made any oral submissions with reference to Regulation 6, notwithstanding pleadings in the writ petition filed by him evidencing a claim predicated on Regulation 6. Needless to state, it was the writ petition which got registered as TA No.312/2009 filed by Shriom Dalal. Learned counsel urges that the petitioner deliberately did not urge with reference to Regulation 6 for the reason he wanted to sail through under the cover of the other claimants before the Tribunal for the reason WP(C) Nos.1359/2010 & 6660/2010 Page 4 of 7 facts pertaining to him were fairly incriminating. CBI was investigating a serious fraud with reference to Shriom Dalal and found prima facie material to proceed against Shriom Dalal. As per the Department, Shriom Dalal could not be permanently absorbed under respondent No.1 till his name got cleared.

16. The Rule of Prudence requires that when a Court is faced with the afore-noted situation i.e. one party asserting that an issue was argued before the Central Administrative Tribunal and the other urges to the contrary, is to direct the petitioner to move an appropriate application before the Tribunal pointing out that apart from the other pleas commonly urged with reference to the other claimants before the Tribunal, Shriom Dalal had argued a point in the alternative and for which the Tribunal would decide whether the point was argued or was given up.

17. Under the circumstances, noting the facts as above, we dispose of WP(C) No.1359/2010 permitting Shriom Gopal to file an application before the Tribunal pointing out to the Tribunal that he had urged an alternative point predicated on Regulation 6 and that the same was not decided by the Tribunal. Needless to state, if such an application is filed, it would be open to the respondents to plead and show to the Tribunal that Shriom Dalal had given up the said plea which was urged in the pleadings by not predicating any oral submissions based thereon. Needless to state, if the Tribunal holds in favour of Shriom Dalal that the said point

was urged the Tribunal would proceed to decide the issue with reference to Regulation 6. This would require the Tribunal to refer to the facts and the documents relied upon by the parties in respect of their respective claims.

18. Coming now to WP(C) No.6660/2010, suffice would it be to state that the subject matter of the claim before the Tribunal was a subsequent Original Application No.1380/2010 filed by Shriom Dalal. By the word subsequent we mean the Original WP(C) Nos.1359/2010 & 6660/2010 Page 5 of 7 Application was filed after the Tribunal had pronounced its decision dated 12.1.2010.

19. Shriom Dalal predicated a claim under Regulation 6 as also questioned the office order dated 5.3.2010 repatriating him to the parent Department.

20. The Tribunal has dismissed OA No.1380/2010 by and under order dated 23.8.2010 holding that the issue of absorption predicated under Regulation 6 was raised by Shriom Dalal in TA No.312/2009 and noting the fact that the Tribunal had not decided the claim it has been held that Shriom Dalal cannot re-urge the same point pertaining to his being absorbed.

21. In other words, though not was expressly stated by the Tribunal, OA No.1380/2010 has been held to be barred by constructive res-judicata.

22. Suffice would it be to state that on the same claim i.e. the claim of permanent absorption under Regulation 6, Shriom Dalal cannot maintain two actions. Whereas Shriom Dalal did predicate a claim under Regulation 6 in his pleadings in TA No.312/2009 but the decision thereon does not reflect that an argument was advanced during hearing of the TA predicated on Regulation 6 and in respect thereof we have already directed as afore-noted. Thus, OA No.1380/2010 could in any case not have been maintained by Shriom Dalal. Suffice would it be to state that if the Tribunal holds that Shriom Dalal had argued the matter pertaining to his regular absorption when TA No.312/2009 was argued and that the arguments have escaped the attention of the Tribunal while deciding TA No.312/2009, the Tribunal would take corrective action in TA No.312/2009. Upon the Tribunal holding that the plea was specifically given up, Shriom Dalal would not be entitled to urge the same point by and under another Original Application. Thus, whatever

may be the view taken by the Tribunal, no relief can enure in favour of WP(C) Nos.1359/2010 & 6660/2010 Page 6 of 7 Shriom Dalal pursuant to OA No.1380/2010 and for said reason, declining prayer to adjourn hearing of WP(C) No.6660/2010; noting that the same is inextricably linked with WP(C) No.1359/2010; the linkage being shown by us as above, we dismiss WP(C) No.6660/2010.

23. Before concluding we may observe that Shriom Dalal has been repatriated. Vide order dated 30.9.2010 we had observed that no equities would be created nor lost on account of said fact. Thus, the Tribunal would decide the application filed by Shriom Dalal in TA No.312/2009 as per our observations herein above.

24. To conclude, WP(C) No.6660/2010 is dismissed. WP(C) No.1359/2010 stands disposed of permitting Shriom Dalal to file an appropriate application before the Tribunal pointing out that he had argued the claim in the alternative with reference to Regulation 6 of the 2007 Regulations.

25. No costs.

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