

Dharmendra Kumar, and anr. Vs. the Union of India, and anr.

Dharmendra Kumar, and anr. Vs. the Union of India, and anr.

SooperKanoon Citation : sooperkanoon.com/916357

Court : Patna

Decided On : Nov-24-2010

Judge : Meena Kumari; Shiva Kirti Singh, JJ.

Appeal No. : CIVIL WRIT JURISDICTION CASE No.3705 OF 2009

Appellant : Dharmendra Kumar, and anr.

Respondent : The Union of India, and anr.

Advocate for Def. : SRI SUDHIR SINGH, Adv.

Advocate for Pet/Ap. : SRI R.P.BIRNAWAY; SRI ANAND SHARAN, Advs.

Judgement :

1. This writ petition has been preferred by two petitioners to challenge order of Central Administrative Tribunal, Patna Bench, Patna dated 19.12.2008 whereby O.A. No. 381/2008 preferred by the petitioners has been dismissed summarily after noticing the dismissal of three earlier O.As out of which O.A. No. 540/1994 was filed by the present petitioners and others raising similar grievance.

2. Learned counsel for the petitioners has drawn our attention to the earlier order of the Tribunal dated 12.11.1997 passed in O.A. No. 540 of 1994(Annexure-2) to highlight that by the said order the Tribunal had not dismissed the claim of the petitioners and some others but had remanded the matter to the competent authority who was required to dispose of the representation in the light of observations made by the Tribunal in that order. It was further highlighted that the

Tribunal had indicated two issues of facts and had required the concerned authorities to decide those issues relating to correctness of the claim of the petitioners regarding the number of days they had worked as casual Safaiwalas and whether the persons who were included in the panel of 1987 had worked for lesser days than the petitioners or not.

3. According to learned counsel for the petitioners the competent authority complied with the order of the Tribunal contained in Annexure-2 and passed a reasoned order dated 23.04.1998 contained in Annexure-4 and rejected the claim of the petitioners and 12 others by holding that they had worked for much lesser number of days as per records of payment, than what they had claimed and it was also indicated in that order that persons included in the panel of 1987 for being engages as casual Safaiwalas had worked for more days than the petitioners.

4. It is relevant to notice that admittedly the reasoned order contained in Annexure-4 was challenged by the petitioners through O.A. No. 342 of 1999 but without any success. The final order passed in that O.A., dated 13.09.1999 has been annexed as Annexure-5. That order is an order of summery rejection of the claims of the petitioner without interfering with the findings given by the authorities in their reasoned order contained in Annexure-4. Of course, an observation was made in the order dated 13.09.1999 that the applicant may have the option to initiate contempt proceeding if they felt that earlier order of the Tribunal dated 12.11.1997 (Annexure-2) had not been complied. The petitioners preferred a contempt application bearing C.C.P.A. No. 29 of 1999 but the same was dismissed by a reasoned order dated 07.08.2001 which is contained in Annexure-7.

5. The petitioners did not challenge either the order rejecting their O.A. No. 342 of 1999, contained in Annexure-5 or the order rejecting the contempt application contained in Annexure-7 before this Court or any appropriate forum and those orders have attained finality.

6. The argument advanced on behalf of the petitioners is that they did not sit idle and filed representations before the authorities and thereafter filed O.A. No.381 of 2008 before the Tribunal itself which has been dismissed summarily by the

impugned order dated 19.12.2008. It has been further argued on behalf of the petitioners that they have a right to re-agitate the matter because their challenge to the reasoned order of the authorities contained in Annexure-4 has never been considered by the Tribunal on merits.

7. On the other hand, learned counsel for the Railways has taken the stand that petitioners' challenge to the findings of the authorities in the reasoned order contained in Annexure-4 failed long back in 1999 when their O.A. No.342/1999 was dismissed and in any case after dismissal of contempt application on 07.08.2001 vides Annexure-7. According to learned counsel for the Railways, since the petitioners accepted those orders for long number of years and those orders have attained finality, learned Tribunal was correct in dismissing the present O.A. summarily as it was barred by res judicata.

8. Having considered the rival submissions and the relevant facts noticed above, we are in agreement with the submission advanced on behalf of Railways that the matters have attained finality with the order of the Tribunal dated 13.09.1999 rejecting O.A. No.342 of 1999. If the petitioners were dissatisfied with the aforesaid decision, they ought to have challenged that decision immediately in 1999 or at least after dismissal of the contempt application in 2001. But admittedly, those orders have not been challenged till date. In these circumstances, in our considered view, the Tribunal had no option but to dismiss the claim of the petitioners which is in fact based upon challenge to the findings of the authorities contained in Annexure-4. Hence, we have no option but to dismiss this writ petition. It is, accordingly, dismissed.

9. Having dismissed the writ petition on the ground noted above, we feel that claim of the petitioners may deserve a sympathetic consideration by the authorities if they can be engaged as casual Safaiwalas under the existing schemes or the rules and if they apply for the same. Nothing further need be said in this matter.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com