

K.Nagarajan Vs. the Registrar

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Court : Chennai

Decided On : Jun-08-2012

Judge : D.Hariparanthaman, J.

Acts : Industrial Disputes Act - Section 10; [Constitution of India](#) - Articles 226

Appeal No. : W.P.(MD)No.13948 of 2011

Appellant : K.Nagarajan

Respondent : The Registrar

Advocate for Def. : Mr.K.K.Senthilvelan, Adv.

Advocate for Pet/Ap. : Mr.K.M.Boopathu, Adv.

Judgement :

PRAYER

Writ petition is filed under Article 226 of the [Constitution of India](#) praying to issue a Writ of Mandamus, to direct the third respondent herein for accord the permanent status of the petitioners in the services of the Management of M/s.Heavy Alloy Penetrative Project, Trichy and grant further and other reliefs which the petitioners are entitled and to pass appropriate orders in petitioner's representations dated 28.11.2011.

ORDER

1. The petitioners are Sanitary Workers. Totally 42 sanitary workers including the petitioners were appointed by the respondents 2 and 3. According to the respondents 2 and 3, they were appointed on contract basis through a contractor from 1988, almost continuously without any break. The said contractor is also one among the sanitary workers.

2. The said 42 sanitary workers including the petitioners filed O.A.No.489 of 1997 before the Central Administrative Tribunal, Chennai, seeking for a direction to regularize their services. The said O.A.No.489 of 1997 was allowed by the Central Administrative Tribunal on 17.06.1998. The respondents 2 and 3 filed W.P.No.19713 of 1998, to quash the aforesaid order of the Central Administrative Tribunal, before the Principal Bench of this Court. A Division Bench, directed the Union of India, to refer the dispute between the third respondent herein and the 42 sanitary workers under Section 10 of Industrial Disputes Act to the appropriate forum, within a period of four weeks from the date of receipt of that order and the industrial adjudicator was directed to decide the issue and to pass award within a period of six months from the date of reference. A further direction was also issued to retain the service of the sanitary workers including the petitioners in the meantime. Para 10 of the order of the Division Bench of the Court dated 05.11.2004 in W.P.No.19713 of 1998 is extracted hereunder in this regard.

The second petitioner is directed to refer the dispute between the first petitioner and respondents 2 to 43 under Section 10 of the Industrial Disputes Act, to the appropriate forum, within a period of four weeks from the date of receipt of a copy of this order and the industrial adjudicator, to whom the dispute is referred, shall proceed with the matter in reference in accordance with law and pass an award within a period of six months from the date of the reference. Till then, the 43 respondents shall be retained in service by the petitioners on the same terms and conditions existing as on date without prejudice to the right of either parties.

3. Based on the aforesaid direction, the Government of India. Ministry of Labour passed an order dated 15.02.2008 in No.L- 14011/15/2007/IR(DU), referring the industrial dispute, regarding the absorption of the 24 sanitary workers for

adjudication by the Central Government Industrial Tribunal/Labour Court, Shastri Bhavan, Chennai - 6. Instead of referring the dispute relating to absorption of 42 sanitary workers, the reference was relating to only to 24 sanitary workers. The Government of India, as per the order dated 05.11.2004 passed in W.P.No.19713 of 1998, should have referred the dispute relating to absorption of all the 42 sanitary workers. On the other hand, the order confined only to 24 sanitary workers and the names of the petitioners herein are not included in the order of reference.

4. The Central Government Industrial Tribunal, passed an award and granted relief of absorption in the award dated 08.05.2009 in I.D.No.9 of 2008. The award was questioned by the third respondent herein, by filing W.P.No.20682 of 2009 before the Principal Bench of this Court. The Principal Bench of this Court dismissed the said writ petition on 05.03.2010. The matter was taken up in W.A.No.473 of 2011. The Division Bench of this Court dismissed the writ appeal also on 17.03.2011. Thereafter, the matter was taken up to the Apex Court in Special Leave to Appeal (civil) C.C.No.16158 of 2011 and the same was also dismissed on 21.10.2011.

5. In the said circumstances, the petitioners have filed the present writ petition, seeking for direction to the third respondent herein to accord the permanent status to the petitioners, as per the award of Industrial Tribunal in I.D.No.9 of 2008.

6. Notice of motion was ordered on 08.12.2011. The 2nd and 3rd respondents have filed counter affidavit.

7. Heard both sides.

8. The second and third respondents have filed counter affidavit stating that the issue relating to absorption of petitioners was also referred to adjudication by the Central Government Industrial Tribunal. The relevant passage in para 10 of the counter affidavit is extracted hereunder: I submit that the 2nd respondent herein has referred the matter for adjudication in respect of all the 37 labourers, including the present 12 petitioners.

But, the aforesaid averment is totally incorrect. The schedule of the order dated 15.02.2008 of the Government of India, referring the dispute relating to absorption of sanitary workers is extracted hereunder:

Whether the demand of Shri S.Amalraj and 23 other workers, as per Annexure for absorption in the services of the management of M/s.Heavy Alloy Penetrator Project, Trichy, is legal and justified? If yes, to what relief the workmen are entitled to?

Therefore, the absorption relating to 24 workers alone was referred to adjudication. Thus, the averment of the respondents 2 and 3 in this regard is not correct. This Court has categorically directed in the order dated 05.11.2004 in W.P.No.19713 of 1998 to refer the dispute of all the sanitary workers. Para 10 of the judgment in W.P.No.19713 of 1998 is extracted above in this regard.

9. In the said circumstances, the Central Government Industrial Tribunal, passed an award relating to absorption of 24 sanitary workers in I.D.No.9 of 2008. The award was questioned by the third respondent in W.P.No.20682 of 2009, wherein, the respondents are the 24 sanitary workers. Likewise, the writ appeal is also relating to 24 sanitary workers. Ultimately, the order of the Central Government Industrial Tribunal, granting absorption to the sanitary workers was upheld by the Apex Court as stated above.

10. In the said circumstances, it is the mistake of the Government of India in not including the names of the petitioners in the order of reference dated 15.02.2008. It is also admitted that all the sanitary workers are similarly situated and there is no dispute on the same and thus the petitioners should also be treated like others. In fact all of them filed O.A.NO.489 of 1997, before the Central Administrative Tribunal, claiming regularization.

11. In the said circumstances, the writ petition is allowed and a direction is issued to the third respondent to absorb the petitioners as sanitary workers in terms of the award dated in I.D.No.9 of 2008 by the Central Government Industrial Tribunal, Chennai within a period of six weeks from the date of receipt of a copy of this order. NO costs.

