

K. Lieson Vs. Union of India Represented by the General Manager and Others

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Court : Central Administrative Tribunal CAT Ernakulam

Decided On : Jun-28-2012

Judge : The Honourable Dr. K.B.S. Rajan, Judicial Member

Appeal No. : O.A. No. 18 of 2008

Appellant : K. Lieson

Respondent : Union of India Represented by the General Manager and Others

Advocate for Pet/Ap. : For the Applicant: Martin G. Thottan, Advocate. For the Respondents: P. Haridas, Advocate.

Judgement :

Dr. K.B.S. Rajan, Judicial Member

1. The applicant was initially engaged in the construction organisation of the Respondents on 18 - 01 - 1979 under the Permanent Inspector- I, Nagarcoil and continued there till 15 - 04 - 1980. Thereafter he was posted under Inspector II where he served till 05 - 12 - 1980 whereafter he was disengaged. The total period of casual labour service put forth by the applicant according to the applicant worked out to 678 days. Initially, the applicant along with certain other individuals moved the High Court of Kerala, by filing OP number 5365 of 1981 which was disposed of by the High Court with a direction to the respondents that the

petitioners therein should be considered for regular appointment to any class IV posts. Vide judgment dated 12-03 - 1982, at Annexure A-4. As there is no favourable response from the Department, OP No. 8673 of 1982 was filed by them which was disposed of with a direction to the respondents that the petitioners be absorbed in accordance with the scheme for absorption of project casual labourers as approved by the Apex Court in the case of Inder Pal Yadav (1984) 2 SCC 648. Annexure A-5 refers.

2. Despite the above direction, as nothing was coming through from the respondents side, OA 142 of 1987 was filed by the applicant along with 39 others and the respondents while contesting the application submitted that they could not verify the position of the applicant in their seniority lists of project casual labourers of Trivandrum Division. The aforesaid OA was disposed of with a direction to the respondents to intimate that the applicant his seniority position in the list as on 01 - 01 - 1981 and also invite representation from the applicant. Annexure A-6 refers. The applicant accordingly submitted representation vide Annexure A-7. This was responded to by the respondents vide Annexure A-8. Therein the respondents have stated that the service particulars of the applicant were, vide their order dated 14 - 12 - 1989, sent to the Divisional Railway Manager (P)/TVC to include the name of the applicant in their seniority list of project casual labourers of pre-01 - 01 - 1981 list.

3. Despite the above communication since there had been no further developments in regard to the absorption of the applicant on the basis of his seniority position in the list of project casual labourers, the applicant, along with 29 others, moved OA No. 1795 of 1991. Initially an interim order was passed to re-engage the applicant on a provisional basis in case juniors to the applicant were already engaged. Annexure A-9 refers. By Annexure A 10 order dated 30.04.1998 the said OA was dismissed. While recording the reasons for dismissal, an observation was also made to the effect that the respondents have contended that applicant's turn for re-engagement on the basis of his seniority had not as yet matured. Paragraph 5 of order at Annexure A- 10 refers. The applicant had moved Annexure A-11 representation dated 20-02-1997. In the said representation he had stated that in the then published register, his name did not figure in and he

had requested for inclusion of his name therein. The applicant had renewed his request again by another representation dated 12-07-2004 vide Annexure A-13. It was this representation that stands rejected by the applicant through the impugned order dated 12-04-2005 at Annexure A-1. In the said communication the respondents stated that the applicant had not registered his name on or before 31 - 03 - 1987 for any possible re-engagement. The seniority list to prepared for re-engagement was based on yet another order of the Tribunal in OA No. 1706 of 1994. Any appointment on regular basis could be made only through the aforesaid seniority list.

4. Aggrieved by the aforesaid impugned order at Annexure A-1, the applicant has moved this only seeking the following directions:

- (i) Call for the records leading to the issue of Annexure A1 and quash the same.
- (ii) Declare that refusal on the part of the respondents to include the applicant's name in the list of retrenched casual labourers maintained by the respondents in Trivandrum Division is arbitrary, discriminatory and unconstitutional.
- (iii) Direct the respondents to consider and include the applicant's name in the Live Register containing the list of retrenched casual labourers and consider him for regular absorption as a Track Man/Gang Man and to grant him consequential benefits thereof with effect from the date of absorption of his juniors with lesser number of days of service.
- (iv) Award costs of and incidental to this application.

5. Respondents have contested the OA. They have contended that the Trivandrum Division had not received the Annexure A-8 communication from the Executive Engineer's Office. Further, the applicant has not challenged the said Annexure A-8 order. The challenge made is against Annexure A-1 order which is again Time Barred. Annexure A-10 order of the Tribunal, whereby the claim of the applicant has been rejected puts a full stop to all the affairs and thus, subsequent communication such as Annexure A-11 etc., does not call for any remarks.

6. In his rejoinder the applicant submitted that Annexure A-8 need not be challenged since, the same reflects that his name would be included in the waiting list of casual labourers for absorption. As regards limitation, it has been submitted by the applicant that he had filed an application for condonation of delay, which contains cogent reasons.

7. In their additional reply, the respondents have stated that Annexure A-8 is not the final reply and the final reply is Annexure A-1 order dated 12 - 04 -2005. The applicant remained silent thereafter till he filed the present OA. It has also been contended that the final cut-off date of 31-03-1987 having been prescribed by the apex court, no authority can alter the same. The Hon'ble High Court of Kerala had in their judgment dated 07-12-2005 stated that it is not possible to include any person to submit application beyond the date prescribed by the apex court. Annexure R-1 refers.

8. The respondents have recently filed additional affidavit reiterating their earlier points such as limitation aspect, infructuous nature of Annexure A-11 and A-12 representations in view of dismissal of the OA No. 1795 of 91, non pursuance of the case by the applicant (para 10) and irrelevance of the grounds contained in the O.A.

9. Counsel for the applicant had given a brief outline of the entire facts of the case and submitted that the following three points deserve consideration: -

(a) He had sent his communication for registration as early as 27 - 03 - 1987. In this regard, the original of the certificate had been filed by the counsel. The said certificate contains the Address of the Senior Divisional Personal Officer, S.Railway, Trivandrum and dated 27-03-1987.

(b) It is only just and proper to infer or presume that the applicant had already registered his name as per the requirement of the respondents. The Counsel further submitted that the applicant's continuous attempt in seeking justice through the court/Tribunal by filing Original Petitions before the High Court prior to constitution of the Tribunal and by filing Original Applications after the Constitution of the Tribunal would go to show that the applicant is keen in getting reengaged

and also absorbed in the respondents organisation.

(c) After the receipt of Annexure A-7 communication, the Executive Engineer, construction, Palayankottai, had confirmed the dispatch of details of the applicant to the Divisional Railway Manager, Trivandrum. By this act, the respondents are estopped from making any objection relation to the registration as also to the other details of casual labour service.

10. Counsel for the respondents succinctly summarised all the contentions as contained in the reply filed earlier and the latest additional reply.

11. Arguments were heard and documents perused. As regards limitation, the respondents themselves have stated that the earlier communication at Annexure A-8 cannot be treated as a final one and it is only the impugned order that is treated as final one. This impugned order is dated 12-04-2005 and the applicant has explained the same in his MA No. 27 of 2008, stating in para 4 as under:-

"4. The applicant most humbly submits that he is a person who is aged 50 years at present. He had been in continuous contact with the respondents for including his name in the list of retrenched casual labourers. He had submitted representation at the proper time for including his name also in the Live Register before 31.03.1987. For the last 26 years, he is pursuing his grievances before the Railway authorities. He is a pre-1981 retrenched Casual Labourer with more than 678 days of service to his credit. Every time he approached the authorities, they assured him that they will take favourable action. This is the Fourth round of litigation of the applicant in redressal of his grievance. Even though he was favoured by the orders of this Hon'ble Tribunal a number of times, the respondents have not chosen to implement the same. Rather they are literally playing with the lives of these poor Casual Labourers by dragging them over and again to the Courts of Law. The applicant who had to chose to go for manual work for maintaining himself and his family could not all on a sudden arrange enough money too approach a counsel to file an Original Application to redress his grievances. As soon as he found it possible, he has filed this Original Application. As a result of the omission on the part of the respondents to include his name in the Live Register, the applicant is put to substantial prejudice and irreparable

damages. It was due to the pressure of these circumstances that he could not approach this Hon'ble Tribunal in time. The applicant humbly submits that the delay in filing the Original Application was not at all wilful or deliberate or on account of any laches or negligence on the applicant's part. The delay occurred due to reasons beyond the control of the applicant."

12. The applicant has been vigilant right from 1981 onwards as could be seen in his moving the High Court for regularization etc., Periodically he had filed cases and his keen interest in getting himself absorbed cannot be undermined. There is certainly a delay of 298 days, as contained in the delay application and the reasons are certainly justifiable. Being a low paid employee, fighting a legal battle is certainly one of concern from the financial point of view. As such, the Tribunal is inclined to condone the delay of 298 days in filing the application. M.A. No. 27 of 2008 is thus allowed.

13. Now on merits. The spirit behind the decision of the Apex Court in Inder Pal case needs no emphasis. All those casual labourers who had put in the minimum requisite period of casual labour service would be entitled for further engagement and subsequent absorption in the order and on the basis of their total period of casual labour service rendered prior to 01-01-1981. Opportunity was given to all to register their names. In the instant case, the applicant initially moved the High Court and the judgment passed by the High Court happened to go in favour of the applicant. If he had put in adequate days of casual labour service, he would be eligible for consideration for further re-engagement and absorption. Time limit stipulated for such registration was 31-03-1987. The applicant has filed the original of the Certificate of Posting dated 27-03-1987. There is no reason to disbelieve the same. Nevertheless, since by Annexure A-6 order yet another opportunity was given to the applicant in OA No. 142 of 1987, the applicant did avail of the same vide Annexure A-7. This was addressed to the Senior Divisional Personnel Manager, Trivandrum, and obviously, the applicant had to submit the same through his immediate higher authority, i.e. the Executive Engineer, Construction/Palayankottai who had informed the applicant of the action taken taken by him, i.e. furnishing the materials to the Trivandrum Division, vide Annexure A-8. The genuineness of the said letter has not been questioned or

doubted by the respondents, though the respondents had stated that the same had not been received by the Trivandrum Division. The correspondence being one of inter-departmental, the applicant could hardly be penalized for non receipt of the same by the Trivandrum Division. The fact that the details are available with the authorities, be it with the Engineer's office or at the Personnel Office of the Trivandrum Division would suffice to show that the respondents have accepted the details of service rendered by the applicant as a casual labour and the same had been on time. The inference cannot be anything than the above. When so, it is not the fault of the applicant but of the respondents in not having considered the case of the applicant for regularization.

14. One aspect about the earlier dismissal of OA No. 1795 of 1991. The same had been dismissed for different reasons. The contention of the respondents that the same puts a full stop to further action cannot be accepted. The applicant's case is to progress on the basis of the orders of the Tribunal as contained in OA No. 142 of 1987.

15. In view of the above, the OA deserves to be allowed and the same is accordingly allowed. It is declared that the applicant is entitled to regularization. However, in view of the time distance between his earlier engagement and now, all that could happen is that in the future available vacancies he could be absorbed and the applicant's seniority shall also be fixed accordingly. All the benefits that are available to any new recruits would be admissible to the applicant. His regularization is, of course, subject to the other formalities such as medical examination, etc., being fulfilled

16. This order shall be complied at the earliest and in any event, not later than two months from the date when vacancy to consider the applicant against the same arises.

17. No costs.