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Court : Central Administrative Tribunal CAT Delhi

Decided On : Feb-07-2012

Judge : The Honourable Mr. M.L. Chauhan, Member (J) & the Honourable Mrs. Manjulika Gautam, Member (a)

Appeal No. : OA No.2520 of 2011

Appellant : Ashok Kumar and Others

Respondent : Ashoka Hotel Through Its General Manager Pansheel Marg, New Delhi and Others

Advocate for Pet/Ap. : For the Applicants: In Person. For the Respondents: Arvind Kumar, Advocate.

Judgement :

M.L. Chauhan, Member (J)

1. This is the second round of litigation. Earlier the applicant filed CWP No.3051/2011 before the High Court, which was subsequently transferred to this Tribunal and was registered as TA No.1439/2009. This Tribunal vide order dated 30.09.2010 disposed of the TA when attention of the Tribunal was brought to the fact that an appeal/request dated 10.08.2010 has been preferred by one of the applicants for sympathetically settling the matter outside the court so as to

reinstate the applicants, as was done in the case of 31 persons who were appointed on contract basis and made permanent in the month of July 2010 when the load of work having been entrusted to ITDC in the light of Commonwealth Games. On the basis of the contention so raised, this Tribunal passed the following order:

“3. We do not have any such methodology for outside court settlement and it cannot be approved of but we can now safely direct the respondents to treat the present TA (C.W.P. (C) No.3051/1991) as representation on their behalf and consider their claim within a period of two weeks from the date of receipt of a copy of this order. Subject to the result, applicants shall be at liberty to assail their grievance afresh before the Tribunal, for which limitation would not be attracted as an impediment. No costs.”

2. Pursuant to the order passed by this Tribunal the respondents have treated the TA as representation of the applicants and passed a reasoned and speaking order dated 30.11.2010, thereby rejecting the claim of the applicants. At this stage, it will be useful to quote the said order in extenso, which thus reads:

“Nov 30, 2010

Ref. No.AH/HR/Legal/HC/47/10/1424

To

Shri Ashok Kumar,

S/o Shri Kalicharan

B-41, Sector-25, Rohini,

DELHI-110085.

Sir,

This has reference to the order dated 30.09.2010 passed by the Hon'ble Central Administrative Tribunal in TA No.1439 of 2009 titled Ashok Kumar and Ors. Vs

ITDC whereby the Hon'ble CAT has disposed off the Application with the observation that the Tribunal does not have any methodology for outside court settlement and it cannot be approved. The Hon'ble CAT has directed to treat the TA as representation on their behalf and consider their claim.

In this connection, it is informed that a Writ Petition was filed by you being CWP NO.3051 of 1991 (subsequently registered and numbered as TA No.1439/2010) wherein it was the admitted case of the Petitioners that they are working on daily wage basis and were engaged from time to time on adhoc basis. It was the submission of ITDC that the petitioners have an alternative efficacious remedy in the form of raising an industrial dispute under the Industrial Disputes Act, 1947, which was so chosen by the Applicants and on the motion of the Applicants, the Appropriate Govt. was placed to refer the dispute vide order of reference No.32986-91 dt. 19.10.89 seeking adjudication of the then POIT No.III, on the following terms:-

“Whether the workmen whose names are listed in Annexure-A are entitled to be regularized and if so, what directions are necessary in this regard?

It is mentioned that the petitioners were employed on purely casual basis for different periods and their such employment was purely on account of casual and intermittent work of the hotel and none of the petitioners continuously worked for a period of 240 days particularly from the period when the determination of the number of days of work was to be reckoned for the purpose of Section-25B of the Industrial Disputes Act, 1947.

Vide your letter/representation dated 10.08.2010, you have cited the case of other contract workers who were given permanent employment in Ashok Hotel. In this connection, it is mentioned that in the case cited by you being CWP No.3893 of 2000 titled Ashok Kumar and Ors. Vs. Ashok Kumar, New Delhi that the petitioners therein in the pending case before the High Court was against the sanctioned permanent post, however, they were appointed initially on contract basis on a consolidated salary only because these candidates at that point of time (in 1988) did not possess requisite working experience in a mechanized laundry as that of the Ashok.

However, working considering their regularization, the selection committee, in the Minutes has observed that based on their performance during the period of one year, they be regularized as laundry men Gd.III in the pay scale of Rs.2110-3135. The basic objection which has been cited by ITDC is that they did not qualify for the post at that period of time and, therefore, taken on contract. However, they have been allowed to continue on contract since 1998 by virtue of the interim order to maintain status quo in respect of their service, passed by the Hon'ble High Court in the said Writ Petition. The petitioners have gained the necessary working experience having worked in the laundry for more than 11 years and their performance has been satisfactory. They were given regular scale of pay and also other benefits including bonus ex-gratia etc. and regular increments.

In view of the above, the case of the petitioners in TA No.1439 of 2009 is entirely on different footings as that of in CWP No.3893 of 2000, compelling us not to take similar approach in the present case. Last, but not the least, your (Petitioner's) services even otherwise cannot be regularized, as their services have already been discontinued.

With the above observations, your representation stands disposed off.

Thanking you,

Yours sincerely,

Sd/-

(S.K. Maitra)

Vice President (HR Legal)"

3. Thereafter, the applicants again filed review/appeal against the said order and the same was subsequently rejected on the ground that decision has already been taken on 30.11.2010. Hence, the applicant has filed this OA, thereby praying for the following reliefs:

"8.1 That this Hon'ble Tribunal may be graciously pleased to allow this application of the petitioners and direct the Respondents to reinstate the petitioners in service

from the date of their illegal termination and regularize their services with continuity of service and full back wages with all consequential benefits.

8.2 That the Hon'ble Tribunal may also be pleased to award any other or further relief which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.”

4. Notice of this Application was given to the respondents, who have filed their reply, opposing the claim of the applicants on the basis of the reasoning given in the impugned order, relevant portion of which has been extracted in the earlier part of the judgment. At this stage, it will be useful to quote paras 4-6 of the reply-affidavit, which thus read:

“4. That the Applicants were employed as daily wagers on purely casual basis for different periods from the year 1985-90 and their such employment was purely on account of casual and intermittent work of the Hotel and none of the Applicants continuously worked for a period of 240 days, particularly from the period when the determination of the number of days work was to be reckoned for the purposes of section 25B of the Industrial Disputes Act. The Answering Respondents are giving below the details of the number of days worked by each of the Applicants in every year from the year 1985-90:

Sr. No.	Name of the Person	1985	1986	1987	1988	1989	1999	Total
1	Ashok Kumar S/o Kali Charan	--	--	30	99	187	208	524
2	Dharamvir Singh S/o Bhikhari Singh	--	60	41	--	--	210	311

3	Surinder S/o Prakash	--	15	--	--	82	44	141
4	Sunil, S/o Rajan	223	149	89	182	217	76	936

As regards the contention and allegation of the Applicants, namely, Ashok Kumar, Dharambir and Sunil that they have worked with the Management of the Hotel from 16.03.1992 to 01.03.1992, it is submitted that in fact, the said Applicants worked with the Management of the Hotel for a period of 7 days only i.e. from 16.02.1992 to 22.02.1992 and not as alleged or averred by the said Applicants. This fact is amply clear from the document relied upon by them and annexed with the Application under reply.

5. That it is most respectfully submitted that in order to abolish the practice of employment of casual labour, in the year. 1990, the Management of the Hotel started a Scheme under which all casual employees of the Hotel were considered for appointment on regular basis and after interviewing all such employees, a total of 111 employees were regularized and thereafter, the Hotel totally dispensed with the employment of casual labour on daily basis, except for few instances, when the services of daily wagers were taken on need basis. On this count also, the present Application is liable to be dismissed with cost.

6. That it may be submitted here that the Applicants did not acquire any vested right to claim regular and full time employment with the Hotel and have no legal right to such employment. It is denied that any artificial breaks, as alleged or otherwise at all were given in respect of the Applicants in order to deprive them of continuous employment. As submitted above, all the employees including the Applicants were given casual employees as and when work or need arose for their engagement.”

5. Applicant has filed rejoinder. The details of the working days during the period when the applicants were engaged by the department in the years 1985-1990, as given in para-4 of the reply-affidavit, have not been specifically controverted by the

applicants in the rejoinder, but for the vague averments made in the rejoinder that the details given by the respondents are not true and correct and respondents may be directed to provide proof regarding attendance register, salary register, muster-roll, overtime register etc. of applicants from 1985 to 31st August, 1990.

6. We have heard applicant No.1 in person and the learned counsel for the respondents. We are of the view that the applicants have not made out any case for grant of relief for more than one reason. As per the material placed on record, admittedly applicants have not continuously worked for a period of 240 days in one year so as to attract the provisions of Section 25B of the Industrial Disputes Act. In any case, if the services of the applicants have been terminated in violation of provisions of Section 25B of the Industrial Disputes Act, remedy lied for the applicants was to approach the Industrial Tribunal for appropriate relief, thereby praying that their termination is in violation of the provisions contained in Section 25B of the Industrial Disputes Act, thus, such termination is void abinitio. Certainly for violation of provisions of Section 25B, remedy does not lie either before the High Court or before this Tribunal. That apart, as can be seen from the impugned order dated 30.11.2010, relevant portion of which has been reproduced hereinabove, it is evident that industrial dispute was in fact raised on behalf of the applicants and the appropriate Government was pleased to refer the dispute vide order of reference No.32986-91 dated 19.10.1989, which was in the following terms:

“Whether the workmen whose names are listed in Annexure-A are entitled to be regularized and if so, what directions are necessary in this regard?

7. Thus, according to us, once the appropriate Government has referred the dispute to the Industrial Tribunal for adjudication, it was not permissible for the applicants to simultaneously resort to a remedy by filing a Writ Petition before the High Court, which has been transferred to this Tribunal and has been disposed of by giving directions to the authorities to treat that Writ Petition/TA as a representation of applicants and decide the same. Further, we see no infirmity in the decision of the respondents, whereby relief regarding regularization of the applicants has been declined on the ground that the applicants had an alternative

efficacious remedy in the form of raising a dispute under the Industrial Disputes Act and in fact the dispute was also referred to the Industrial Tribunal and further that the provisions of Section 25B of the Industrial Tribunals Act, 1947 are not attracted in the instant case, as none of the applicants had continuously worked for a period of 240 days.

8. Insofar as the second grievance of the applicants that their services should be regularized, as was done in the case of other persons, who were employed on contract basis, we see no infirmity in the reasoning given by the competent authority in the impugned order dated 30.11.2010. It has been categorically stated in the said decision that the persons who were employed on contract basis were appointed against permanent posts on a consolidated salary their services could not be regularized as they do not possess the requisite working experience in a mechanized laundry, although their cases were recommended by the selection committee and were allowed to continue on contract basis since 1998 by virtue of the interim order passed by the High Court in the Writ Petition. Since the petitioners in CWP No.3893/2000 have put in 11 years of satisfactory service it was under these circumstances that their services were subsequently regularized. We fail to understand how the applicants can take any assistance from such decision, as admittedly, applicants were engaged as casual workers on daily wage basis and were not engaged against any permanent posts on contract basis on a consolidated salary. Thus, their services could not have been regularized.

9. Yet for another reason, applicants are not entitled to any relief. Admittedly, applicants were disengaged from service in the year 1990 and none of them had continuously for one year completed 240 days of service. From the material placed on record, it is also evident that in order to abolish the practice of employment of casual labour, in the year 1990 the Management of the Hotel started a Scheme under which all casual employees of the Hotel were considered for appointment on regular basis and after interviewing all such employees a total of 111 employees were regularized and thereafter the Hotel totally dispensed with the employment of casual labour on daily wage basis. Admittedly, services of the applicants were not regularized. Thus, it is not permissible for this Tribunal to give a direction to the respondents to regularize the services of the applicants, especially when in view of

the law laid down by the Constitution Bench of the Apex Court in the case of Secretary, State of Karnataka and others v. Umadevi(3) and others (2006) 4 SCC 1, every appointment to a civil post has to be made in accordance with the recruitment rules. Even on this ground applicants cannot be appointed to a Group 'D' post de hors the rules and in violation of the mandate of Articles 14 and 16 of the Constitution of India. Since the applicants were working as casual workers and were not appointed against any post, as such they cannot be reinstated, that too, after a period of about two decades when their services had been disengaged.

10. In the result, for the foregoing reasons, OA is found bereft of merit, which is accordingly dismissed, with no order as to costs.

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