

Samulam Kerketta and Others Vs. the Union of India and Others

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Court : Kolkata

Decided On : Sep-13-2012

Judge : Jayanta Kumar Biswas & Harish Tandon

Appeal No. : WPCT No. 563 of 2012

Appellant : Samulam Kerketta and Others

Respondent : The Union of India and Others

Judgement :

Jayanta Kumar Biswas, J.

The 40 petitioners in this WPCT under art.226 dated August 27, 2012 are aggrieved by an order of the Central Administrative Tribunal, Calcutta Bench (Circuit at Port Blair) dated December 13, 2011 dismissing their OA No.179/AN/2010.

The case stated in the OA precisely is this. The petitioners were appointed in the Forest Department of the Andaman Administration as daily rated mazdoor between 1992 and 1996. Having worked continuously for 240 days, they acquired a right to absorption in permanent employment; for the provisions of s.25B of the Industrial Disputes Act, 1947 created their such right.

The respondents in the OA filed a reply contending that the petitioners not appointed according to the recruitment rules, were not entitled to employment in

the department concerned on a permanent basis by way of regularization.

The Tribunal held that on the facts the petitioners not appointed to any post were not entitled to an order directing the Administration to appoint them in the department concerned on a permanent basis by way of regularization.

Ms.Nag appearing for the petitioners and relying on the decision in State of Karnataka and Ors. v. M.L.Kesari and Ors., AIR 2010 SC 2587, has argued that in view of the long continuous services the petitioners gave, the Administration was under an obligation to frame a scheme for their employment on a permanent basis by way of regularization.

Mr.Mandal appearing for the respondents and relying on the decisions in Union of India and Anr. v. Mohan Pal and Ors., (2002) 4 SCC 573 and Hindustan Aeronautics Ltd. v. Dan Bahadur Singh and Ors., (2007) 6 SCC 207, has argued that by dismissing the OA the Tribunal has not committed any wrong; for the petitioners not selected according to rules, were not entitled to any employment on a permanent basis by way of regularization.

The decision in Hindustan Aeronautics Ltd. v. Dan Bahadur Singh and Ors., (2007) 6 SCC 207 is the complete answer to the petitioners' case stated in the OA. In that case it was clearly held that continuous engagement for 240 days is not a ground for employment in the organization concerned on a permanent basis.

We, however, do not think it will be appropriate to decide the case on this question only, because before the Tribunal and also before us it has been argued that the petitioners were entitled to employment in the Administration on a permanent basis by way of regularization on the basis of a scheme that the Administration was under an obligation to frame following the decision in Uma Devi.

The petitioners were appointed as daily rated mazdoor; at the date they were appointed all appointments on a permanent basis were to be made according to the recruitment rules which were in force. But nothing in the rules prevented the Administration from appointing the petitioners on a daily rated basis. On the contrary, in view of an order of the Central Government issued in 1988 the

Administration was empowered to appoint casual labourers such as the petitioners on a daily rated basis.

Therefore, there is no reason to say that the petitioners' appointments were either illegal or irregular.

For giving better benefits to the casual labourers the Government framed a scheme in 1993 whereunder persons working for more than 240 days were to get the benefit of temporary status. It was mentioned that persons working with temporary status would be eligible to participate in recruitment process initiated for filling permanent Group-D posts in the organization concerned. In *Union of India and Anr. v. Mohan Pal and Ors.*, (2002) 4 SCC 573 it was held that the scheme was not an ongoing scheme.

The petitioners engaged as daily rated mazdoor were to remain as such until they acquired a right to get any other status. They were given this opportunity in 2008 (as will appear from the case stated in para. 8 of the reply the respondents filed before the Tribunal). It is not disputed that they have been given all the financial benefit to which they are otherwise entitled.

The petitioners seeking permanent employment in the Administration would have been entitled to permanent employment only if they were recruited according to the recruitment rules, and for this they were to participate in the recruitment process. Though the Administration gave opportunity only four persons working in the department as daily rated mazdoor applied for permanent employment. Out of the four two ultimately participated and were selected, and the other two did not participate in the selection process.

It is, therefore, evident that the petitioners getting sufficient opportunity to participate in the recruitment process for permanent employment in the Administration chose not to participate in the selection process. Having taken this decision, in our considered view, they were not entitled to call upon the respondents to frame a special scheme for their employment in the department concerned on a permanent basis by way of regularization.

We do not think on the facts of the case the decision of the Supreme Court in State of Karnataka and Ors. v. M.L.Kesari and Ors., AIR 2010 SC 2587 can give the petitioners any benefit. We do not think it is a fit case where we should follow the decision for passing an order directing the Administration to frame a scheme for the petitioners' employment in the department concerned on a permanent basis by way of regularization.

For these reasons, we dismiss the WPCT. No costs. Certified xerox.

Jayanta Kumar Biswas, J.

Harish Tandon, J.:

I agree.

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