

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.1628/2008**

% Date of decision : February 29th, 2008

Ramagya & Ors.

..... Petitioners

Through: Mr.Umesh Singh, Advocate.

Versus

M/s.Bata India Ltd. & Ors.

.....

Respondent

Through : Nemo.

CORAM :-

* **HON'BLE MR. JUSTICE ANIL KUMAR**

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J. (Oral)

1. The petitioners have challenged the award dated 8th October, 1997 of the Industrial Tribunal-I declining the reference regarding regularization of the services of the petitioners.

2. The Secretary (Labor), Government of NCT had made the following reference :-

“Whether the workmen S/Sh. Ramagya S/o.Sh. Rajman Singh & Others as shown in Annexure-A are entitled to be regularized in the services from the initial date of their joining & if so, what directions are necessary in this respect”.

3. The petitioners in their claim petition had contended that the managements are not maintaining proper records and are not providing legal benefits and their services have not been regularized in spite of the petitioners working for the last many years whereas their other colleagues have been granted regularization and permanent position by the respondent.

4. The respondent Nos.2 and 3 opposed the claim of the petitioners on the ground that the petitioners were engaged on casual and temporary basis and they had never been employed as regular employment. It was asserted that regularization is done on the basis of the test conducted by the management and all those workmen who qualify the test and fulfill other requisite conditions are appointed as permanent employee. In case of petitioners, it was contended that they have failed to qualify the test for regularization and in the circumstances they are not entitled for appointment to the permanent post.

5. The Industrial Tribunal has considered the statement of the workmen in which they admitted that the management regularly

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conducts an examination/test for regularization of the temporary employees and those who pass the recruitment test are posted at different places. The petitioners also admitted in their statements and in the cross-examinations that the respondents have never restricted the petitioners to appear in the said test/examination. The petitioners also admitted that those who have qualified the test have been appointed as permanent employees.

6. Learned counsel for the petitioners has contended that under the rules of the respondents 2 and 3, there are two classes of the employees, probationer and permanent and in the circumstances, the petitioners cannot be termed as employees other than permanent employees.

7. The contention of the petitioners is without any basis because the petitioners themselves have admitted that before appointment as permanent employee, the tests are conducted in which the petitioners have also appeared, however, they have not qualified. In the circumstances the petitioners cannot contend that they are entitled to be appointed as permanent employee without qualifying the test conducted by respondents 2 and 3 to which tests the petitioners have never been restricted to appear.

8. It is a settled position of law that in exercise of jurisdiction under Article 226 of the Constitution of India, the Court is not to interfere with factual findings of the lower courts and should restrain itself from re-appreciating evidence while exercising powers of judicial review. Reliance for this proposition can be placed on the judgment of the Supreme Court, *Government of A.P. and Ors. v. Mohd. Nasrullah Khan* reported as (2006) 2 SCC 373. Writ court should refrain from interfering with the orders of an inferior tribunal or subordinate court unless it suffers from an error of jurisdiction or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law. The objective of judicial review is that a person receives a fair treatment and objective is not to re-appreciate the entire pleas and evidence and draw inferences again. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court.

9. In the facts and circumstances, there is no manifest error in the award dated 8th October, 2007 of the Industrial Tribunal-I so as to

interfere with the same under Article 226 of the Constitution of India.

The Writ Petition is, therefore, without any merit and is dismissed.

February 29th, 2008.
'Ravindra'

ANIL KUMAR, J.