

Chief Justice's Court

Case :- WRIT - A No. - 8581 of 2024

Petitioner :- Mohammad Azam Khan Deceased And 2 Others

Respondent :- Union Of India And 3 Others

Counsel for Petitioner :- Amrendra Kumar Srivastava, Anil Kumar Pandey

Counsel for Respondent :- A.S.G.I., Jigyasa Singh

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Vikas Budhwar, J.

1. Heard Sri Amrendra Kumar Srivastava, learned counsel for the writ petitioners, Sri Shashi Prakash Singh, learned A.S.G.I. assisted by Ms. Jigyasa Singh, learned counsel for the respondents.

2. Impugned in the proceeding at the instance of Mohammad Azam Khan (deceased) through its legal representative and two others (in short 'writ petitioners') are the judgment and orders of the Central Administrative Tribunal, Allahabad Bench, Allahabad (in short 'the Tribunal'), whereby the Original Application No. 330/01321/2018 (Mohammad Azam Khan and three others vs. Union of India and two others) preferred by the writ petitioner/ original applicants seeking a direction commanding the respondents to reinstate the original applicants and to give them arrears from the date the original applicants were given the time pay-scale was dismissed on 06.12.2023 as well as the order of the Tribunal dated 09.01.2024 passed in Review Application No. 1 of 2024 dismissing the review application.

3. The case of the writ petitioners/original applicants before the Tribunal was that the original applicants/ writ petitioner nos. 1, 2 and 3 were engaged as casual labours working under Singal Department of Varanasi Division of North-Eastern Railway, Gorakhpur since 20.10.1980, 07.05.1979 and 24.08.1979. They further claimed that they were accorded time pay-scale on 03.04.1987 and 05.04.1987,

respectively. According to the pleadings set forth, in paragraph-4.6 of the Original Application without any notice, pay or retrenchment compensation, the original applicants'/ writ petitioners' engagement was dispensed with despite the fact that they were accorded time-pay-scale.

4. Pleadings further reveal that the original applicants claimed similar benefits, which had been accorded to their counter-parts, one Vijay Bahadur Lal Srivastava and 9 others, who approached the Tribunal while instituting Original Application No.126 of 2010, Vijay Bahadur Lal Srivastava and 10 others vs. Union of India and 2 others, which came to be decided in their favour on 11.02.2015 with a direction to reinstate them along with the arrears from the date they were made admissible to the pay-scale without giving any effect to the result of any scrutiny test published on 19.10.2010. Since they were not accorded the benefits so the original applicants preferred O.A. No. 330/01321/2018 (Mohammad Azam Khan and three others vs. Union of India and two others) along with the delay condonation application seeking the following reliefs:

"8.1 Issue an order or direction commanding the respondents to reinstate the applicants and give the arrears from the date the applicants were given Time Pay Scale as per the judgment passed by the Hon'ble High Court, which is being affirmed by the Hon'ble High Court, which is being affirmed by the Hon'ble Supreme Court in the case of similarly situated person under the command of the same respondents as are in the present Original Application. (Contained as Annexure No.A-2 in present Original Application)

8.2 Issue any other suitable writ, order or direction as this Hon'ble Tribunal may be fit & proper under the fact and circumstances of the case.

8.3 Award the costs of the O.A. in favor of the applicants."

5. It appears that the delay was condoned and the original application was given a regular number.

6. A counter affidavit came to be filed before the Tribunal by the respondents, to which a rejoinder affidavit was also filed.

7. The original application preferred by the original applicants/ writ petitioners being O.A. No.330/01321/2018 (Mohammad Azam Khan and three others vs. Union of India and two others) came to be dismissed by virtue of the order dated 06.12.2023.

8. A review application also came to be filed by the original applicants which also met with the same fate vide order dated 09.01.2024.

9. Questioning both the orders, the original applicants/ writ petitioners have preferred the present writ petition.

10. Sri Amrendra Kumar Srivastava, learned counsel for the writ petitioners have sought to argue that the orders impugned of the Tribunal cannot be sustained for a single moment, as the same suffers from complete misreading of records and perversity. Elaborating the said submission, it is being submitted that the original applicants/writ petitioners herein had been engaged as casual labours and were working under the Signal Department of Varanasi Division of North-Eastern Railway, Gorakhpur since 20.10.1980, 07.05.1979 and 24.08.1979 and they were accorded the time-pay-scale on 03.04.1987 followed on 05.04.1987.

11. It is submitted that in the seniority list, maintained by the respondents, name of the writ petitioners/ original applicants finds place at Sl. Nos. 25, 48 and 69. However, without there being any notice, pay and retrenchment compensation, their engagement has been dispensed with.

12. It is also submitted that similarly situated incumbents, who were also sailing on the same boat, namely Vijay Bahadur Lal Srivastava and 10 others, they were disengaged. However, challenging the action

of the respondents herein, they preferred O.A. No. 126 of 2010, which came to be decided in their favour on 11.02.2015 according to reinstatement to them along with arrears from the date, they were granted pay-scale. In nutshell, the submission is that since the writ petitioners/ original applicants are similarly situated, thus the Tribunal fell in error in dismissing their challenge while rejecting the original application.

13. Additionally, it has been argued that in view of the provisions contained under Section 5 of the Administrative Tribunal Act, 1985, the Administrative Member of the Tribunal was not vested with the jurisdiction to adjudicate the present controversy, as the matter related to reinstatement, thus either the Division Bench of the Tribunal or Bench of a Judicial Member was having jurisdiction to decide the issue. Reliance has been placed upon the decision of the Hon'ble Supreme Court in the case of *State of Madhya Pradesh vs. B.R. Thakare and others*, **AIR (2002) SC 2431** and a Division Bench judgment of the Karnataka High Court in the case of *Thammaiah Chari Vs. State of Karnataka and others*, reported in **2005 (1) ATJ 324** so as to contend that the dismissal of the original application by an Administrative Member of the Tribunal was not justified.

14. It is accordingly prayed that the orders of the Tribunal be set aside and the writ petition be allowed *in toto*.

15. Countering the submission of the learned counsel for the writ petitioners, Sri Shashi Prakash Singh, learned A.S.G.I. assisted by Ms. Jigyasa Singh, who appears for the respondent-Railways has submitted that the orders impugned in the writ petition need no interference in the present proceedings, particularly in view of the fact that the Tribunal has analyzed the issues in question and has considered each and every aspect of the matter while passing the order which is impugned in the present petition.

16. It is submitted on behalf of the respondents that the very basis and the foundation of filing of the original application itself is weak, particularly when though in the relief claimed before the Tribunal, it was prayed that the original applicants/ writ petitioners be reinstated and be accorded arrears from the date they were given time pay-scale, but as per the pleadings before the Tribunal neither any date has been specified nor any document has been appended, though bald allegation has been levelled that their engagement has been dispensed with without notice, pay, retrenchment compensation. According to them, the writ petitioners/ original applicants have asserted in para-4.2 of the original application and also annexed a document dated 11.10.1985, however, the said document is not worth consideration, as its existence is doubted. Submission is that the said document is not authentic and further a glance of the said document will show that it is dated 11.10.1985, however date of giving time-pay scale has been shown to be of the year 1987, inferring that the said document is a forged and fictitious document.

17. We have heard learned counsel for the parties and perused the records accordingly.

18. The first and foremost issue, which needs to be addressed originates from the relief sought for by the original applicants before the Tribunal. A perusal of the relief shows that the original applicants sought a direction commanding the respondents herein to reinstate the original applicants and to give arrears from the date they were given time pay-scale in accordance with the judgment of the Tribunal in O.A. No.1627 of 2010, *Vijay Bahadur Lal Srivastava and 10 others Vs. Union of India and two others* decided on 11.02.2015.

19. The question of reinstatement only arises when there has been any act of the employers/ Railways for disengagement, as noticed only in para-4.6 of the original application, this much has been asserted that

the applicants were granted time pay-scale and were not given notice, pay and retrenchment compensation by respondents, hence applicants are entitled to be reinstated. In absence of any details or any document available on record, this Court is not in a position to accord relief to the writ petitioner/ original applicants, particularly, when the pleadings are completely lacking. Nonetheless, the document, which was made the sheet-anchor to raise a challenge, dated 11.10.1985 is also not worth consideration, as its genuineness has been doubted by the Tribunal. Furthermore, the said document is dated 11.10.1985, however, it depicts the date of the year 1987.

20. This Court on 28.05.2024, required the counsel for the writ petitioners to place on record the details and the documents, which shows the date when they were disengaged from service in order to consider their claim of reinstatement. However, today a supplementary affidavit has been filed, which neither contains any details nor any document, which substantiates and supports the case of the writ petitioners/ original applicants. In absence of any factual pleadings or documents available on record either before the Tribunal or before us, we are not in a position to subscribe the contentions raised by the writ petitioners.

21. As regards the issue that the writ petitioners/ original applicants are entitled to the same benefits which have been extended to the original applicants in O.A. no.1627 of 2017, *Vijay Bahadur Lal Srivastava and 10 others Vs. Union of India and two others* is concerned, the same is of no aid and assistance to the writ petitioners / original applicants, particularly, when in the said original application challenge was made to the result of the scrutiny test published on 19.10.2010. Here in the present case, there is no challenge to any order, furthermore the very basis for laying down the factual foundation is lacking. Even otherwise, even if the claim set up by the

writ petitioners/ original applicants that they were granted time pay-scale since year 1987, is taken to its face-value, then too it would not improve the case of the writ petitioners/ original applicants, particularly, when there are no dates or details with regard to the dispensation of the engagement. Even otherwise, in order to claim similar benefits the original applicants have to paint a picture which places them on the same platform. However, in absence of any pleading, the relief cannot be granted. Apart from the same, we find that the claim set up by the original applicants is also barred by delay and laches, as it is not open for the litigant to rise from a deep slumber and to claim benefits.

22. The argument raised by the learned counsel for the writ petitioners that the Administrative Member of Tribunal in the wake of the provisions contained under Section 5 of the Administrative Tribunal Act, 1985 could not have adjudicated the dispute relatable to termination/ disengagement, is neither here nor there for variety of reasons; firstly, there was no relief claimed by the original applicants before the Tribunal for setting aside the termination/ disengagement order either oral or in-writing; secondly, the solitary relief for reinstatement without questioning an order for disengagement would not make the order without jurisdiction, particularly, when no notification has been placed before us showing that the Administrative Member of the Tribunal was forbidden from dealing with the said issues. The judgments relied upon by the learned counsel for the writ petitioners/ original applicants in the case of ***B.R. Thakare*** (*supra*) and in ***Thammaiah Chari*** (*supra*), would not apply in the facts of the case.

23. Viewing the case from all points of angle, we are of the firm opinion that the judgment and order of the Tribunal does not suffer from any legal infirmity, so as to call for any interference in the present proceedings.

24. Accordingly, the writ petition being devoid of merits is liable to be dismissed and is **dismissed**.

Order Date :- 16.7.2024

N.S.Rathour

(Vikas Budhwar, J) (Arun Bhansali, CJ)