

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.08.2016

Delivered on : **09.08.2016**

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM

AND

THE HON'BLE MR.JUSTICE P.KALAIYARASAN

Writ Appeal No.1949 of 2012
& M.P.Nos.1 of 2012 and 1 of 2014

All Indian Ex-Servicemen Employees' Union
(Regn.No.2972/CNI)
Rep.by its General Secretary
Lathalaya, Plot No.45, APN Nagar
Selaiyur, Tambaram
Chennai 600 073

.. Appellant

Vs.

1. The Presiding Officer
Central Government Industrial
Tribunal cum Labour Court
Shastri Bhavan
Chennai 600 006
2. The Deputy General Manager, HRD
Air India Limited
Air India Unity Complex
Cantonment
Pallavaram
Chennai 600 043

.. respondents

Prayer: WRIT APPEAL filed under Clause 15 of Letters Patent against the order dated 5.6.2012 passed in W.P.No.34215 of 2007.

For Appellant : Mr.K.M.Ramesh for
Ms.R.Vaigai

For Respondents : Mr.K.Srinivasamoorthy for R2
R1 - Labour Court

JUDGMENT

*(Judgment of the Court was delivered by
A.SELVAM, J)*

This Writ Appeal has been directed against the order dated 5.6.2012 passed in W.P.No.34215 of 2007 by the learned Single Judge of this Court.

2. The appellant herein, as writ petitioner, has filed W.P.No.34215 of 2007 on the file of this Court under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records from the file of the first respondent relating to the Award dated 22.3.2007 passed in I.D.No.343 of 2004 and quash the same and consequently for directing the second respondent to regularise the service of the employees mentioned in the petition.

3. The averments made in the Claim Statement filed on the side of the petitioner is that the petitioner is none other than the Union of Security Guards and they have joined service as Security Guards on various dates from July 1997. Even though their appointments are temporary in nature, they are serving till date, but the respondent has refused to regularize their service. Under the said circumstances, the present Claim Statement has been filed.

4. The Labour Court, after considering the divergent contentions raised on either side, has rejected the claim of the petitioner, by way of passing the impugned award and the same has been challenged in Writ Petition No.34215 of 2007 on the file of this Court.

5. The learned Single Judge, after considering the rival contentions raised on either side, has dismissed the Writ Petition No.34215 of 2007 and thereby, confirmed the award passed by the Labour Court. Against the order passed in W.P.No.34215 of 2007, the present Writ Appeal has been filed.

6. The learned counsel appearing for the appellant/petitioner has vehemently contended to the effect that the employees mentioned in the Claim Statement are nothing but exservicemen and the second respondent has recruited them as Security Guards in the post of permanent Security Guards and even though they are serving as Security Guards till date, their services have not been regularized. Under such circumstances, various proceedings have been initiated and the Hon'ble Supreme Court has directed them to file relevant Claim Petition before the Labour Court and accordingly, a Claim Petition has been filed, but the Labour Court has rejected their claim by way of passing an award and the same has been challenged in Writ Petition No.34215 of 2007, but the learned Single Judge, without considering the points raised on the side of the petitioner and also without considering that the concept of unfair labour practice, has erroneously dismissed the Writ Petition by way of passing the impugned order and therefore, the order passed by the learned Single Judge is liable to be set aside.

7. Per contra, the learned counsel appearing for the 2nd respondent has sparingly contended that the persons mentioned in the

Claim Statement have been appointed temporarily for a short period and in fact, they have not possessed of necessary qualifications for the post of Security Guard and both the Labour Court as well as learned Single Judge of this Court have rightly and also uniformly rejected their claim and therefore, the present Writ Appeal deserves to be dismissed.

8. It is seen from the records that on 9.4.1997, a Notification has been issued with regard to recruitment of Security Guards. In the subject, it is mentioned as "Recruitment of permanent Security Guards in Air India, Chennai". Further, it is seen from the records that the persons mentioned in the Claim Statement have been appointed temporarily as Security Guards only for few months.

9. The entire argument put forth on the side of the appellant is based upon the subject mentioned in the Notification dated 9.4.1997. As adverted to earlier, in the subject, it is mentioned as "recruitment of permanent Security Guards in Air India, Chennai". However, they have been appointed temporarily as Security Guards for few months.

10. The learned counsel appearing for the 2nd respondent has drawn the attention of the Court to the necessary qualifications for the post of Security Guards. The first and foremost qualification is that a candidate should have studied upto Higher Secondary and further qualification is with regard to age limit. The contention put forth on the side of the 2nd respondent is that the Security Guards mentioned in the Claim Statement have not possessed of the necessary qualifications and further, as a stop gap arrangement, they have been appointed only for few months as Security Guards and therefore, their services cannot be regularized.

11. The Labour Court as well as learned Single Judge of this Court have uniformly found that since the Security Guards mentioned in the Claim Statement have been appointed only for few months, their services cannot be regularized.

12. The entire contention put forth on the side of the appellant is based upon the subject mentioned in the Notification. Simply because in the said Notification, it has been mentioned as "recruitment of

permanent Security Guards", the Security Guards, who have been appointed as a stop gap arrangement and that too only for a limited period, cannot get benefit of regularization.

13. The learned counsel appearing for the appellant has also contended to the effect that from the date of their recruitments, they have been serving as Security Guards and therefore, the 2nd respondent has indulged in unfair labour practice and on that ground also, their services are liable to be regularized.

14. In support of their contention raised on the side of the appellant, the following decisions are relied upon:

(i) In **(2009) 8 SCC 556** (Maharashtra State Board Transport Corporation and another vs. Casterbibe Rajya Parivahan Karmachari Sanghatana, the Hon'ble Supreme Court in paragraph No.41 has held thus:

"Thus, there is no doubt that creation of posts is not

within the domain of judicial functions which obviously pertains to the executive. It is also true that the status of permanency cannot be granted by the court where no such posts exist and that executive functions and powers with regard to the creation of posts cannot be arrogated by the courts.

Further, it is observed as follows:

"Therefore, the case of the complainants that they are working in different depots is not a disputed one. It is for the Corporation to point out how many posts are in the depots and how many persons are working in those depots. Therefore, it cannot be said that for want of any material on record that all these persons cannot be absorbed in permanent posts. When there is deliberate attempt on the part of the Corporation not to employ them as regular employees in the posts of Cleaners for years together the intention is very clear and in my opinion, this is the fit case where the declaration under

Item 6 of Schedule IV of the Act will have to be given.

(ii) In **2011 (12) SCC 449**, (Delhi International Airport Private Limited), the Hon'ble Supreme Court has observed that "AAI is under an obligation to follow the directions of the Central Government and if DIAL has admittedly assumed those obligations through OMDA, then DIAL is presumably also obligated to follow such directions. Again, a contrary interpretation would allow AAI to circumvent the Central Government's exercise of authority over its work merely by contracting it out to third party (DIAL).

15. It is a settled law that when there is an unfair labour practice on the part of the employer, the concerned employee is entitled to get benefits.

16. In the instant case, the position is entirely different. As adverted to earlier, the Security Guards in question have been appointed only for few months and that too temporarily. After a lapse of the period mentioned in the appointment orders, they approached various courts

and only due to interim stay granted in their favour, they have been allowed to work. Therefore, it is needless to state that the alleged unfair labour practice does not arise in the present case.

17. The learned counsel appearing for 2nd respondent has drawn the attention of the Court to the decision reported in **(2007) 5 SCC 317** (Post Master General, Kolkata and others v. Tutu Das (Dutta), wherein the Hon'ble Supreme Court has held that if there is any illegal or improper grant of regularization to similarly situated person, the same does not create an entitlement to regularization on the ground of equal treatment under Article 14 of the Constitution.

18. As stated earlier, the Security Guards in question have been appointed only for a period of few months and in fact, they have been appointed temporarily for a regular post. The main defence taken on the side of the 2nd respondent is that the Security Guards in question have not possessed of necessary qualification. It has already been pointed out the requisite qualification for the post of Security Guards. Since the Security Guards in question have been appointed for a limited period and

since they have not possessed of necessary qualifications and since there is no unfair labour practice on the part of the employer, this Court is of the considered view that their claim cannot be accepted.

19. The Labour Court as well as learned Single Judge of this Court have rightly rejected their claim. In view of the discussions made earlier, this Court has not found any error nor illegality in the concurrent orders passed both by the Labour Court as well as learned Single Judge of this Court and therefore, the present Writ Appeal deserves to be dismissed.

In fine, this **Writ Appeal is dismissed** without cost and the impugned order dated 5.6.2012 passed in Writ Petition No.34215 of 2007 by the learned Single Judge is confirmed. Consequently, connected Miscellaneous Petitions are closed.

Index:Yes/No
ajr

(A.S.,J.) (P.K.,J)
09.08.2016.

**A.SELVAM,J.
AND
P.KALAIYARASAN,J.**

ajr

Judgment in
W.A. No.1949 of 2012

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