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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 31st October, 2018

+ W.P.(C) 11023/2018

THE DIRECTOR GENERAL (WORKS) CPWD Petitioner
Through: Ms.Vibha Mahajan Seth, Adv.
Ms. Laimon Rani Burmo, Adv.

versus

THE GENERAL SECRETARY CPWD
MAZDOOR UNION Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T (O R A L)

1. This writ petition, at the instance of the Director General (Works), CPWD, assails Award, dated 30th October, 2017, passed by the Labour Court, answering the following reference, made to it by the Central Government under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter referred to as “the ID Act”):

“Whether Shri Satpal S/o Shri Balbir Singh is entitled to be regularized as MLD with effect from 04.04.2003 with all consequential benefits from the date when the services of his juniors were regularized with effect from 04.04.2003? If not, what directions are necessary in this respect?”

2. As per the Statement of Claim of the respondent-workman before the Labour Court, the respondent was appointed as Motor Lorry Driver (MLD) on daily wage basis on 30th August, 1990, and his services were terminated on 30th September, 1993. He challenged the said termination by raising an industrial dispute, which was

adjudicated by the Labour Court *vide* Award dated 30th April, 2004.

The concluding para of the Award reads thus:

“From the evidence on record, I find that the workman worked continuously w.e.f. 20.8.1990 to 16.09.1993 in the direct control of Dy. Director (Horticulture) and other concerned officers of the Department of CPWD which go to more than 240 days in every year and admittedly prior to termination of his services, no notice, or notice pay and payments of compensation was given to him. It clearly goes to show that the services were terminated in clear violation of Sec. 25-F of the I.D.Act. Therefore, the action of the management in terminating the services of the workman Shri Satya Pal, cannot be justified. It was improper and illegal and deserves to be quashed and the workman deserves to be reinstated in the service in the same capacity in which he was working all the time of his termination with only 4 % back wages as to him as per the rules with all other consequential benefits. The award deserves to be implemented by the management within two months from the date of publication of this award in the official gazette.”

3. It is clear, from the Award, that the respondent-workman was directed to be reinstated with *40% back wages and all other consequential benefits*.

4. The aforementioned Award was challenged, by the petitioner, before this Court, and, thereafter, before the Supreme Court, and was successively upheld by a learned Single Judge, and, thereafter, the Division Bench of this Court, as well as the Supreme Court.

5. It is significant to note that certain paras, from the orders of this Court and the Supreme Court, merit reproduction. Para 6 of the order dated 19th October, 2005, of the learned Single Judge, reads thus:

“6. I find that the Circular dated 18th August, 1973 noticing that the workman engaged on work order basis have

been treated as daily rated worker: No dispute has been raised that even termination of daily rated workman requires compliance with Section 25-F of the Industrial Disputes Act, 1947. As per the circular of the petitioner, it is termination of only such workmen who have not completed 240 days of service was being considered. (There is no dispute that the respondents have continued issuance of the work orders but the service has been continued.)”

6. Paras 2, 4 and 9 of the judgment of the Division Bench, as reported in *PWD v. Satyapal, 122 (2006) DLT 571 (DB)*, whereby the Letters Patent Appeal, preferred against the aforementioned order of the learned Single Judge, was dismissed, reads thus:

“2. The said order of the Tribunal was challenged before the learned Single Judge of this Court. The learned Single Judge dealt with the plea raised by the learned counsel for the appellant that no appointment letter was issued in favour of the respondent and that he was appointed on a work order/contractual basis. The learned Single Judge noticed that a Circular dated 18th August, 1993 produced before the Tribunal was issued by the Director of Administration to the Chief Engineer. The said Circular reads as follows:

“ You are, therefore, once again requested to send a list of all such daily rated Muster Roll Workers engaged on hand receipt or work order or any other basis defying the existing Government instructions, ensuring inter-alia termination of the services of all such workers who have not completed 240 days of service in two consecutive years. Your probable demand requiring appointment of such workers may also be intimated to this Directorate.

Since the instructions with regard to absolute ban on engagement of workers on Muster Roll issued on 19-11-85, will also apply to any from the engaged workers of daily rated including work order, you are, therefore, requested to follow the instructions quoted above and in future no recruitment even on work order be made.”

4. Thus the concurrent findings of the Tribunal as well as the learned Single Judge are:

(a) The respondent was a daily rated worker and worked for more than 240 days continuously. In fact, he worked continuously for three years from 30-8-1990 to 13-9-1993.

(b) His services were terminated without notice, in violation of Section 25-F of the Act.

9. It is apparent from the above that the device of issuing work orders was to satisfy the letter of the law as contained in Section 2(oo)(bb) but in fact it was nothing but an employment on the continuous basis. The very purpose for which Section 2(oo)(bb) was introduced was to avoid saddling an employer with the liability under Section 25F where a worker had been engaged for a very short period of say, two or three months. It was not meant to be invoked in a situation where the worker is in continuous employment, as in this case, for over three years. If one were to interpret Section 2(oo)(bb) in the manner that the appellant suggests, it would permit the law to be misused to avoid a statutory liability. It must be kept in mind that the ID Act is intended to protect a workman whose services have been continuously engaged for a considerable period of time. It is in this background that the provision of Section 2(oo)(bb) should be interpreted.”

(Emphasis supplied)

7. The Division Bench ultimately upheld the decision of the learned Single Judge not to interfere with the Award passed by the Labour Court.

8. The order of the Supreme Court, dismissing the SLP(C) 4726/2007, preferred against the judgment of the Division Bench, by PWD, reads thus:

“Having heard Mrs. Indira Jai Singh, learned Additional Solicitor General, appearing for the petitioner and Mr. Varun Prasad, learned counsel appearing for the respondent–employee and after going through the impugned orders, we find that the three courts below concurrently found on fact that the respondent having completed 240 days is entitled for reinstatement. That being the position and nothing adverse could be shown from the orders of the High Court, we are not inclined to interfere with the impugned order, exercising our discretionary power under Article 136 of the Constitution and this special leave petition accordingly stands dismissed.”

9. Two aspects are apparent from a reading of the aforementioned judgments, of the learned Single Judge and the Division Bench of this Court, and the order passed by the Supreme Court dismissing the SLP thereagainst, i.e. (i) that the respondent has been concurrently treated, by all fora, as a daily rated worker and (ii) this finding has been arrived at, despite the emphatic assertion by the PWD at every stage, that the respondent was only a “work order” employee.

10. Para 2 of the impugned Award of the Labour Court also notes this fact by recording as under:

“2. It is averred in the statement of claim filed on behalf of Shri Satpal, hereinafter referred to as the claimant, that he was initially appointed as Motor Lorry Drivers (in short MLD) on daily wage basis on 30.08.1990. Later on, his services were terminated on 13.09.1993. However, he was reinstated by Central Government Industrial Tribunal cum Labour Court vide its award dated 30.04.2004. It is further averred that award passed by the Industrial Tribunal was further upheld by Single Judge as well as Division Bench of Hon’ble High Court and Hon’ble Supreme Court upholding stand of the workmen that they are not employees of the contractor in the matter of Satpal Singh case. Further, the Courts have given findings that they were work order employees and are also daily rated workers.”

11. Consequent to his reinstatement, the respondent staked a claim for regularisation and for grant of wages in the minimum of the pay-scale of regular workers working in the same capacity with the CPWD.

12. The main plank of the defence, of the CPWD, to the said claim of the respondent-workman was that the respondent-workman was only a work order employee, who had been awarded work order on contract basis. It was contended that he was neither appointed through The Employment Exchange nor in accordance with the Recruitment Rules, but had merely been issued work orders on certain terms and conditions, to work for certain periods at specific rates.

13. The benefits of regularisation, it was contended, have been extended to workers engaged on muster roll/hand receipt, as a policy matter, whereas no such benefits have been extended to workers recruited against work orders. As such, seeking to draw distinction between workers working on daily rate basis, or on muster roll basis, with those recruited against specific work orders, the petitioner-CPWD sought to dispute the claim of the respondent.

14. The Labour Court framed the following issues, as arising for its consideration, on 8th May, 2016:

“(1) Whether the claimant is entitled to regularization with all consequential benefits, as alleged?”

(2) Whether claim filed by the claimant is not maintainable?”

15. Various witnesses were cited and documents exhibited; it is not necessary, however, given the limited nature of controversy, to enter into the specifics thereof.

16. The Labour Court, after citing various judicial authorities, dealing with the regularisation of workman, in the eventuality of other workmen, doing similar duties, being regularised, held, in paras 14 to 17 of the impugned order thus:

“14. Lastly, reliance was placed on behalf of the workman in the case of Director General: Works. CPWD vs Karam Singh and others. It was a case where the claimants were also party to the said case. Contention of the management regarding denial of relief of regularization and equal wages to such workmen who were performing similar kind of duties like their regular counter parts, was rejected by the Hon'ble High Court of Delhi and the calculation of the wages in terms of office, order dated 21.10.1990 applicable for daily rated workers was upheld. It was further held when a particular award has attained finality, such daily rated workers were direct employee and are entitled for equal wages, there is no question of entertaining such plea time and again. Workman was held entitled to the recovery of amounts due under the impugned recovery certificate as ordered by the Tribunal.

15. It is, thus, clear from detailed discussions made herein above, that the workman herein is a daily rated worker and is working regularly since his initial appointment. When services of juniors to the workman are regularized, there is no legal basis or justification in the wake of clear cut pronouncement made by the Hon'ble High Court of Delhi as well as Hon'ble Apex Court to deny regularization to the claimant herein from the date mentioned in the petition.

15. Perusal of the statement of Shri Arun Kumar Tyagi MW1 reveals that the claimant was appointed as Motor Lorry Driver against work order on 30.08.1990. This witness has admitted in having complied with the orders of the Hon'ble Courts as mentioned in his affidavit. The witness also admitted the claimant was reinstated on 02.08.2010 as per the orders of the Hon'ble Supreme Court and is working continuously since his reinstatement.

16. It is, thus, clear from detailed discussions made herein above, that the claimant herein was a daily rated workers and was working regularly since his initial appointment. When services of juniors to the claimant are regularized, there is no legal basis or justification in the wake of clear cut pronouncement made by the Hon'ble High Court of Delhi as well as Hon'ble Apex Court to deny regularization to the said claimant from the date mentioned in the petition.

17. Accordingly, it is held that Shri Satpal, the claimant herein, is entitled to be regularized as Motor Lorry Drivers with effect from 04.04.2003, the date when junior to him were regularized, with all consequential benefits. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.”

17. The CPWD, aggrieved thereby, is before this Court by means of the present writ petition.

18. I have heard Ms. Vibha Mahajan Seth, at length, on the merits of the case.

19. Though Ms. Seth had sought, initially, to reiterate the contention advanced by her client before the Labour Court, to the effect that the respondent was a work order employee and was, therefore, essentially distinct from a daily rated worker, she, fairly,

acknowledges the fact that the judgment of the learned Single Judge and the Division Bench, as well as the orders passed by the Supreme Court, arising from the earlier industrial disputes initiated against the termination of the respondent from the service, treat him as a daily-rated worker/daily wage worker.

20. Mr. Seth, nevertheless, submits that the claim of the respondent was not justified, and that the Labour Court erred in granting the same, for the following reasons:

(i) There was a fundamental difference between the respondent and other daily-rated workers in the establishment of the petitioner, as other workers had been recruited through the Employment Exchange, whereas the petitioner had not been so employed.

(ii) The regularization, of daily-rated/daily-wager employees in the CPWD, was being effected in accordance with Office Memorandum dated 11th December, 2006, issued by the Department of Personnel and Training, which, while contemplating regularization of daily-rated workers who have worked for ten years or more, specifically excepted, from the ambit thereof, employees who had been working “under cover of orders of courts or Tribunals”. The contention of Ms. Seth is that the respondent could be treated as having worked for ten years as a daily-rated worker in the CPWD only if the order reinstating him in service, as passed by the Labour Court, could be extended to treating the entire period, with effect from which

he had been reinstated, as the period during which he had actually worked. She submits that such reinstatement having been effected by the Labour Court, and the respondent having ultimately re-joined duty only pursuant to the order of the Supreme Court, he would fall within the excepted category, and would, therefore, not be entitled to claim regularization.

(iii) There is no sanctioned post, in the CPWD, against which the respondent could be adjusted.

21. Apart from this, Ms. Seth contends that the Labour Court was not justified in regularizing the respondent retrospectively w.e.f. 4th April, 2003, on the ground that employees junior to the respondent had been regularised from the said date.

22. It may be noted, in this regard, that the only averment, in the writ petition, challenging the legitimacy of this justification, of the Labour Court, for granting retrospective regularization to the respondent, is found in para 3.18, which reads thus:

“Because the Hon'ble Tribunal further erred in regularizing the workman, Satpal, retrospectively with effect from 04.04.2003. It is stated that retrospective regularization cannot be allowed also on the ground that the same entail heavy expenditure for the department.”

23. Ms. Seth submits that the “juniors” to whom the Labour Court refers had probably been granted regularization retrospectively pursuant to certain court orders, but is unable to enlighten this Court any further, on this aspect.

24. I am unable to agree with either of these submissions.

25. Ms. Seth herself admits that regularization was being granted, to daily-rated workers in the CPWD, on the basis of the Office Memorandum, dated 11th December, 2006, issued by the DoPT. In this context, the entire Office Memorandum merits reproduction, thus:

“OFFICE MEMORANDUM

Sub: Regularization of qualified workers appointed against sanctioned posts in irregular manner.

The undersigned is directed to say that the instructions for engagement of casual workers enunciated in this Department's OM No. 49014/2/86 Estt.(C) dated 7th June, 1988 as amplified from time to time, inter-alia provided that casual workers and persons on daily wages should not be recruited for work of regular nature. They could be engaged only for work of casual or seasonal or intermittent nature, or for work which is not of full time nature for which regular post cannot be created. Attention is also invited to this Department's OM No. 28036/1//2001-Estt.(D) dated 23rd July, 2001 wherein it was provided that no appointment shall be made on ad-hoc basis by direct recruitment from open market.

2. A Constitution bench of the Supreme Court in Civil appeal No.3595-3612/1999 etc. in the case of Secretary State of Karnataka and Ors. Vs Uma Devi and others has reiterated that any public appointment has to be in terms of the Constitutional scheme. However, the Supreme Court in para 44 of the aforesaid judgment dated 10.04.2006 has directed that the union of India, the state Governments and their instrumentalities should take steps to regularize as a one-time measure the services of such irregularly appointed, who are duly qualified persons in terms of the statutory recruitment rules for the post and who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or tribunals. The Apex Court has clarified that if such appointment itself is in infraction of the rules or if it is in

violation of the provisions of the Constitution, illegality cannot be regularized.

3. Accordingly the copy of the above judgment is forwarded to all Ministries/Departments for implementation of the aforesaid direction of the Supreme Court.”

26. In view of the tenor of this Office Memorandum, it is clear that a policy decision had been taken, to regularise daily-rated workers and daily wagers in the employ of the CPWD, who had, to their credit, ten years or more of service.

27. It may be noted, in this regard, that the CPWD, in an internal communication, dated 11th March, 2011, also acknowledges the fact that it was following the policy as contemplated by the aforementioned Office Memorandum dated 11th December, 2006, issued by the DoPT for regularizing its daily wagers.

28. As such, it would not be permissible to distinguish between daily wagers and daily-rated workers, whether they were employed through the Employment Exchange, or otherwise, as no such distinction is to be found in the Office Memorandum dated 11th December, 2006 (*supra*).

29. It remains, however, to be considered, whether the respondent could be denied the benevolence of the said Memorandum on the ground that he could be credited with ten years of service in the CPWD only on the basis of the Award dated 30th April, 2004 of the Labour Court, as successively upheld by the learned Single Judge and

the Division Bench of this Court and the Supreme Court. Ms. Seth's submission is that, inasmuch as the Office Memorandum, dated 11th December, 2006 of the CPWD, itself excepted the applicability thereof, to daily wagers who were working "under powers of Courts or Tribunals", the respondent would not be entitled to the benefits thereof.

30. This argument appears, to me, to be misconceived.

31. In the first place, the respondent was never working with the CPWD "under cover of any order of a court or a Tribunal". The exception culled out in this Office Memorandum, obviously relates to persons who had been granted interim orders by Courts or Tribunals, enabling them to continue in service. It is not the case of the petitioner that the respondent was granted any such interim relief. As such, on its very face, this clause would not stand in the way of the respondent.

32. Can, then, the respondent be denied the benefit of this Office Memorandum on the reasoning that he had actually not worked for the CPWD for ten years, but could only be treated as having worked because of the retrospective reinstatement directed by the Labour Court on 30th April, 2004 ?

33. The answer to this query, in my opinion, has necessarily to be in the negative.

34. While awarding reinstatement, the Labour Court was careful to note that back wages would be limited to 40%, but that the respondent

would be granted “all other consequential benefits”. This order of the Labour Court stands successively upheld by the learned Single Judge of this Court, Division Bench of this Court and the Supreme Court. It cannot be denied that regularization would be one of the “consequential benefits” which would enure in favour of the respondent, were he to be treated as reinstated w.e.f. 4th April, 2003, as directed by the Award dated 30th April, 2004 of the Labour Court.

35. The said Award having been successively upheld at three stages, it would be completely impermissible for me, sitting singly in of this Court, to adopt an interpretation which would denude the respondent of the benefits, to which he would be entitled, on the basis of the said Award of the Labour Court.

36. For this reason, I am not able to subscribe to the view, canvassed by Ms. Seth, that the respondent should be denied the benefit of the Office Memorandum dated 11th December, 2006 of the DoPT on the ground that ten years service could not be attributed to him only because of the retrospective reinstatement awarded to him by the Labour Court on 30th April, 2004.

37. The surviving submission, of Ms. Seth, to the effect that there was no sanctioned post, against which the respondent would be entitled to be regularised, can also not sustain legal scrutiny.

38. It is a trite position, in law, that if an employee, who has been continued for years without remuneration, is found entitled to

regularization, that benefit cannot be denied to him on the ground that no sanctioned post exists. Interestingly, the averment on affidavit, by the DPC, is that there is no “sanctioned post”. It is *ex facie* difficult to accept this submission at face value, as the impugned Award itself notes that there were persons working as MLDs with the CPWD.

39. Ms. Seth, however, submits that irrespective of whether there were sanctioned posts or not, there is no available vacancy against which the respondent could be regularized. That, in my view, cannot be a ground to deny the benefit to which the respondent is lawfully entitled. If the post of MLD exists in the establishment of the CPWD, it would be for the petitioner to ensure the implementation of the impugned Award. If it is necessary, for the said purpose, to create a supernumerary post, the petitioner may have to do so.

40. To advert, finally, to the last submission of Ms. Seth i.e., to the effect that the Labour Court was not justified in regularising the petitioner with retrospective effect, it is already noted, hereinabove, that such regularization was granted on the ground that other similarly placed workers had been regularised from the said date.

41. Para 3.18 of the writ petition, which is the only answer to this finding, does not deny anywhere, the fact that there were, indeed, workmen, who had been regularized from the date from which the Labour Court had directed regularization of the petitioner.

42. Be that as it may, in view of the fact that the details of such regularization, of fellow workmen, and the circumstances in which the said workmen had been regularised, is really not forthcoming on the record, I am inclined to hold that the benefit of regularization, as granted by the Labour Court to the respondent, would have to be limited from the date of issuance, by the CPWD, of the Office Memorandum, dated 11th March, 2011, as there is nothing on record, to indicate that a policy of regularisation of daily wagers existed in the CPWD prior to that date.

43. Subject, therefore, to the said limited modification, the impugned Award, dated 30th October, 2017, of the Labour Court, is upheld, in its entirety.

44. As a result thereof, any monetary or other benefits enuring in favour of the respondent, would be disbursed by the CPWD to the respondent within a period of eight weeks thereof.

45. The writ petition stands disposed of in the above terms without order as to costs. All pending applications also stand disposed of accordingly.

C. HARI SHANKAR, J.

OCTOBER 31, 2018

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