

MAT 474 of 2017
With
CAN 3 of 2023
Sri Bikash Kumar Biswas & Ors.
Vs.
The Union of India & Ors.

Mr. P.C. Das

Ms. Soma Chowdhury (Bandhu)

... ... for the appellants

Mr. Dibashis Basu

Mr. Arun Bandyopadhyay

... ... for the respondents

- 1) Heard Shri P.C. Das, learned counsel for the appellants and Shri Dibashis Basu, learned counsel for the respondents.
- 2) Briefly stated facts of the present case are that the appellants/petitioners claimed that they were engaged by the respondents as “Seasonal Anti Malaria Lascars” (for short SAML) ever prior to the year 1991. Engagements were usually for six months every year and they have been continuously serving as SAML. They were also agitating for giving temporary status and for their regularization. Therefore, all the appellants/petitioners and few others (in all 21 persons) filed OA 9371 of 2003 (Bikash Kumar Biswas and 20 others Vs. Union of India and 4 others), which was disposed of by order dated 08.03.2004 passed by the Central Administrative Tribunal, Kolkata Bench directing the respondents as under :

“7. In the situation, I dispose of the OA with the direction to the respondents, that those who have at least done two terms after 1990, their names be incorporated in the notional seniority list and they be regularised against available vacancies within a period of three years, which I consider sufficient to absorb all of them if found otherwise suitable as per rule. No costs.”

- 3) Aggrieved with the aforesaid order of the Central Administrative Tribunal, the Union of India and others had filed WPCT 462 of 2004 (Union of India and others Vs. Bikash Kumar Biswas and others), which was disposed of by order dated 16.02.2007 directing as under :

“After considering the submissions made by the learned Advocates, we are of the view that the order under challenge cannot be sustained because the application before the Tribunal was patently barred by limitation. However, considering the fact that a policy dated 21st August, 1997 is still in force, we dispose of the writ petition by the following order.

The writ petitioners are directed to extend the benefit of the policy dated 21st August, 1997 to the writ petitioners based on merit within a period of three months from the date of communication of this order.”

- 4) Pursuant to the aforequoted order of the Writ Court the respondents passed identical orders dated 18.06.2007 in respect of the appellants herein who are 16 in numbers, rejecting their claim for granting temporary status on the ground of non-fulfillment of condition no.4 of the Policy dated 21.08.1997. All the orders are identical, therefore,

one such order in respect of the appellant/petitioner no.1, passed by the respondents, is reproduced below :

- “1. Reference is made to Hon’ble Kolkata High Court’s order dated 16 Feb 2007 in respect of WPCT 462/2004.
2. In terms of order dated 16.02.2007 passed by Hon’ble Division Bench of Hon’ble High Court consisting of their Lordship, the Hon’ble Justice G.C. Gupta and Hon’ble Justice Prasenjit Mandal passed in WPCT No. 462/2004 (UOI and others Vs. Bikash Kumar Biswas and others). Your case was taken up for consideration of in terms of policy dated 21.08.1997.
3. After considering your case the competent authority has found that you are not eligible for granting Temporary Status under the said policy for the following reasons.
 - a. You do not fulfill the eligibility criteria as provided in paragraph 4(i) of the policy dated 21.08.1997 since you have not worked for 165 days of work for office; observing 06 days for two consecutive years it has been found that you have worked only 183 days (i.e. from 15.05.1991 to 14.11.1991).
 - b. It is needless to mention that also you cannot fulfill the criteria laid down in Para 4(ii) of policy dated 21.08.1997 mainly 650 days of work in last consecutive 04 years.
4. In view of the above the undersigned regrets to inform you that you are found ineligible for granting Temporary Status.
5. This complies with the order.”

5) Aggrieved with the orders passed by the respondents rejecting the claim of the

appellants/petitioners, the appellants filed Writ Petition No.10100 (W) of 2015 (Shri Bikash Kumar Biswas and others Vs. Union of India and others) which has been dismissed by the impugned order dated 15.02.2017 on two grounds, **firstly**, that the impugned order dated 18.06.2007 does not find the petitioners to have the merit to qualify under the specified Policy dated 21st August, 1997 and no material has been produced before the Court to establish that the decision of the authorities is perverse; and **secondly**, that the appellants/petitioners have directly challenged the order of the respondent authorities for enforcement of the order of the Writ Court.

- 6) Aggrieved with the order dated 15.02.2017 passed by the learned Single Judge in WP No.10100 (W) of 2015, the appellants herein have filed the present intra-court appeal.
- 7) We have heard the learned counsel for the parties and carefully considered the submissions advanced by them.
- 8) We find that the Policy dated 21.08.1997 prescribed criteria for grant of temporary status and regularization, as evident from paragraph 4 of the Policy. From perusal of the paragraph 7 of the Policy, it is clear that the Scheme is applicable to Seasonal Anti Malaria Lascars in the employment

of IAF. Thus, the Scheme is applicable to all Seasonal Anti Malaria Lascars. Benefit is available to those who fulfilled the criteria prescribed in paragraph 4 of the Policy. Orders dated 18.06.2007 passed by the respondents which were impugned in the Writ Petition No.10100 (W) of 2015, are identical in words and figures. When compared with the order of the Central Administrative Tribunal dated 08.03.2004 in OA 9371 of 2003, it appears that the respondent authorities have failed to deal with the contention of the appellants/petitioners and passed cyclostyle orders, without considering the facts of each case. Therefore such orders cannot be sustained.

9) Considering the facts and circumstances of the case in its entirety and to meet the ends of justice, we dispose of this appeal modifying the impugned order of the learned Single Judge dated 15.02.2017 passed in Writ Petition No.10100 (W) of 2015, with the following directions:-

- (i) All the orders dated 18.06.2007 passed in respect of each of the appellants/petitioners and challenged in the Writ Petition No.10100 (W) of 2015 are hereby quashed.
- (ii) All the appellants/petitioners are permitted to submit their representations within four weeks before the respondent no.2 ventilating all their

grievances, along with copies of all relevant documents which they may intend to rely in respect of their claim.

(iii) The respondent no.2 shall forward representations of each of the appellants/petitioners to the competent jurisdictional authority within next three weeks of receipt of representations.

(iv) The competent authority or the officer authorized by the respondent no.2 shall pass reasoned and speaking order separately in respect of each of the appellants/petitioners, within next six weeks in accordance with law and in terms of the Policy dated 21.08.1997, without being influenced by any of the observations made in the body of this order and shall forthwith communicate the orders to the concerned appellants/petitioners.

10) With the aforesaid directions, the appeal is disposed of. The impugned order of the Writ Court is modified accordingly. Pending application, if any, also stands disposed of.

(Surya Prakash Kesarwani, J.)

(Rajarshi Bharadwaj, J.)