



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: October 31, 2023

+ W.P.(C) 6152/2016

SHANTI PRASAD & ORS.

..... Petitioners

Through: Ms. Srishti Choudhary, Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Ripudaman Bhardwaj, CGSC
with Mr. Kushagra Kausal, Adv. for
UOI.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

V. KAMESWAR RAO, J

1. This petition has been filed by the petitioners challenging the order dated November 3, 2015 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal' for short) in the Original Application being OA 574/2008.
2. At the outset, we may state here that vide order dated November 3, 2015, the Tribunal had decided three OAs. It is only the petitioners in OA 574/2008, who have approached this Court by way of this writ petition.
3. In terms of the impugned order, the Tribunal has rejected the



OA filed by the petitioners for their regularization by stating in paragraph 20 onwards as under:

“20. It is not in dispute that the applicants were engaged as hand receipt workers, in the NSG Project undertaken by CPWD. Once the project work was completed, the persons who were engaged for the said project cannot have any right to compel the respondents to engage them in any other project or to regularize their services. Further, if certain persons, who were engaged in a particular capacity, in a particular project, were either continued or engaged in another project or work, in view of the availability of work to that particular category, others such as the applicants cannot have indefeasible right either for continuation or regularization.

21. The examination of the aforesaid common seniority lists of different categories of employees, in different projects and divisions, supports the contentions put forth by the respondents that none of the juniors to the applicants, who were engaged in NSG Project in the same capacity, were regularized.

22. Further, even S/Shri Devender Tiwari and Surender Singh were appointed on permanent basis, in pursuance of the directions of the Tribunal in a OA filed by them.

23. It is also not in dispute that the services of the applicants were dispensed with even before the Hon'ble High Court passed interim orders for their continuation, and accordingly the impugned retrenchment orders were given effect to.

24. It is now well settled that no Court or Tribunal can issue directions to regularise the services of any employee except in certain circumstances. As rightly contended by the respondents, in Prem Ram (supra) directions were given for regularization of services of the appellant therein, in terms of the Regularization Rules, 2011 of the Government of Uttarakhand and since no such Rules or Scheme was in existence in respondent-CPWD, the said decision has no application to the facts of present case.



25. In the circumstances and in view of the aforesaid discussion, we do not find any merit in the OA and accordingly, the same is dismissed. No order as to costs.”

4. The facts as noted from the petition are that the petitioners were initially appointed as Beldar / Mali etc. on daily wage basis in NSG project of the CPWD. They later acquired, temporary status. Their services were disengaged for want of work with the culmination of the project. The OA was initially dismissed on merit vide order dated May 10, 2010. Even Review Petition being RA 260/2010 in OA 574/2008 was dismissed vide order dated February 24, 2011.

5. This Court in a writ petition being W.P.(C) 8868/2011 filed against the order dated February 24, 2011 in RA had remanded the RA back to the Tribunal for a fresh hearing to the extent stated by this court inasmuch as when a plea has been raised by the petitioners that persons junior to them who were working in the same project have been accommodated in the other projects, the said aspect need to be dealt with by the Tribunal.

6. Vide order dated March 12, 2014, the Tribunal had allowed the RA and set aside the order dated May 12, 2010 and directed the listing of the OA for a fresh adjudication. It is pursuant thereto the impugned order has been passed.

7. The submission of Ms. Srishti Choudhary, learned counsel for the petitioners, is that the Tribunal has committed an error by not considering the contention raised by the petitioners that juniors have been retained and regularised, which plea was not denied by the respondents either in their reply or additional affidavit filed by them in



response to the affidavits filed by the petitioners giving details by way of annexures and thereby dismissing the O.A. which is illegal and arbitrary.

8. According to her, the fact that the names of the persons mentioned in Annexure-II of the additional affidavit filed by the petitioners were taken from the original seniority list published in 2006 and they all belonged to the NSG project and since this fact has not at all been denied by the respondents, the finding recorded by the Tribunal suffers from perversity. In support of her submissions, she has drawn our attention to paragraph 10 of the writ petition to contend that the persons who were working during the years 1989, 1990, 1991, 1992 up to 1997 are shown to be continuing in service. According to her, on comparison of the seniority list it is clear that the respondents knowingly, illegally, willfully and deliberately under the garb that the project of NSG has come to an end had retrenched the petitioners while continuing the others. She lays stress on the fact that the petitioners having been granted temporary status should have been continued and in fact regularized. The action is not only violative of Articles 14 and 16 of the Constitution of India, but against the law laid down by the Supreme Court where seniors needs to be given preference over the juniors and outsiders.

9. On the other hand, Mr. Ripu Daman Bharadwaj, learned CGSC appearing for the respondents would submit that the petitioners were engaged as hand-receipt workers in the NSG project undertaken by CPWD. Once the project work has come to an end, the persons who were engaged for the said project cannot have a right to compel the



respondents to engage them in any other project or to regularise their services. Further, if certain persons who are engaged in a particular capacity in a particular project were either continued / engaged in a project / work in view of the availability of work to that particular category, others such as the petitioners cannot have an indefeasible right either for continuance or regularization. It was also stated that the statement no.1 on which reliance has been placed is a list of workers working as Beldar, Khallasi, MLD and Fireman, who are of different category than that of Mali. In list no.2 worker shown at serial no. 46 has been regularised as he was working as Assistant Operator and has been regularised against a vacancy of Assistant Operator. There is no irregularity in regularising a person on the post of Assistant Operator against the said post. The posts of Assistant Operator and Mali are different. He also draws our attention to Para 8 of the additional affidavit of April 22, 2017, wherein it is stated that no junior to the petitioners has been regularized in the Mali category in the entire NCR territory except on compassionate ground. He seeks the dismissal of the writ petition.

10. At the outset we may state here that the petitioners had earlier approached this Court in W.P.(C) 8868/2011, wherein this Court had set aside the order of the Tribunal in RA dated February 24, 2011 and remanded the matter back for a decision on the issue whether persons who were employed in the same project as the petitioners have been continued. We may state here that this Court has in Para 6 of its judgment held that the *“Tribunal was right to observe that the petitioners have no right either for regularization or to seek work in*



any other project from the respondents.”

11. In view of the above, the issue needs to be seen from one perspective that is when a specific plea has been raised that persons junior to the petitioners who were working in the same project have been accommodated in other projects, whether the petitioners are also entitled to be continued. Having said that, it is the case of the petitioners themselves that they were engaged as Malis / Beldar and the persons junior to them have been continued elsewhere. We find in terms of the seniority list prepared by the respondents, all the casual labourers have been shown as Beldars. The name of the petitioner No.1 features at serial no. 136 and he is shown to be working in Horticulture Division-VI. The respondents have stated that the petitioners were working as Mali and no person junior to them as Mali except compassionate appointment, has been regularised. The fact of the matter is that the last engagement of the petitioners was in the year 2004 and 19 years have elapsed since then. It is not known whether such persons are continuing as of today.

12. This Court is of the view that it is too late in the day for the petitioners to seek their re-engagement / regularization when apparently no person junior to them has been regularized as Mali. Hence, given the position of law laid down by the Supreme Court in Secretary, *State of Karnataka and Ors. v. Uma Devi (3) and Ors.*, (2006) 4 SCC 1 wherein the Supreme Court has in paragraphs 47 and 49 has stated as under, the prayer of the petitioners for their continuance or for that matter regularization cannot be granted:

“47. When a person enters a temporary employment or gets



engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

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49. It is contended that the State action in not regularising the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional



scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.”

13. It is settled law that regularization is not a mode of appointment. It is also settled law that any entitlement to a regular appointment has to be as per Recruitment Rules. It is not the case of the petitioners that they have the qualifications/eligibility for the post of Mali and vacancies exist against which they can be regularised.

14. In view of our above discussion, we do not see any merit in the petition, the same is dismissed.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

OCTOBER 31, 2023/jg