

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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LPA-1554-2019 (O&M)
Reserved on: 22.07.2024
Pronounced on: 02.09.2024

Darshan Singh

...Appellant

Versus

Central Institute of Research of Buffalo, Hisar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR.JUSTICE VIKAS SURI

Present: Mr. A.P. Singh, Advocate for the appellant.

Mr. Naveen Chopra, Advocate
for respondents No. 1 and 2.

VIKAS SURI, J.

CM-3453 and 3454-LPA-2019

As the main appeal has been heard and is being disposed of on merits, the applications for condonation of delay are allowed and the delay of 98 days in filing and 105 days in re-filing is condoned.

CMs stand disposed of.

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1. The instant Letter Patents Appeal under Clause X of the Letters Patent has been filed by the appellant-workman assailing order dated 05.12.2018 passed by learned single Judge in CWP-20619-2016 titled as *Central Institute of Research of Buffaloes, Hisar and another vs.*



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Darshan Singh and another, whereby the award passed by the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh (for short 'the Tribunal'), in favour of the workman, has been set aside.

2. Brief facts of the case are that the appellant (for short 'the workman') was engaged as a casual labourer with the Central Institute of Research of Buffaloes, Hisar (for brevity 'CIRB, Hisar') on 01.01.1988 and was granted temporary status w.e.f. 01.09.1993, vide order dated 01.02.1995. According to the workman, his services were terminated on 12.08.1997 whereas as per the management, the workman did not perform his duty regularly and 13 warning letters had been issued to him upto November, 1996 and he ultimately abandoned duty w.e.f. 11.08.1997. The workman represented to the Director, CIRB, Hisar, alleging that he was being kept out of work and vide communication dated 27.11.1997, the Officer Incharge, Sub Campus CIRB, Nabha was directed that the workman be called for work immediately. Accordingly, the workman was called upon to join duty on 30.11.1997, when he had visited the aforesaid Sub Campus 29.11.1997 but the workman did not turn up for work. The respondent-management did not terminate his services, which were temporary in nature.

2.1 For many years at a stretch, the workman was not heard from and his whereabouts were also not known. After about 08 years, a notice was served by the workman alleging termination. The Central Government vide notification dated 28.04.2008, in exercise of powers



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under Section 10(1)(d) and sub-section (2A) of the Industrial Disputes Act, 1947 (for short 'the Act') made a reference to the Tribunal.

2.2 On completion of the pleadings, the parties led their evidence in support of their respective case and vide award dated 18.11.2015 (Annexure P-5), the reference was answered in favour of the workman and against the respondent-management.

2.3 In the said award it was correctly observed that the relevant regulations applicable to the workman were the 'Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993' (for short '1993 Regulations'). However, while purporting to advert to the said provisions, inadvertently, provisions from the 'Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of the Department of Telecommunications, 1989 (for short '1989 DoT Regulations') were reproduced in the award, which are not only not applicable but also materially different. However, the award was passed on that basis. As per the 1989 DoT Regulations, action permissible against a workman having temporary status is provided under regulation Nos.8 and 9 thereof, whereas regulation 7 of the 1993 Regulations was applicable in the instant case.

3. The respondent-management assailed the award passed by the Tribunal by way of CWP-20619-2016. Learned Single Judge allowed the writ petition vide judgment dated 05.12.2018 and quashed the aforesaid award.



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4. Aggrieved by the said judgment, workman has preferred the present intra-Court appeal.

5. Learned counsel for the appellant has not seriously contested the relevant regulations applicable to the workman in the present matter but has laid much stress that even if there was delay in workman approaching the Tribunal, the reference ought to have been answered in his favour, as no notice or retrenchment compensation was given to the workman, mandated by the provisions of Section 25F of the Act. Reliance was placed upon ***Krishan Singh vs. Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana), (2010) 3 SCC 637*** and ***Ramesh Kumar vs. State of Haryana, (2010) 2 SCC 543***.

6. Per contra, learned counsel for respondent Nos.1 and 2 has vehemently opposed the appeal while defending the judgment passed by learned Single Judge. It is submitted that the provisions of 1989 DoT Regulations were only applicable to the casual labourers employed by the Department of Telecommunications, as specifically provided under regulation 3 of the same. The two regulations are materially different and only the 1993 Regulations are applicable in the case of the workman. It is further submitted that in view of the applicable provision, the services of casual labourers with temporary status could be dispensed with by giving one month's notice in writing. However, the present case is that of 'abandonment of work' by the workman. Moreover, the



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workman has not raised the claim within a reasonable period. No explanation is forthcoming from the workman with regard to the delay for not reporting for duty on 30.11.1997, pursuant to the direction dated 27.11.1997 by the Director, CIRB, Hisar and the workman having been called on work despite his poor track record. The workman did not report for duty and thus, abandoned his job.

7. We have heard learned counsel for the parties and perused the record with their able assistance.

8. It would be apposite to refer to the regulations governing the engagement of the workman before appreciating the rival contentions raised before us. The 1993 Regulations read as under:-

APPENDIX

Ministry of Personnel, Public Grievances and Pensions (Deptt. of Personnel and Training, Casual Labourers (Grant of Temporary Status and Regularisation) Scheme

1. This scheme shall be called "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993."

2. This Scheme will come into force w. e. f. 1.9.1993.

3. This scheme is applicable to casual labourers in employment of the Ministries/Departments of Government of India and their attached and subordinate offices, on the date of issue of these orders. But it shall not be applicable to casual workers in Railways, Department of Telecommunication and Department of Posts who already have their own schemes.



4. Temporary Status

(i) Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this OM and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week).

(ii) Such conferment of temporary status would be without reference to the creation/availability of regular Group 'D' posts.

(iii) Conferment of temporary status on a casual labourer would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on need basis. He may be deployed anywhere within the recruitment unit/territorial circle on the basis of availability of work.

(iv) Such casual labourers who acquire temporary status will not, however, be brought on to the permanent establishment unless they are selected through regular selection process for Group 'D' posts.

5. Temporary status would entitle the casual labourers to the following benefits:-

(i) Wages at daily rates with reference to the minimum of the pay scale for a corresponding regular Group 'D' official including DA, HRA and CCA

(ii) Benefits of increments at the same rate as applicable to a Group 'D' employee would be taken into account for calculating pro-rata wages for every one year of service subject to performance of duty for at least 240 days, 206 days in administrative offices observing 5 days week) in the year from the date of conferment of temporary status.



(iii) Leave entitlement will be on a pro-rata basis at the rate of one day for every 10 days of work, casual or any other kind of leave, except maternity leave, will not be admissible. They will also be allowed to carry forward the leave at their credit on their regularisation. They will not be entitled to the benefits of encashment of leave on termination of service for any reason or on their quitting service.

(iv) Maternity leave to lady casual labourers as admissible to regular Group 'D' employees will be allowed.

(v) 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after their regularisation.

(vi) After rendering three years' continuous service after conferment of temporary status, the casual labourers would be treated on par with temporary Group 'D' employees for the purpose of contribution to the General Provident Fund, and would also further be eligible for the grant of Festival Advance/Flood Advance on the same conditions as are applicable to temporary Group 'D' employees, provided they furnish two sureties from permanent Government servants of their Department.

(vii) Until they are regularized, they would be entitled to Productivity Linked Bonus/ Ad-hoc bonus only at the rates as applicable to casual labourers.

6. No benefits other than those specified above will be admissible to casual labourers with temporary status. However, if any additional benefits are admissible to casual workers working in Industrial establishments in view of provisions of Industrial Disputes Act, they



shall continue to be admissible to such casual labourers.

7. Despite conferment of temporary status, the services of a casual labourer may be dispensed with by giving a notice of one month in writing. A casual labourer with temporary status can also quit service by giving a written notice of one month. The wages for the notice period will be payable only for the days on which such casual worker is engaged on work.

8. Procedure for filling up of Group 'D' posts

(i) Two out of every three vacancies in Group 'D' cadres in respective offices where the casual labourers have been working would be filled up as per extant recruitment rules and in accordance with the instructions issued by Department of Personnel and Training from amongst casual workers with temporary status. However, regular Group 'D' staff rendered surplus for any reason will have prior claim for absorption against existing/future vacancies. In case of illiterate casual labourers or those who fail to fulfil the minimum qualification prescribed for post, regularisation will be considered only against those posts in respect of which literacy or lack of minimum qualification will not be a requisite qualification. They would be allowed age relaxation equivalent to the period for which they have worked continuously as casual labourer.

9. On regularisation of casual worker with temporary status, no substitute in his place will be appointed as he was not holding any post. Violation of this should be viewed very seriously and attention of the appropriate authorities should be drawn to such



cases for suitable disciplinary action against the officers violating these instructions.

10. In future, the guidelines as contained in this Department's OM dated 7.6.88 should be followed strictly in the matter of engagement of casual employees in Central Government offices.

11. Department of Personnel and Training will have the power to make amendments or relax any of the provisions in the scheme that may be considered necessary from time to time.

9. It is not disputed that the provisions quoted in the award passed by the Tribunal are from 1989 DoT Regulations. The relevant provisions from the said Regulations are extracted hereunder for reference:-

1. This scheme shall be called "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of the Department of Telecommunications, 1989".

2. This Scheme will come into force w. e. f. 1.10.1989 onwards.

3. This scheme is applicable to casual labourers employed by the Department of Telecommunications.

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8. Despite conferment of temporary status, the services of a casual labourer may be dispensed with in accordance with the relevant provisions of the Industrial Disputes Act, 1947 on the ground of non-availability of work. A casual labourer with temporary status can quit service by giving one month's notice.



9. If a labourer with temporary status commits a misconduct and the same is proved in an enquiry after giving him reasonable opportunity, his services will be dispensed with. They will not be entitled to the benefit of encashment of leave on termination of services.

10. The Department of Telecommunications will have the power to make amendments in the scheme and/or to issue instructions in detail within the framework of the scheme.

10. Thus, in view of the candid provisions noticed above the learned Single Judge, has rightly held that reference to Regulation 9 of the 1989 DoT Regulations was wrong, since Regulation 7 of the 1993 Regulations was to be applied.

11. Now, we shall consider the plea regarding delay and latches in approaching the industrial adjudicator and its effect. It is evident from the record, which has not been contested by the workman, that the workman's last day on duty was 06.08.1997 and was on sanctioned leave from 08.08.1997 to 11.08.1997 and after 12.08.1997 he never made any application for extending his leave nor reported for work. However, he served demand notice only in the year 2005, i.e. after a lapse of about 08 years and reference to the Tribunal was made on 28.04.2008. The workman in his claim statement before the Tribunal has relied upon the direction issued by the Director, CRIB, Hisar, vide communication dated 27.11.1997 passed on the workman's representation dated 26.11.1997, to call the workman for duty. However, despite having been called on work, the workman did not report for duty and remained absent w.e.f.



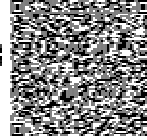
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12.08.1997. It is not the case of the workman that he approached any official or higher officer of the respondent-management after 29.11.1997 or any representation was made in that regard. No explanation is forthcoming on record or even before the Letters Patent Bench that as to what prevented him from raising an industrial dispute within a reasonable time from the date when he last worked or was called for work on 30.11.1997. In the absence of any satisfactory explanation, it has been rightly inferred that the workman abandoned his service and period of 08 years is sufficiently long lapse of time for the presumption to be disregarded.

12. There is no dispute with regard to the law laid down in ***Krishan Singh vs. Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana)*** (supra). However, the said case is not of any advantage to the workman, as in the present case there are notified regulations applicable to the respondent-management, governing the services of casual labourer. However, no such regulations were there or noticed in ***Krishan Singh's case*** (ibid). As per the applicable regulations, the services of a casual labourer can be dispensed with by giving one month's notice.

13. Moreover, the present case *prima facie* is that of abandonment of work and not of termination. A perusal of the record shows that the Roll call incharge reported that the workman had worked for 4, 13, 4, 0, 0 and 18 days in the months of January, February, March, April, May, June, respectively, and is habitual to remain absent, as

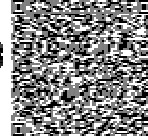


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noticed in the communication dated 21.08.1997 addressed to the workman. There is no challenge or denial to the finding recorded by the learned Single Judge that 13 warning letters had been issued to the workman or any material to the contrary has been pointed out from the record. In view of the above, ratio of ***Ramesh Kumar vs. State of Haryana*** (supra) is also not applicable to the instant case.

14. In ***Prabhakar vs. Joint Director, Sericulture Department and another***, (2015) 15 SCC 1, the Apex Court held that if the dispute is raised after a long period, it has to be seen as to whether such a dispute still exists. Thus, notwithstanding the fact that law of limitation does not apply, it is to be shown by the workman that there is a dispute in *praesenti*. For this purpose, he has to demonstrate that even if considerable period has lapsed and there are laches and delays, such delay has not resulted into making the industrial dispute cease to exist. Therefore, if the workman is able to give satisfactory explanation for these laches and delays and demonstrate that the circumstances disclose that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, if because of such delay dispute no longer remains alive and is to be treated as “dead”, then it would be non-existent dispute which cannot be referred. It was further held that the words “at any time” used in Section 10(1) do not admit of any limitation in making an order of reference and laws of limitation are not applicable to proceedings under the Act. However, the policy of industrial adjudication is that very stale claims



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should not be generally encouraged or allowed inasmuch as unless there is satisfactory explanation for delay.

15. In the light of the above discussion, no illegality or perversity can be found with the impugned judgment wherein it is observed that inordinate delay in raising an industrial dispute is an accepted reason for the Tribunal to refuse answering the reference in favour of the workman, even though the provisions of Limitation Act, 1963 do not apply to Section 10(1)(c) of the Act. In the present case, as noticed above, no explanation is forthcoming from the workman even remotely explaining the inordinate delay. On the contrary, the material on record shows that the workman was not interested in working and it is a case of abandonment of work.

16. Resultantly, finding no merit in the instant letters patent appeal, the same is accordingly dismissed.

17. No order as to costs.

(SHEEL NAGU)
CHIEF JUSTICE

(VIKAS SURI)
JUDGE

September 02, 2024

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Whether speaking/reasoned : Yes / No

Whether Reportable : Yes / No