

Executive Engineer, Electricity Distribution Division, U.P.S.E.B., Bareilly

Vs

Hydro Electric Employees' Union and Others

Civil Appeal No. 7419 of 1993

(S. B. Majmudar, M. Jagannadha Rao JJ)

22.01.1998

ORDER

1. The Executive Engineer, Electricity Distribution Division, U.P. State Electricity Board, Bareilly has filed this appeal being aggrieved by the order passed by the High Court of Judicature at Allahabad dismissing his writ petition and confirming the order of the Labour Court in favour of the respondent-workmen. Six respondent-workmen who are Coolies raised an industrial dispute against the appellant to the effect that they were entitled to be regularised in the services of the U.P. State Electricity Board (hereinafter to be referred to as the UPSE Board) in accordance with Order No. 683-ILC-PSEB dated 13-11-1987 as they were seniormost workmen. Their contention was that though they were working, and had completed 240 days of work in a given year, they were not regularised as per the said order. That industrial dispute was referred for adjudication. The terms of reference were as follows :

"Whether action of employers in not giving the pay scale and post of regular Coolie to the six workmen mentioned in the Schedule in accordance with Order No. 683-ILC-PSEB dated 13-11-1987 of the U.P. State Electricity Board though they are seniormost is legal or valid ? If not, then for what relief the workmen concerned are entitled and with what further details ?"

2. The Labour Court on evidence being offered by the parties came to the conclusion that these six workmen were entitled to the benefit of the said order of 13-11-1987 and they have worked for 240 days in a year. That finding was reached on the basis of the oral and documentary evidence. It is pertinent to note that the stand of the appellant before the Labour Court was that the said office order dated 13-11-1987 did not apply to Bareilly region where the respondent-workmen are said to have worked in the past. The contention was that thereafter, they were no longer in service. The Labour Court repelled the said contention and passed the aforesaid order and the award was drawn accordingly. The appellant carried the matter in a writ petition before the High Court. The writ petition came to be dismissed agreeing with the finding of the Labour Court that the workmen had completed 240 days of service and therefore, they were entitled to the benefits as granted by the Labour Court.

3. In this appeal, learned Senior Counsel for the appellant vehemently contended that in fact, there was no office order dated 13-11-1987 and therefore, the very basis of the respondents' claim was not sustainable. It is difficult to agree with this contention of the learned Senior Counsel for the simple reason that neither before the Labour Court nor even in the writ petition before the High Court any such contention was ever raised. In fact, even in the SLP memo, no such ground is taken. This, therefore, appears to be an afterthought. The only contention canvassed before the Labour Court

was that the aforesaid office order did not apply to Bareilly region. It is difficult to appreciate as to how the said office order giving benefit of regularisation to those workmen who had completed service of 240 days in a year could be made available to workmen working in other divisions and could not be made available only to workmen working in Bareilly region. That would be clearly a discriminatory act on the part of the Board which is a State within the meaning of Article 13 of the Constitution. Consequently, it must be held that the aforesaid defence put forward by the appellant was wholly misconceived and rightly rejected by the Labour Court and the High Court. On this short ground, therefore, this appeal is liable to fail.

4. We must however state that as the respondents have not worked for a number of years, on the peculiar facts and circumstances of this case, they may not be given any back wages as the order under appeal was stayed by this Court for all these years. Learned counsel for the respondents fairly submitted that the respondents are not interested in back wages, if only continuity of service is given to them and they are allowed to resume work subject to available remaining period of service as regular Coolies in the running timescale till their age of superannuation as per rules and regulations of the Board. We appreciate this fair stand taken by learned counsel for the respondents. We therefore, while disposing of the appeal direct that the appellant-Board shall issue orders of appointment to Respondents 3 to 8 within a period of six weeks from today calling upon these respondents to report for duty as regular Coolies at the Office of the Executive Engineer, Electricity Distribution Division No. I, U.P. State Electricity Board, Bareilly region and if they so report, they should be permitted to work that is assigned to them as required by exigencies of service. It is made clear that all these respondents shall be treated to be in continuous service as regularly appointed Coolies and will continue in the running timescale as available to their counterparts but they will not be entitled to any back wages. The period of continuity of service will be available to them for consideration of their pensionable service and other service benefits in accordance with rules and regulations of the Board. The appeal is disposed of subject to the above directions. No costs.