SUPREME COURT OF INDIA

Oil and Natural Gas Corporation Limited

Vs

Engineering Mazdoor Sangh

Appeal (Civil) 6607 of 2005 With Cont.Petn. No.164/2006 In Ca 6607/2005

(Dr. Ar. Lakshmanan and Altamas Kabir, JJ)

20.11.2006

JUDGMENT

ALTAMAS KABIR, J.

When the application being I.A.No.7/06 for revocation of the leave granted, filed by the respondent-union, was taken up for hearing, the appeal itself was taken up for disposal.

The Oil & Natural Gas Corporation Ltd. (hereinafter referred to as 'the ONGC') is a public sector undertaking constituted under the Oil & Natural Gas Commission Act to provide for production and sale of petroleum and petroleum products. In order to achieve these objects, the ONGC carries out geological and geophysical surveys for the exploration of petroleum. Such work of survey is seasonal and is confined to the period between November each year and April or May of the following year. The workload is far less during the monsoon period and is generally referred to as the off season. Every year when such survey work or field season begins, the ONGC starts recruiting casual/contingent/temporary workmen for specified periods and their service are terminated at the end of the field season. Such practice appears to have been continuing from the very inception of the ONGC in 1956. While in 1956, the ONGC had a staff strength of 450 employees, in course of time the number increased to about 25, 000 employees by the year 1979. It has been stated that the strength of the labour force has increased even further since then.

In view of the aforesaid phenomenon relating to employment of seasonal workers, the Engineering Mazdoor Sangh on behalf of its members who had been recruited as such casual/contingent/temporary workmen, raised an industrial dispute in the form of a demand for regularization of such workmen. The dispute was ultimately referred by the Government of India to the Industrial Tribunal (Central) at Vadodra (hereinafter referred to as 'the Tribunal'), being Reference (ITC) No.6/1991. The following issue was referred to the Tribunal for adjudication:-

"Whether the demand of Engineering Mazdoor Sangh, Vadodra that the employees employed in the ONGC, Western Region, Vadodra who have completed 240 days or more in the Commission as casual/contingent/temporary be regularized as permanent workman from the date of their engagement in ONGC, with other consequential benefits, is justified? If yes, to what reliefs the said workmen are entitled?"

While the reference was pending, the union filed a complaint under Section 33A of the Industrial Disputes Act, 1947 (hereinafter referred to as the '1947 Act') being Complaint (ITC) No.5/1993 alleging that the ONGC had started giving work to contractors in preference to the casual/contingent/temporary workmen and had thus altered the terms of service of the workmen and committed breach of Section 33 of the 1947 Act. The said complaint was tried by the Tribunal and by its award dated 30th October, 1993, it held that it was not permissible for the Tribunal to examine whether the work of the ONGC was seasonal or not or whether the ONGC had breached the terms of service of the workmen by giving the work to contractors in preference to the casual/contingent/temporary workmen. By the said order, the ONGC was also directed to follow the principle of "last come first go" in case it wanted to terminate the services of the casual/temporary workmen on the ground that they had no work. In such case, the ONGC was required to obtain the prior permission of the Tribunal under Section 33 (1) (a) of the 1947 Act.

Consequent upon such order, the ONGC filed an application on 25th April, 1994 seeking permission to terminate the services of the casual/temporary workmen mentioned in the list enclosed with the application. Due notice of the application was served on the Engineering Mazdoor Sangh and after hearing both the sides, by order dated 30th May, 1994, the Tribunal directed the ONGC to terminate the services of casual/contingent/temporary workmen, except 189 out of 269 workmen who were indicated in the list filed by the union.

While considering the question as to who would be eligible to be considered for appointment to the regular posts and whether the present workmen could be included in such list and whether the reference should be restricted only to those workmen who were members of the Engineering Mazdoor Sangh and whose names appeared in the list filed by the union, the Tribunal came to a finding that only a temporary workman who had put in not less than 240 days of attendance in a period of 12 consecutive months was entitled to be considered for conversion as regular employee. The learned Tribunal took note of the practice of ONGC of recruiting casual workmen in the beginning of November every year and terminating their services in April or May every year as a recurring phenomenon. But it also observed that keeping workmen casual/badli or temporary over long spells of time amounts to unfair labour practice and observed that there had to be some scheme for regularizing such workmen. In order to find a solution to the said problem, the Tribunal took recourse to the Certified Standing Orders which govern the parties and in particular Rule 2 thereof

which reads as follows:-

"2 Classification of Workmen

(i) The contingent employees of the Commission shall hereafter be classified as under:-

(a) Temporary, and

(b) Casual

(ii) A workman who has been on the rolls of the Commission and has put in not less than 180 days of attendance in any period of 12 consecutive months shall be a temporary workman, provided that a temporary workman who has put in not less than 240 days of attendance in any period of 12 consecutive months and who possesses the minimum qualifications prescribed by the Commission may be considered for conversion as regular employee.

(iii) A workman who is neither temporary nor regular shall be considered as casual workman."

On the basis of the above, the Tribunal held that a casual workman who put in attendance of 180 or more days in 12 consecutive months automatically became a temporary workman who could after completion of 240 days of attendance in any period of 12 consecutive months and possessing qualifications be considered for conversion as a regular employee. The Tribunal also rejected the list of 269 workmen shown by the Union who according to the Union had completed 240 days and accepted as correct the list submitted by the Chief Geophysicist showing about 189 workmen arranged in descending order as per number of days put in by each workmen. Taking such list to be correct and proceeding on the assumption that the workmen had completed 240 days in the Commission, the Tribunal ordered as follows:-

"The present reference is ordered to be restricted to the workmen whose names appear in the Schedule to the affidavit Ex.48 in the Complaint (ITC) No.5/93 a copy of which is appended to this award for the sake of convenience. The ONGC is directed that as and when vacancy to the regular post arise, they shall consider the names of those workmen in the same descending order in which they are mentioned in the Schedule and shall regularize them provided they satisfy the prescribed educational qualifications and for each 240 days of work put in by each workman, the ONGC shall give him age relaxation of one year. Ten workmen mentioned at the bottom of this Schedule are not entitled to any relief. It is made clear that the workmen have to compete with other workmen seeking employment through Employment Exchange or similar lawful manner. The ONGC is warned to ensure that no officer in their employment resorts to the unfair labour practice of inducing any casual workman to change his name. Similarly no workman shall hereinafter change his own name to conceal his previous employment with the ONGC.

Lastly, the ONGC is directed to pay a sum of Rs.5, 000/-(Rupees Five Thousand only) as special cost to the Engineering Mazdoor Sangh, Vadodra."

The aforesaid order of the Tribunal was challenged by the respondent-Union before the High Court of Gujarat in Special Civil Application No.12850/1994. After considering the submissions of the respective parties, the learned Single Judge observed that though regularization could not be effected in the absence of availability of permanent posts, the availability of permanent post is a fortuitous circumstance and consequential confirmation is, therefore, uncertain, but that there was no ban against treating a person to be regular even if a permanent post was not available. On the basis of the aforesaid reasoning, the learned Single Judge modified the order of the learned Tribunal in the following manner:-

(i) "..the relief will not be restricted only to those workmen whose name appear in the schedule to the affidavit at Exh.48 which was filed by the ONGC before the Industrial Tribunal in the complaint (ITC) 5 of 1993, but it will be available to all the employees who fulfil the requirements of completion of 240 days or more and the minimum qualifications under the ONGC (Recruitment and Promotions) Regulations, 1980 in accordance with the relevant Certified Standing Order and in case they fulfil these requirements, all of them shall be considered at par with regular employees for the benefits which are given to regular employees, whether their names are there in the Schedule or not, whether they are members of the petitioner Sangh or not from the due date.

(ii) All such employees who are found to be covered by the preceding para of the relief as modified by this court shall be treated at par with the other regular employees working against the corresponding or equivalent/equated or identical posts and grant of such benefit shall not wait for the availability of the vacancies on the regular posts, of course, they will have to wait according to their turn for being made permanent as and when the permanent posts become available. For this purpose, the age requirement shall be seen with reference to the point of time when such employees were initially employed instead of the relaxation as has been directed by the Industrial Tribunal in the impugned award.

(iii) Whereas the status of regular appointee is to be given to the employees who are covered by the Standing Order No.2 (ii) as above on the basis of conversion, the requirement to compete with other workman seeking employment through Employment Exchange or similar manner as has been mentioned by the Industrial Tribunal in the impugned award, simply does not arise..."

The impugned award of the Tribunal dated 6th June, 1994, was modified accordingly.

The appellant herein took the matter in appeal to the Division Bench in Letters Patent Appeal No.759/1999. While the appeal was pending, the respondent-Union gave up its claim for modification of the award as per the first direction given by the learned Single Judge and only pressed for implementation of the second direction given by the Tribunal. Similarly, on behalf of the ONGC, it was submitted that it did not wish to press its challenge in respect of the third direction. Accordingly, the controversy in the appeal was restricted to the challenge in respect of the second

direction only. Going one step further, the Division Bench disposed of the appeal by directing that the workman concerned should be notionally treated as regularized with effect from 1st May, 1999. Since most of the benefits had already been given to the workmen, a further direction was given to give them actual benefits at par with regular employees, including all the perquisites and applicable allowances, as also regular employment during the year, with effect from 1st May, 2005. It was made clear that the aforesaid directions would apply to the surviving employees out of the 189 employees who had been accepted as having acquired temporary status and whose employment had been saved by the order dated 30th May, 1999 in Complaint (ITC) No.5/1993.

Appearing for the ONGC the appellant herein, Mr. Harish Salve, learned senior advocate, while indicating the aforesaid facts submitted that by filing the appeal, the appellant was placed in a more disadvantageous position than when the learned Single Judge passed his order on the Writ Application. It was submitted that the learned Tribunal had realized the difficulty of regularizing altogether all the 189 workmen who had acquired temporary status and were eligible for being considered for conversion. It had accordingly directed that they be absorbed against vacancies that may arise from time to time in terms of seniority. The learned Single Judge of the High Court, however, on a completely erroneous construction of the law that non-availability of a permanent post is no bar for considering the employees to be at par with the regular employees for the purpose of giving them all the benefits other than the status of a permanent workman, directed that not only the 189 workmen, but all employees who had fulfilled the requirements of completion of 240 days or more and had the minimum qualification under the recruitment rules would be treated at par with the other regular employees and the grant of such benefit would not wait for the availability of vacancies to regular posts. The learned Single Judge, however, also made it clear that in the absence of vacancies, the concerned workmen would have to wait for their turn for being made permanent as and when permanent posts became available.

Mr.Salve submitted that not only was such a direction based on a wrong reasoning, but such a direction would be impossible to implement given the nature of work and the period of employment. Mr. Salve submitted that contrary to the settled law, the Division Bench had even directed that the workman concerned be notionally treated to have been regularized with effect from 1st May, 1999 in the appeal which had been preferred by ONGC against the direction of the learned Single Judge to treat such employees at par with the regular employees. Mr. Salve urged that the directions given by the learned Tribunal were more in conformity with the Certified Standing Orders than the directions given both by the learned Single Judge as also the Division Bench of the High Court and could be worked out gradually.

Mr. Salve's submissions were vehemently opposed on behalf of the Union by Mr. P.H. Parekh who tried to establish that the directions given by the High Court, both by the learned Single Judge as well as the Division Bench, were just and reasonable and did not warrant any interference in this appeal. Mr. Parekh contended that neither the Single Judge nor the Division Bench had directed that the service of the concerned 189 workmen now reduced to 153 workmen be regularized. On the other hand, what weighed with the learned Single Judge as also the Division Bench was the fact that these employees had been working with the appellant over a long period of time, though on a periodical basis, and that they, therefore, deserved to be treated at par with regular employees as far as financial benefits were concerned. Mr. Parekh pointed out that while the learned Single Judge had only directed that these workmen be treated at par with the regular employees, the Division Bench felt that since the said workmen had worked for even as long as 15 years, though on a seasonal

basis, they deserved to be treated as permanent employees and accordingly directed that they be treated to have been notionally regularized with effect from 1st May, 1999, though the actual monetary benefits were to be made available with effect from 1st May, 2005.

We have carefully considered the submissions made on behalf of the respective parties and we are unable to agree with the reasoning both of the learned Single Judge as well as the Division Bench of the High Court in firstly directing that the concerned 153 workmen be treated at par with regular employees as far as all benefits are concerned, except for being given permanent status and the subsequent direction of the Division Bench directing that they be treated as having been notionally regularized with effect from 1st May, 1999. Having regard to the nature of employment and the period during which these field workers are employed, it would create various difficulties if the seasonal workmen were to be treated at par with regular employees as directed by the learned Single Judge. It would be even more difficult for the appellant to adjust the workmen in permanent employment when the need for them was only seasonal. Admittedly, these workmen who are employed for field survey work are employed for about six months in a year between November and May. If at all they are to be regularized, the appellant will have to find work for them during the months when their services would otherwise have not been required. As pointed out by Mr. Salve, previously the appellant had monopolistic control over geological survey work for oil and natural gas but today the scene had changed and it is just another competitor along with others, notwithstanding the fact that they are a government company. The appellant is now required to compete with others in securing exploration work and can only recruit field workers as and when required. Even then the learned Tribunal found a via media in directing that the 153 workmen who had admittedly completed 240
We are of the view that the directions given by the learned Tribunal are reasonable and should be allowed to stand as against the directions given by the High Court, firstly to treat the said 153 workmen at par with the regular employees and thereafter to treat their services as having been notionally regularized from 1st May, 1999. We can, of course, add a few further safeguards in order to protect the interests of the said 153 workmen so that they are assured of employment as before.

We, accordingly, dispose of this appeal by setting aside the judgments and orders of both the learned Single Judge and the Division Bench of the High Court and restoring the judgment and order passed by the Tribunal. We, however, add that till such time as these 153 workmen are not absorbed against regular vacancies in the concerned category no recruitment from outside will be made by the appellant. Furthermore, even in matters of seasonal employment, the said 153 workmen or the numbers that remain after regularization from time to time, shall be first considered for employment before any other workmen are engaged for the same type of work in the field. The appellant should make a serious attempt to regularize the services of the workman concerned, in terms of the order passed by the Tribunal, as quickly as possible, but preferably within a period of two years from the date of this order. There will be no order as to costs.

Having regard to this order, no further orders are required to be passed on the Contempt Petition which is disposed of accordingly. I.A.Nos.7, 8 and 9 are also disposed of by this order.