SUPREME COURT OF INDIA

Union of India

Vs.

S.J.Benedict

C.A.No.6529 of 2008

(S.B. Sinha and Cyriac Joseph JJ.)

22.10.2008

ORDER

1. Respondent has not appeared despite service of notice.

2. Leave granted.

3. Respondent was a casual labourer appointed on or about 15.3.1968. Indisputably, the Railway Administration had adopted a policy decision that on completion of six months of service the concerned workman would attain the temporary status. It is not denied or disputed before us that a large number of workmen approached the Central Administrative Tribunal,Ernakulam as the temporary status was denied to them.

4. In one of such Original Application marked as O.A.No.849 of 1990 by a judgment dated 27.1.1992, the Central Administrative Tribunal, Ernakulam Bench directed grant of such temporary status, inter-alia, on the premise that the service cards of the workman concerned had been authenticated by Sr. DSTE Works and they were not fabricated.

5. However, in a batch of Original Applications bearing O.A.No.1502 of 1992 and others, it was directed as under:

> "7. However, we are not satisfied the way in which the representation has been already disposed of by the Railway, particularly when there was directions by the Tribunal. They very object of the direction and the disposal was to examine the grievances of the applicant with reference to official records bearing in mind the declaratory judgment and decide whether the applicants are similarly situated like the applicants in O.A.849/90 for getting the benefit on the basis of the principles laid down by that judgment. It appears no attempt in that line was made by the DPO. So there were no implementation of the direction in the perspective in which it was issued. We deprecate this attitude of the Railway. In fact he has taken a technical view and decided to reject the request stating that the judgment in OA 849/90 is not applicable to him. It is wrong and against the view taken in a number of causes.

Hence this decision cannot be sustained. We are inclined to set aside Annexure A4 in OA 236/93 and similar decision taken by the DPO in other cases covered by this judgment."

6. It was further held as under:

> ".....Since this question is again raised by the respondents and it is contested, we are not examining the issue and expressing our final opinion on that. It is for the concerned authorities to take a decision in the light of the contentions and the earlier decisions of this Tribunal. Therefore, we make it clear that it is open for the respondents to go into the matter in detail with an open mind uninfluenced by the commitments made by the respondents in their reply."

7. Claiming parity thereto, the respondent filed an Original Application as his representation pursuant to the said judgment was rejected.

8. The Tribunal by a judgment and order dated 2.8.1999 opined as under:

> "3. We have perused the material on record and have heard the learned counsel on either side. That the Senior DSTE is not a project but a regular establishment is now declared and well established. Therefore, it follows that the casual labourers on completion of six months continuous service, they would attain temporary status. The plea of the respondents is that the application is belated and therefore barred by limitation. Since the question of reckoning the period of temporary status for the purpose of retirement benefits would be relevant and germained only towards the end of once service. As the applicant is still in service and would attain the age of superannuation only a few years hereafter, we are of the considered view that the application is well within time. Coming to the question of eligibility of the applicant for grant of temporary status, the photo copy of the casual labour card produced by the applicant, A-4 is a photo copy obtained by him from the office of the 3rd respondent. Therefore, the respondents cannot have any suspicion about the genuineness of the casual labour card as the card was with the third respondent. This plea therefore has no merit."

9. A writ petition filed thereagainst by the appellants was dismissed by a Division bench of the Kerala High Court by reason of the impugned judgment.

10. It was submitted before us that no document having been produced to the satisfaction of the authorities of the Railway Administration that the respondent had been appointed as a casual labourer in a permanent establishment and continued to work for six months, he was not entitled to grant of a temporary status.

11. It was urged that the learned Tribunal having not considered that aspect of the matter, the High Court should not have upheld the said order only on the premise that applications involving similar questions have been allowed by the Tribunal.

12. The question as to whether the establishment is a permanent one or not is essentially a question of fact. Furthermore, the question as to whether the respondent was appointed in the year 1968 and continued to work in the said establishment till he attained the age of superannuation was again essentially a question of fact.

13. It may be true that although his representation for grant of temporary status was rejected in the year 1984 and he filed an application before the Tribunal only in the year 1988, the same might not have been entertained. In our opinion there was no reason as to why the relevant documents could not be produced by the Railway Administration to show that the contention of the respondent was incorrect particularly when he had been continuing in service.

14. In the peculiar facts and circumstances of this case, we are of the opinion that no case has been made out to interfere with the judgment of the High Court in exercise of our jurisdiction under Article 136 of the *Constitution of India*.

The appeal is dismissed.