SUPREME COURT OF INDIA

Union of India & Ors.

Vs.

Vartak Labour Union

C.A.No.2129-2130 of 2004

(D.K.Jain and H.L.Dattu,JJ.,)

04.03.2011

JUDGMENT

D.K.Jain,J.,

1. Challenge in these appeals, by special leave, is to the judgments and orders dated 27th March, 2001 and 22nd January, 2003 delivered by a Division Bench of the Gauhati High Court at Guwahati in Writ Appeal No. 548 of 1996 whereby it has directed appellant No.1 viz. Union of India to regularize the services of the members of the respondent Union, employed by the Border Roads Organization (for short the "BRO"), as postulated in Office Memo No. Sectt. BRDB ID No. BRDB/04(90)/99- GE-II dated 2nd February, 2001. Appellants No. 2 to 17 are the functionaries of appellant No. 1.

2. Shorn of unnecessary details, the facts essential for adjudication of the present appeals may be stated as follows: The respondent is a registered trade union comprising of casual workers employed by the BRO, in terms of paragraph 503 of the Border Road Regulations (for short "the Regulations"), some of whom have been working with the BRO for the last thirty years. In the year 1993, the respondent filed a writ petition before the Gauhati High Court praying for issuance of a writ, inter-alia, directing appellant No.1 to regularize the services of the members of the respondent.

3. Vide judgment dated 27th August, 1996, the High Court allowed the writ petition, and directed appellant No.1 to regularize the services of the members of the respondent who have been in service for more than five years, within six months of the date of order.

4. Being aggrieved, appellants filed a writ appeal before a Division Bench of the Gauhati High Court. The Division Bench, while partly allowing the appeal, modified the order of the Single Judge on the basis of a circular dated 25th May, 1988 issued by one Brig. S.K. Mehta, D.D.G. (P&V), for and on behalf of the Director General Border Roads, New Delhi to all Chief Engineers for consideration of regularization of casually paid labourers employed by the BRO. The Division Bench held that:

"There shall be a writ of mandamus issued to the appellant herein with a direction to consider the case of these employees who are working in the above Organization/Institution who have put in more than 5 (five) years and above period of service for the purpose of regularization of their service in the light of the Circular referred to above keeping in view of the requirements of Articles 14, 15 and 16 for the purpose of maintaining the reservation Policy followed by the Govt. of India. In so far as the casual labourers working in the organization/Institution are concerned, they shall continue to work till they attain the eligibility coming within the purview of the Circular for being considered."

5. At this juncture, it would be expedient and useful to extract relevant portions of the said circular, which read as follows:

"REGULARISATION OF CASUALLY PAID LABOURERS EMPLOYED IN BORDER ROADS ORGANIZATION-CONSTITUTION OF BOARD OF OFFICERS TO EXAMINE THE PROBLEMS.

1. Border Roads Organisation has been employing a large number of Casual Labourers for the past 28 years. There have been cases where Labour Unions have been formed though not recognized by us, as also there have been demands for their regularization. A large number of Court cases are also pending, connected with this issue.

2. Ministry of Surface Transport (BRDB) has offered a Board of Officers to examine various aspects. The terms of reference of the Board are at appendix `A'.

3. Before the Board examines the terms of reference as also other connected aspects, certain data is required from the Projects which is discussed in the succeeding paragraphs. .... 7. It may be appreciated that the recommendations of the Board of Officers have far reaching consequences. Your views and suggestions are, therefore should be deliberate and keeping in view the long term implications of the suggestions made. CEs are therefore, requested to kindly give personal thought to these problems and make their recommendations accordingly.
8. We would expect your reply by 30 June 88 positively."

6. Being aggrieved by the directions of the Division Bench, the appellants preferred an appeal, by special leave, before this Court. Vide order dated 19th February, 1999, this Court, while allowing the appeal and remanding the matter back to the Division Bench, observed thus:

"It appears that there was some bona fide misunderstanding by learned counsel who appeared before the Division Bench on behalf of the appellants. Even that apart, the Circular dated 25.05.1988 on which reliance was placed requires a closer scrutiny of

the Division Bench of the High Court. This was unfortunately not done because of the aforesaid misunderstanding. Hence, without expressing any opinion on the merits of the controversy between the parties, we deem it fit in the interest of justice to allow this appeal and set aside the order of the Division Bench."

7. During the course of fresh hearing of the writ appeal before the Division Bench, senior Central Government standing counsel appearing on behalf of the appellants stated that pursuant to circular dated 25th May 1988, the appellants had framed a scheme vide Office Memo No. Sectt. BRDB ID No. BRDB/04(90)/99-GE-II dated 2nd February, 2001, for the welfare of casually paid employees. Upon perusal of the scheme and recording the satisfaction of the counsel appearing for the respondent-Union, the Court observed that the scheme had been framed on a rational basis. Accordingly, disposing of the writ appeal on the basis of the said office memo, the Division Bench directed the appellants to implement the said office memo dated 2nd February, 2001.

8. Still being aggrieved, the appellants preferred a review application before the High Court. Vide the impugned order, the Division Bench declined to entertain the said application.

9. Hence, the present appeals against the main judgment and the order in review.

10.We have heard learned counsel for parties and perused the documents/circulars referred to and relied upon by the High Court as also some office notings produced before us by learned counsel appearing for the appellants.

11. Mr. Vivek Tankha, the learned Additional Solicitor General of India, strenuously urged that the High Court committed serious error in law in treating communication dated 2nd February 2001, as a final scheme framed for regularization of the casual labourers engaged by BRO for a maximum period of 6 months at a time. According to the learned counsel, it is evident from communication dated 2nd February 2001, that as on that date the Border Roads Development Board was still in the process of collecting information from other departments of the Central Government, particularly from the Railways for the purpose of examining if any of such schemes could be adopted in the BRO. In support of his stand that so far no scheme for absorption or regularization of casual labourers had been devised, learned counsel placed before us some correspondence exchanged between the Headquarters of the Border Roads Development Board and the office of the Director General Border Roads, which shows that in view of the guidelines issued by the DOPT, it has not been possible to frame and implement any policy or scheme for regularization of muster roll working in BRO. It was asserted that circular dated 25th May 1988, on which emphasis is laid on behalf of the respondent, was merely a proposal which has been misconstrued by the High Court as a scheme. It was urged that the proposals or suggestions by the field officers in favour of the respondent Union did not result in creating any enforceable right in their favour. Placing reliance on the decision of this Court in Indian Drugs & Pharmaceuticals Ltd. Vs. Workmen, Indian Drugs & Pharmaceuticals Ltd.1, learned counsel submitted that formulation of any scheme for regularization being a matter of policy, it is not within the domain of the court to direct regularization of temporary appointees in the absence or dehors the recruitment rules.

12. Per contra, *Dr. K.S. Chauhan*[1], in his written submissions, has submitted that even if it is assumed that there is no approved proposal or scheme for regularization of the casual labourers, on the touchstone of Articles 14, 16 and 21 of the Constitution of India, this Court is empowered to examine whether the action of the appellants is not opposed to principles of reasonableness evolved by this Court, as the casual labourers have been working with BRO for the last twenty to thirty years. It is alleged that the appellants are intentionally withholding the scheme dated 2nd February 2001 and, therefore, an adverse inference must be drawn against them. In support of his submission that there is clear discrimination between the members of the Union and the General Reserve Engineering Force (GREF), who have been declared to be members of the Armed Forces in *R. Viswan & Ors. Vs. Union of India & Ors.*[2], it is pointed out that the members of the respondent Union are facilitating the GREF in hard positions and dangerous locations in hilly areas to perform their functions. It is thus, argued that the directions issued by the High Court are fully justified and should be implemented.

13. We are of the opinion that there is force in the contentions urged on behalf of the appellants and these must prevail. We are convinced that the Division Bench has erroneously construed the Office memo dated 2nd February, 2001 as an approved scheme for absorption and regularization of the casual workers. It is manifest from a bare reading of the said memo that it was merely in the nature of an inter-department communication between the Border Roads Development Board headquarters and its officials. We do not find any substance in the stand of learned counsel for the respondent that the appellants are withholding the approved scheme from this Court. This plea of the respondent that a final scheme did come into existence on 2nd February 2001, stands belied from the letter of the Border Roads Development Board dated 22nd July 2002. It would be useful to extract the relevant portion of the said letter, which reads:

> "In the year 1993, a Labour Welfare Scheme i.e. Scheme for Grant of Temporary Status and Regularisation of Casual Workers was formulated. Thus, when we approached DOPT for approval to the scheme proposed by DGBP, they did not support our proposal and advised us that if we felt that there are sufficient grounds to formulate a separate scheme which is at variance with the scheme of DOPT, we may approach the Cabinet for approval of such scheme. The Secretariat delved into the issue at length and came to the conclusion that there is not sufficient justification for going to the Cabinet for approval of a separate scheme. This decision has already been communicated to the Dte GBR vide our letter No.BRDB/04(129)/2000-GE.II dated 24th June, 2002."

14. It is trite that inter-departmental communications and notings in departmental files do not have the sanction of law, creating a legally enforceable right. In *Sethi Auto Service Station & Anr. Vs. Delhi Development Authority & Ors.*[3], a Division Bench of this Court, in which one of us (D.K. Jain, J.) was a member has observed thus:

> "Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned."

15. Similar views are echoed in *Jasbir Singh Chhabra & Ors. Vs. State of Punjab & Ors.*[4]. This Court has observed that:

> "It must always be remembered that in a democratic polity like ours, the functions of the Government are carried out by different individuals at different levels. The issues and policy matters which are required to be decided by the Government are dealt with by several functionaries some of whom may record notings on the files favouring a particular person or group of persons. Someone may suggest a particular line of action, which may not be conducive to public interest and others may suggest adoption of a different mode in larger public interest. However, the final decision is required to be taken by the designated authority keeping in view the larger public interest."

16. We are of the opinion that the respondent Union's claim for regularization of its members merely because they have been working for BRO for a considerable period of time cannot be granted in light of several decisions of this Court, wherein it has been consistently held that casual employment terminates when the same is discontinued, and merely because a temporary or casual worker has been engaged beyond the period of his employment, he would not be entitled to be absorbed in regular service or made permanent, if the original appointment was not in terms of the process envisaged by the relevant rules. (See: *Secretary, State of Karnataka & Ors. Vs. Umadevi (3) & Ors.*[5]*; Official Liquidator V*s. *Dayanand & Ors.*[6]*; State of Karnataka & Ors. Vs. Ganapathi Chaya Nayak & Ors.*[7]*; Union of India & Anr. Vs. Kartick Chandra Mondal & Anr.; Satya Prakash & Ors. Vs. State of Bihar & Ors.*[8] *and Rameshwar Dayal Vs. Indian Railway Construction Company Limited & Ors.*[9]*.)*

17. In Umadevi (3) (supra), a Constitution Bench of this Court had observed that:

"It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no

fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals.

It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled."

18. Explaining the dictum laid down in Umadevi (supra), a three judge Bench in Official Liquidator (supra) has observed that:

> "In State of Karnataka v. Umadevi (3), the Constitution Bench again considered the question whether the State can frame scheme for regularisation of the services of ad hoc/temporary/daily wager appointed in violation of the doctrine of equality or the one appointed with a clear stipulation that such appointment will not confer any right on the appointee to seek regularisation or absorption in the regular cadre and whether the Court can issue mandamus for regularisation or absorption of such appointee and answered the same in negative."

19. In light of the settled legal position and on a conspectus of the factual scenario noted above, the impugned directions by the High Court cannot be sustained. These are set aside accordingly.

20. Before parting with the case, we are constrained to observe that the conduct of the appellants in engaging casual workers for a period of less than six months, and giving them artificial breaks so as to ensure that they do not become eligible for permanent status, as evidenced from the additional affidavit dated 23rd April, 2010 does not behove the Union of India and its instrumentalities, which are supposed to be model employers. With anguish, we extract the relevant paragraph of the said affidavit:

> "Relying upon the provisions contained in Paragraph 501 to 518 of the Regulation, it was contended that the casual labourers are mustered on daily or monthly basis. If on monthly rates, the period of engagement shall be for a minimum period of six months. It is a fact that large number of casual labourers have worked with Project Vartak for number of years but their period of engagement at no stage has existed more than six months at a time. Their services are terminated before completion of six month and as per requirement they are recruited afresh by publishing Part II order by Mustering Unit. Due to the fact that they have not been in continuous engagement for more than six months they do not get the status of permanent employee and accordingly as per Paragraph 503 of the Regulation referred to above, the casual personnel are not eligible for any other privileges for continued employment under the Government."

(Emphasis supplied by us)

21.Therefore, in the facts and circumstances of the instant case, where members of the respondent Union have been employed in terms of the Regulations and have been consistently engaged in service for the past thirty to forty years, of course with short breaks, we feel, the Union of India would consider enacting an appropriate regulation/scheme for absorption and regularization of the services of the casual workers engaged by BRO for execution of its on-going projects.

22.In the final analysis, the appeals are allowed, and the impugned judgments and orders are set aside. However, in the circumstances of the case, the parties are left to bear their own costs.

Judgment Referred.

[1]*(2007) 1 SCC 0408*
[2]*(1983) 3 SCC 0401*
[3]*(2009) 1 SCC 0180*
[4]*(2010) 4 SCC 0192*
[5]*(2006) 4 SCC 0001*
[6]*(2008) 10 SCC 0001*
[7]*(2010) 3 SCC 0115*
[8]*(2010) 4 SCC 0179*
[9]*(2010) 11 SCC 0733*