2021 INSC 891

[REPORTABLE]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 7707-7708 OF 2021
(Arising out of SLP (C) Nos. 28616-28617 OF 2019)

BHARAT SANCHAR NIGAM LTD. APPELLANT(S)

VERSUS

SRI DEO KUMAR RAI @ DEO KUMAR RAY RESPONDENT(S)

J U D G M E N T

Hrishikesh Roy, J.

Leave granted.

**2.** Heard Mr. Dinesh Agnani, learned Senior Counsel appearing for the appellant. Also heard Mr. Surendra Patri, learned counsel representing the respondent (original applicant before the Central Administrative Tribunal (for short “the Tribunal”)).

**3.** The challenge here is to the judgment and order dated 31.5.2018 whereunder, the Gauhati High Court in the Writ Petition (Civil) No. 991/2017 filed by the appellant upheld the order passed by the Tribunal on 25.8.2015 and had directed conferment of temporary status to the respondent, under the *Casual Labourers (Grant of Temporary Status and Regularization) Scheme of the Department of Telecommunications, 1989* (hereinafter referred to as "the 1989 Scheme"). The appellant also impugns the order dated 4.6.2019 by which the Gauhati High Court rejected the Review Petition 59/2019, against the order dated 31.5.2018.

**4.** Under the 1989 Scheme, the casual workers who are working in the BSNL on the day of coming into force of the Scheme i.e. 1.10.1989 and who had rendered continuous service of at least one year, and out of this one-year period those, who have been engaged for at least 240 days, are entitled to be conferred the temporary status. The Union of Casual Labourers were

agitating on behalf of the casual workers for securing the temporary status. To address the issue, a Committee was constituted to verify the records of the casual workers to determine as to who amongst them satisfy the eligibility criteria for securing the benefit under the 1989 Scheme.

**5.** The respondent herein had appeared before the Committee on 19.1.2004 and on verification of the records available with the Department, the Committee members concluded that the respondent was engaged for 4 days in the year 1989; 29 days in 1992; 17 days in 1993; 38 days in 1994; 38 days in 1995; 34 days in 1996; 37 days in 1997 and 17 days in 1998, well below the required 240 days in the year. It was also noted that in support of the claim for temporary status, engagement for much longer periods in the concerned year from 1995 (239 days), 1996 (240 days), 1997(250 days), 1998(89 days) was claimed but the respondent

failed to produce any original documents before the Committee.

**6.** Upon verification of the service records, the Committee in its Report dated 29.8.2005 observed that the respondent did not fulfil the eligibility criteria since he had not completed “240 days” in 12 calendar months. Before the Committee, the BSNL authorities additionally contended that the photostat copies of the certificates relied upon by the respondent, were never issued by any officer of the BSNL. The relevant part of the Committee’s final finding is extracted below:-

> “In view of the above proof and evidence, the Committee has found that the applicant Shri Deo Kumar Rai has completed maximum 38 days in 12 calendar months during 01.01.1995 to 31.12.1995 and as such the applicant is not entitled to grant of temporary status as per the provisions of the Scheme, 1989……..”

**7.** The above decision of the Committee was challenged by the respondent in the High Court by filing the Writ Petition(C) No.2158 of 2006 which was transferred on

8.4.2009 to the Tribunal and the petition was numbered as TA No. 30/2009. Similar such cases were analogously considered by the Tribunal and in the common order (22.1.2010) the Tribunal adverted to the Committee's conclusion and opined that since the Committee had considered all relevant materials placed before it by either side, no case is made out by the applicants to claim temporary status and accordingly the TA and the connected petitions were dismissed by the Tribunal on 22.1.2010.

**8.** When this was challenged, the High Court vide its common order dated 19.3.2013 in Writ Petition(C) No. 2945/2011, set aside the Tribunal's order and remanded the matter back to the Tribunal for fresh adjudication. In the remand order, the High Court noted that in view of the diametrically contradictory factual assertion of the applicants and the Department (on the entitlement to the benefits under the Scheme), evidence of the parties will have to be recorded as permitted under

*Section 22(3)* of the *Administrative Tribunals Act, 1985* (for short "the 1985 Act"). Accordingly, fresh adjudication of the issue was directed by recording evidence of the parties.

**9**. Following the above, the Tribunal reconsidered the matter, by once again perusing the Report of the Committee dated 29.8.2005, and noted that as per the genuine records verified from the office of G.M.T.D., Kamrup, the applicant was engaged for 4 days in the year 1989; 29 days in 1992; 17 days in 1993; 38 days in 1994; 38 days in 1995; 34 days in 1996; 37 days in 1997 and 17 days in 1998. Adverting next to the photocopy of the certificates produced by the applicant, it was observed that the applicant was made to work from 1989 to 1998, with some artificial breaks. With such cryptic observations and without any further evidence or material, the Tribunal passed an order in favour of the applicant on 25.8.2015 in the TA No. 30/2009.

**10.** The Tribunal's order was challenged by the appellant by filing the WP(C) No. 991/2017 where a specific plea was raised about the Tribunal failing to follow the procedure under Section 22(3) of the 1985 Act in terms of the High Court's earlier directions in the remand order (19.3.2013).

**11.** The Department again contended before the High Court that the respondent does not fulfil the eligibility criteria of having worked for 240 days in 12 months and that he had relied on fabricated certificates which do not correspond with the official records and without recording any evidence to conclude otherwise, the Tribunal chose to record a finding which was not supported by any acceptable material. In fact, an erroneous conclusion was drawn purporting to draw support from the contrary conclusion drawn by the Committee, which categorically held that the applicant is disentitled to temporary status, as per the provisions of the 1989 Scheme. The Department also

relied on the decision of this Court in *Secretary, State of Karnataka & Ors. vs. Umadevi & Ors.*[1] to contend that the foundation of the 1989 Scheme stood demolished and no relief can be claimed under the said Scheme.

**12.** The High Court under the impugned judgment dated 31.5.2018, had however dismissed the writ petition filed by the BSNL, where the Court adverted to the xerox copies of the documents produced by the applicant to erroneously observe that the authenticity of those documents have not been disputed by the Department. With such finding, the judgment of the Tribunal dated 25.8.2015 in favour of the respondent was upheld and the Writ Petition was dismissed with the following observation:-

> " **** **** **** ****
>
> By the impugned judgment and order dated 25/08/2015, the learned Tribunal had allowed the application filed by the respondent by recording categorical finding of fact that the

1 (2006) 4 SCC 1

> petitioner had worked for more than 240 days under the department during the period from 1989 to 1998. Such finding of fact was recorded after considering the report dated 29/08/2005 submitted by the "Responsible Committee" constituted by the Department to look into such matters as well as the documentary evidence produced by the SDE/JTO.
>
> The learned counsel for the writ petitioner has not been able to invite our attention to any material which would go to dislodge the factual finding recorded by the learned Tribunal."

**13.** Thereafter, the High Court dismissed the Review Petition filed by the Appellant, vide order dated 4.6.2019, and this order is also under challenge in this case.

**14.** Mr. Dinesh Agnani, learned senior counsel for the appellant points out that both the Tribunal and the High Court failed to appreciate that the 1989 Scheme is intended as a one time measure specifying the eligibility criteria for conferment of temporary status on the casual workers and the respondent had not worked

for 240 days in 12 months and is therefore ineligible for any benefits under the Scheme. Moreover, such also being the finding of the competent committee, there was no justification either for the Tribunal or for the High Court to give an incorrect factual finding favouring the respondent, without recording any evidence or adverting to any acceptable material, notwithstanding the specific direction issued by the High Court on 20.11.2013 when it remanded the matter back to the Tribunal, for fresh adjudication. The learned counsel argues that the photostat copies of the documents produced by the applicant does not correspond to the departmental records and therefore without recording any evidence to determine the authenticity of the xerox copies of the relied documents, neither the Tribunal nor the High Court could have concluded that the applicant fulfilled the eligibility criteria under the Scheme.

**15.** Per contra, Mr. Surendra Patri, the learned counsel for the respondent argues that the respondent is litigating since long to secure the benefit under the 1989 Scheme and since the Tribunal, as well as the High Court, have granted relief in his favour, interference by this Court is not merited.

**16.** In order to secure the benefit of the 1989 Scheme, it was necessary for the respondent to establish that he satisfied the eligibility criteria prescribed under the Scheme and had worked for at least 240 days in 12 months. To resolve the factual controversy, the High Court in its earlier round while remanding the matter, directed the Tribunal to record evidence. However, the Tribunal's order dated 25.8.2015 shows that the only basis for concluding in favour of the respondent was the Report/proceedings of the Committee dated 29.8.2005. The Committee however upon verification of the Records concluded that the respondent has completed maximum 38 days in 12 calendar months during 1.1.1995

to 31.12.1995 and as such he is disentitled for the temporary status under the Scheme. Yet, by misreading the specific recording of the Committee and without any basis for a contrary view, the Tribunal cryptically observed that the applicant was made to work with artificial breaks during 1989 to 1998 and on that basis, relief was granted to the respondent. But the Tribunal never recorded any evidence to determine the factual controversy and instead respondent’s service during 10 years from 1989 to 1998 were erroneously taken into account to compute the requirement of 240 days service in 12 calendar months.

**17.** The Review application filed by the appellant to challenge the incorrect conclusion of the Tribunal and the High Court viz-a-viz the finding given by the Committee was summarily brushed aside. Moreover, although it was pointed out that the finding is contrary to the material on record, the same was disregarded with the observation that both the Tribunal

and the High Court had considered the Report and granted relief to the applicant. The Review petition accordingly came to be dismissed on 4.6.2019.

**18**. The Committee as noted earlier had clearly recorded that the respondent *"has completed maximum 38 days in 12 calendar months during 1.1.1995 to 31.12.1995 and as such the applicant is not entitled to grant of temporary status as per the provisions of the Casual Labourers (Grant of Temporary Status and Regularization) Scheme of the Department of Telecommunications, 1989."* Although this categorical finding of the Committee was noted both by the Tribunal as also by the High Court, regularization was surprisingly ordered for the respondent. For the contrary finding, the Tribunal did not make any inquiry or record any evidence, in terms of the remand order dated 19.3.2013 of the High Court in the earlier round. It is therefore seen that the conclusion is drawn without any material foundation.

**19**. In the above circumstances, we are of the considered opinion that the conclusion drawn by the High Court and by the Tribunal favouring the respondent is contrary to the factual finding recorded by the Committee on 29.8.2005. The Committee Report also discloses that the Applicant had failed to produce records in original, to support his claim. The Committee further noted that certificates were issued by unauthorised persons and the authenticity of such documents have not been established.

**20.** At this stage, it is apposite to extract Clause 5(i) of the 1989 Scheme which prescribed the requirements for conferring temporary status to casual workers.

> "5. Temporary Status
>
> (i) Temporary status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of atleast one year out of which they must have been engaged o work for a period of 240 days (206 days in case of offices observing five days week) such casual

> labourers will be designated as Temporary Mazdoor."

The above clause makes it clear that the Applicant was required to have been engaged for 240 days in a given calendar year. The Committee's findings showed that the respondent had served for a maximum of 38 days in a calendar year and was ineligible.

**21.** The Tribunal in its order (25.8.2015) has relied upon the judgement in *Uma Devi* (supra) to consider the service period during 1989 to 1998, to compute 240 days of engagement. However, this manner of considering eligibility does not gain support from the ratio in *Uma Devi.* To understand this, we benefit by reading the opinion of Justice P.K. Balasubramanyan, who speaking for the Constitution Bench, made the following observation on the issue of regularisation of irregularly appointed workmen as a one time measure,

> " **53.** ...There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa* [(1967) 1 SCR 128 : AIR 1967 SC

> 1071] , *R.N. Nanjundappa* [(1972) 1 SCC 409 : (1972) 2 SCR 799] and *B.N. Nagarajan* [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such *irregularly* appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

**22.** The above ratio as is seen, was concerned with irregular appointments, which issue however is not very relevant in this matter. Furthermore, the ratio does not lay down a ten-year service yardstick for determining the eligibility of casual workers, as has been understood by the Tribunal. As such, the period of engagement spreading across several calendar *years* (and

not one year as mandated under the Scheme) could not have been accepted by treating the gaps in service over those years, as ‘artificial breaks’. This manner of computation is inconsistent with the diktat of *Uma Devi* as well as the prescribed criteria governing the Respondent. It is also seen that the Tribunal in its order (22.01.2010), while dismissing the regularisation claim of the respondent amongst other applicants, had noted the admission therein that they had not satisfied the requirement of engagement of 240 days in any year. It was finally held that the applicants had failed to establish any infirmity in the Committee’s findings. For the sake of completion, we may note that the above order of the Tribunal was interfered with and remanded by the High Court, as was previously mentioned.

**23.** Such being the situation, the impugned judgments dated 31.5.2018 and 4.6.2019 of the High Court as also the order dated 25.8.2015 of the Tribunal in T.A. No.

30/2009 are found to be unsustainable. The same are accordingly set aside and quashed.

**24**. The appeals are allowed with the above order without any order on cost.

……J.
[R. SUBHASH REDDY]

……J.
[HRISHIKESH ROY]

NEW DELHI
DECEMBER 14, 2021