WWW.LIVELAW.IN

AFR

Court No. - 10

Case :- WRIT - C No. - 16186 of 2021

Petitioner :- Bipin
Respondent :- Union Of India And 3 Others
Counsel for Petitioner :- Raghawendra Kumar Singh
Counsel for Respondent :- A.S.G.I.,Annapurna Singh,Taniya Pandey

Hon'ble Siddhartha Varma,J.

This writ petition has been filed challenging the award dated 23.11.2020 which has been passed by the Presiding Officer, Central Industrial Tribunal-cum-Court, Kendiry Bhawan, 8th Floor Hall No. 1, Sector – H, Aliganj, Lucknow. Further the writ petition has also challenged the notice/order dated 04.02.1998 which was issued by the Joint General Manager, IRCON International Ltd, Anpara, District – Sonbhadra. The writ petition was finally heard after the parties exchanged their affidavits.

Briefly stated the facts of the case are that the petitioner was employed by the Indian Railway Construction International Ltd. (hereinafter referred to as the ‘Company’) initially as a peon on casual basis for a period of six months by the order of the Project Manager Vindhyay Nagar, District – Sithi (M.P.) on 19.4.1984. This was an employment under the grade “D” category. After the completion of six months of continuous service, the petitioner was re-employed on monthly basis with a consolidated wage of Rs. 196/- plus dearness allowance by an order dated 09.05.1985 and,

WWW.LIVELAW.IN

thereafter, he was attached with Anpara Project, District – Mirzapur, U.P. His attachment there necessitated a training and on the completion of it, he was employed on the scale of pay which was in the grade pay of Rs. 196-237/-. This was done by an order dated 29.05.1998 issued by the Regional Manager IRCON - Anpara. In this arrangement, the petitioner continued for a period of four years and was thereafter by an order dated 28.4.1989 brought in the regular scale. Thereafter the petitioner was transferred from Vindhya Nagar Project to Rihand Nagar Project, District - Sonbhadra U.P. by an order dated 23.12.1993. However, on 04.02.1998 a notice was served upon the petitioner that with effect from 06.02.1998 his services were dispensed with it.

Aggrieved by the termination/notice dated 04.02.1998, the petitioner alongwith 74 other workmen filed a writ petition being Writ Petition No. 6522 of 1998. However, the writ petition was disposed of on 23.01.2002 whereby it was ordered that other than the petitioners no. 31 & 61 the other petitioners who were 73 in number were to be given Rs. 3 lacs as compensation. The petitioner alongwith the petitioner no. 61 was given an option to file a writ petition afresh. The petitioner instead of filing a writ petition raised an industrial dispute and prayed for his reinstatement with back wages. The conciliation proceedings failed and the matter was referred by the Government of India to the Central Government Tribunal- cum – Labour Court, Lucknow (hereinafter referred to as

WWW.LIVELAW.IN
the 'Labour Court') and this reference came to be numbered as Reference No. 23 of 2009. When the award was passed by the Labour Court on 23.11.2020, the instant writ petition was filed.

Before proceeding to enumerate arguments advanced by the counsel for the petitioner, certain other facts also require a brief mention.

Certain workmen who were employed with the company had filed writ petitions which were numbered as 18561/1993, 32500/1993, 32651/1993, 34786/1993 and 44416/1993. When the petitioners in these writ petitions had been found to be surplus and their services were dispensed with then the above mentioned writ petitions were filed. These writ petitions were connected to each other and were decided by a common judgement on 7.12.1993 in which the order impugned by which the petitioners therein had been found to be surplus were set aside and the petitioners were directed to be absorbed in other projects. The order dated 7.12.1993 was challenged in an Intra-court Special Appeal and the Special Appellate Court had on 24.2.1998 allowed the special appeal and set aside the order passed by the learned single judge dated 7.12.1993. Aggrieved thereof five civil appeals were filed before the Supreme Court. The Supreme Court wherein on certain grounds set aside the order of the Division Bench dated 4.12.1998 and also set aside the order of the learned Single Judge dated 7.12.1993. The Supreme Court while remanding the matter framed certain questions for consideration and they were as follows:-

WWW.LIVELAW.IN
(i) Whether Anpara Rihand Nagar Project is subjected to a factual closure as mentioned in the impugned notices of March, 1998 or whether the project is not still completed;

(ii) In the light of the answer to the aforesaid question a further question would arise whether impugned notices of March, 1998 were in fact and in law closure notices as per Section 25O read with Section 25FFF of the Act or whether they still remain retrenchment notices and hence would be violative of Section 25N of the Act;

(iii) Even if it is held that the Anpara Rihand Nagar project is in fact closed down whether the 25 appellants were employed in the project or they were employees of the respondent – company entitling them to the absorbed in any other project of the company and consequently whether the impugned notices have not effected any snapping of employer-employee relationship between the appellants of the one hand and the Respondent-company on the other;

(iv) Even apart from the aforesaid questions whether the impugned notices are violative of the guarantee of Articles 14, 16 and 21 of the Constitution of India on the ground that the termination of services of the 25 appellants was arbitrary and discriminatory, respondent company being a 'State' within the meaning of Article 12 of the Constitution of India.

Thereafter, upon remand, the five writ petitions being Writ Petition Nos.18561/1993, 32500/1993, 32651/1993, 34786/1993 and 44416/1993 were heard by a Division Bench. When on 17.5.2009 there was a conflict of opinion between the two judges of the Division Bench, again the matter went to the Supreme Court and, thereafter, the Supreme Court remanded the matter back and directed that the matter be disposed of on merit by a Full Bench of the High Court. Before the Full Bench, those very four issues which had been asked by the Supreme Court to be decided on

WWW.LIVELAW.IN
24.3.1998, were placed for consideration. All the issues were thereafter decided in favour of the respondent-company and against the petitioners. The Full Bench case was reported in **2004(5)AWC 3955All (Lal Mohammad vs. Indian Railway Construction Co. Ltd. And others.)**. The petitioners in the Full Bench Case filed an Appeal before the Supreme Court which was numbered as Civil Appeal No. 6195-6198 of 2004 and Civil Appeal No. 5685 of 2006. The decision of the Appeal before the Supreme Court reported in **AIR 2007 SC 2230 (Lal Mohammad and Ors. vs. Indian Railway Construction Co. Ltd. and Ors.**) specifically decided that when a workman is employed for a particular project then the services of that employee came to an end as soon as the project was over and he could not be given a permanent status. It also held that shortfall of period of notice or compensation, after completion of the project ,would not render the termination bad on that count.

The Supreme Court found that the judgement of the Full Bench of the Allahabad High Court was correct. It also found that the petitioners were not entitled to be regularized in the services of the Company as they were not employees of the company. It, however, held that the petitioners were entitled for compensation and thereafter the appeals were dismissed.

The petitioner in this writ petition has claimed that his case was different from the case of Lal Mohammod (supra).

WWW.LIVELAW.IN

Learned counsel for the petitioner has submitted that the petitioner was given a status of regular employee because he had been given a scale of the regular employee with effect from 19.4.1984. He submits that on 19.5.1986 and 28.4.1989, the petitioner was further granted certain status which were different from the status which were granted to the petitioners in the case of Lal Mohammad (supra). Learned counsel further reiterated the provisions of 25H of the Industrial Disputes Act 1947 and stated that the petitioner had a right to be reappointed if the work was there. Learned counsel for the petitioner also submitted that IRCON Services Rules provided for promotion, implementation, regularization of casual employee.

Still further learned counsel for the petitioner submitted that the manner in which the respondents company had conducted itself clearly showed that it was resorting to unfair labour practices which was prohibited by Section 25T and Section 25 U of the Industrial Disputes Act, 1947.

Learned counsel relied upon **2000 AIR SCW 3865 (Mineral Exploration Corporation Employees' Union vs. Mineral Exploration Corporation Ltd. & another)** and submitted that employees who were engaged continuously for a number of years cannot be treated as temporary or casual employees. He, therefore,

WWW.LIVELAW.IN
submitted that the petitioners were entitled for regularization.

Learned counsel for the petitioner also submitted that his case was absolutely different from the case of Meghu Seikh. He submits that comparison of the case of Meghu Seikh with the case of the petitioner was not called for.

Learned counsel for the respondent nos. 2, 3 and 4, however, relying upon the judgements of Lal Mohammod(supra) which was passed in the Full Bench decision of the High Court and was confirmed by the Supreme Court has made her submission and has submitted that the case of the petitioner was at similar footing with the case of Meghu Seikh. She submitted that the very fact that the petitioner had got regular scale did not mean that the petitioner had been regularized. She still further submitted that the petitioner was an employee of the Project and not of the Company. Still further learned counsel for the respondents, Ms. Taniya Pandey submitted that in pursuance of the law laid down in **Secretary, State of Karnataka vs. Uma Devi,** reported in **2006 (4) SCC 1** regularization could be done only if there was a statutory rule framed in that regard.

Having heard the learned counsel for the parties and after having perused the written arguments which the parties have filed (which are now made part of the record) and also upon going

WWW.LIVELAW.IN
through the award and the various pleadings which have been exchanged by the parties, this Court finds that no interference is warranted in the award. The Supreme Court in the case reported in **AIR 2007 SC 2230 (Lal Mohammad and Ors. vs. Indian Railway Construction Co. Ltd. and Ors.)** has categorically laid down that when a workman is employed for a particular project, the services of that employee came to an end when the project was over and, therefore, could not be given a permanent status. It has also held that the workman could not be considered as employee of the company under which various other projects ran. This Court also finds that there was similarity in the case of the petitioner and the case of Meghu Seikh.

Under such circumstances, no interference is warranted in the writ petition and the writ petition is, accordingly, dismissed.

Order Date :- 25.10.2021
PK

(Siddhartha Varma,J.)