

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : SERVICE MATTER

Date of Decision : December 02, 2008

WP(C) No.282/2004

The Management of M/s. Chief Engineer, PWD, Zone-II

... Petitioner.

Mr.Saleem Ahmed, Advocate

Versus

Its Workmen
Through CPWD Mazdoor Union

... Respondents

Mr.Varun Prasad, Advocate
for respondent No. 1.

S.N. Aggarwal, J. (Oral)

1. The Chief Engineer, PWD (DA), Zone-II, New Delhi (hereinafter referred to as the petitioner) has filed this writ petition seeking to challenge the award of the Industrial Tribunal dated 18.3.2003 directing it to regularize the services of eight workmen whose names are given in para 2 of the award after including their names in the seniority list of daily wages workers keeping in view their length of service.

2. The workmen in relation to whom the impugned award has been passed are held to be daily wages workers employed by the PWD/CPWD on different dates. Mr.Saleem Ahmed, learned counsel appearing on behalf of the petitioner has contended that the workmen in relation to whom the impugned award was passed are not daily wages workers but they according to him were appointed on work order basis and are, therefore, stated to be contractual appointees. However, during hearing of this writ petition,

learned counsel appearing on behalf of the petitioner could not show any material on record to support his contentions that the workmen in question are contractual appointees. They are held to be daily wages workers by the award of the court below. This Court is of the view that the question as to whether the workmen are daily wages workers or are contractual appointees is a question of fact and the findings recorded by the Industrial Tribunal on this aspect cannot be interfered with by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India. This Court exercising writ jurisdiction has not to go into the nitty-gritty of the impugned award on questions of fact as it can be gone into by the appellate court. The scope of writ jurisdiction is limited only to ascertain whether the impugned award has caused miscarriage of justice to one or the other party to a lis. In the present case, the workmen are held to be daily wages workers employed by the petitioner and based upon this finding of fact the petitioner itself is stated to have drawn a seniority list of all daily rated workers on its roll including the respondents and have accorded them seniority in the list of daily wagers on the basis of their respective date of joining. Mr. Varun Prasad, learned counsel appearing on behalf of the respondent has placed the seniority list of daily rated workmen of the petitioner which includes the names of the workmen concerned also. The learned counsel appearing on behalf of the respondent has also placed on record copy of a letter of the petitioner dated 10.2.2004 (Annexure R-1 at page 74 of the paper book) to show that the petitioner has already prepared a seniority list of daily wages workers including the concerned workmen and for that reason according to him a part of the impugned award has been implemented by the petitioner itself. It is submitted by learned counsel for the respondent that the petitioner cannot be permitted to re-agitate the issue that the concerned workmen are not the daily rated workers or that they are the contractual appointees.

3. On giving my anxious consideration to the facts and circumstances of the case and the above submissions made by the counsel for the parties, I am of the view that the workmen in relation to whom the impugned award is passed by the Industrial Tribunal are to be treated as daily wages workers for the purpose of payment of their wages and for all other purposes in relation to their engagement.

4. The award of the Industrial Tribunal, which is impugned in the present writ petition, has directed the petitioner/Management to regularize the services of the concerned workmen mentioned in para 2 of the said award. Mr. Saleem Ahmed, learned counsel appearing on behalf of the petitioner has

relied upon a judgment of the Hon'ble Supreme Court in UOI Vs. Sheela Rani 2006 (13) SCALE 394 and has laid emphasis on para 10 of the said judgment which is extracted below:- ?10. The law is well settled on this issue. In State of Haryana Vs. Jasmer Singh, (supra), a three Judge Bench of this Court held that the regularization of daily rated workmen who had completed a certain number of years of service is a policy matter to be decided by the State. This Court held that the respondents who are employed on daily wages cannot be treated on par with persons in regular service of the State holding similar post. Daily rated workers are not required to possess the qualifications prescribed for the regular work nor do they have to fulfill the requirement relating to age at the time of recruitment. They cannot, therefore, be equated with the regular workmen for the purposes of their wages nor can they claim the minimum wages nor can they claim the minimum wages regular pay scale of the regularly employed.?

5. In view of the above judgment of the Hon'ble Supreme Court in Sheela Rani's case (supra), regularization of daily rated workmen can only be in terms of the policy of the petitioner. The general directions could not have been given by the Tribunal to the petitioner for regularizing the services of the concerned workmen who were found to be daily rated workers. The petitioner has already prepared a seniority list of all its daily rated workmen which include the concerned workmen also and, therefore, the petitioner may consider them for their regularization in terms of its policy, if any, strictly as per seniority list.

6. The directions contained in the impugned award of the Industrial Tribunal for regularizing the services of all daily rated workmen are modified to the extent that the petitioner shall consider the daily rated workmen for their regularization in terms of its policy, if any, on the basis of seniority list.

7. For the foregoing reasons, this writ petition is partly allowed in terms referred hereinabove and stand disposed of accordingly leaving the parties to bear their own costs.

Sd/-
S.N.AGGARWAL
[JUDGE]

