

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 6248-6249 OF 2010

ISHER SINGH & ORS.

Appellants

VERSUS

UNION OF INDIA & ORS.

Respondents

O R D E R

Heard learned counsel for the parties and perused the record.

Admittedly, the appellants had been working as 'Porters' in the civilian part of the Army for 15 to 25 years. The Central Administrative Tribunal vide its judgment and order dated 21.5.2009 has taken note of the fact that as per the pleadings taken before the Tribunal that they had been working for 10 to 22 years. However, the Tribunal rejected their claim placing very heavy reliance on the Constitution Bench judgment of this Court in Secretary, State of Karnataka and Others vs. Uma Devi (3) and Others (2006) 4 SCC 1. Thereafter, the petitioners had been approaching one court or the other but they could not get the relief. When they went to Armed Forces Tribunal, the question of jurisdiction arose and the Tribunal came to the conclusion that it has no jurisdiction to deal with the case of civilian part of the Army.

We are not deciding the issue of jurisdiction and leave this question open to be decided in appropriate case, However, in view of the fact that the appellants had been working for 15 to 20 years as on today and in view of the paragraph 53 of judgment in Uma Devi (Supra), would come in their aid. The said paragraph is reported below:

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in State of Mysore vs. S.V. Narayanappa (1967) 1 SCR 128, R.N. Nanjundappa vs. T. Thimmiah (1972) 1 SCC 409 and B.N.Nagarajan vs. State of Karnataka (1979) 4 SCC 507, and referred to in paragraph 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 courts or of tribunals. The question of regularization 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 above referred 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 regularize 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 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 regularization, if any already made, but not subjudice, need not

be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

Recently in Union of India and Others vs. Vartak Labour Union (2) (2011) 4 SCC 200, this Court has laid down as follows:

"22. 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 regularisation of the services of the casual workers engaged by the BRO for execution of its ongoing projects."

In view of the above and in the facts and circumstances of the case and without entering into any other legal issue, we dispose of these appeals directing the respondent to consider the case of the appellants considering their past service record within a period of four months from today. No order as to costs.

.....J.
[DR. B.S. CHAUHAN]

NEW DELHI
MAY 14, 2013

.....J.
[DIPAK MISRA]

ITEM NO.102

COURT NO.2

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 6248-6249 OF 2010

ISHER SINGH & ORS.

Appellant (s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With office report)

Date: 14/05/2013 These Appeals were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN
HON'BLE MR. JUSTICE DIPAK MISRA
(VACATION BENCH)

For Appellant(s) Mr. B.S. Billowria, Adv.

Mr. Dinesh Kumar Garg,Adv.

Mr. P.V. Yogeswaran,Adv

For Respondent(s)

Mr. Rakesh Kr.Khanna,ASG

Mr. R. Balasubramanian,Adv.

Mr. Harsh Prabakar,Adv.

Ms. Kiran Bhardwaj,Adv.

Mr. B.V. Balram Das,Adv.

Mr. S. Nagarajan,Adv.

Mrs Anil Katiyar,Adv.

UPON hearing counsel the Court made the following

O R D E R

In terms of the signed order, we dispose of these appeals directing the respondent to consider the case of the appellants considering their past service record within a period of four months from today. No order as to costs.

(O.P. Sharma)

Court Master

(M.S. Negi)

Court Master

(Signed order is placed on the file)