

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 1458-1459 OF 2010

DIRECTOR GENERAL, PRASAR BHARATI & ANR. Appellant(s)

VERSUS

DILIP ROY & ORS. Respondent(s)

O R D E R

Heard Mr. Rajeev Sharma, learned counsel appearing for the appellants and Mr. Rana Mukherjee, learned counsel appearing for the respondents.

2. These civil appeals seek to challenge the judgment and order dated 25.6.2008 in W.P.C.T. No.704 of 2007 and order dated 11.09.2008 in C.A.N. No.7373 of 2008 rendered by a Division Bench of the Calcutta High Court dismissing the writ petition filed by the appellants herein.

3. The facts leading to the present appeals are this wise. The respondents herein are some 12 Casual Production Assistants who have been working in the Doordarshan Kendra, Kolkata Station since about 1992 and they have been continuing thereafter. They are engaged from time to time and it is their case that they are engaged for more than 120 days every year. They were seeking absorption.

4. The policy of the appellants for absorption required that such Artists should complete a minimum of 120 days of engagement prior to 31.12.1991 as per the scheme framed on 9.6.1992. That being so, these Artists could not be absorbed. The respondents Artists therefore took up the matter to the Central Administrative Tribunal ("Tribunal", for short) by filing O.A. No.652 of 2004. The Tribunal noted that there were some 14 vacancies of Production Assistants with the respondents. The Tribunal was conscious of the fact that the respondents had not completed engagement for 120 days prior to 31.12.1991, yet in paragraph 7 of its judgment rendered on 16.11.2005, it observed that this does not mean that the appellants herein could go on engaging casual artists for years together without looking to their welfare. Thereafter, on noting that there were 14 vacancies available, the Tribunal gave the following direction in paragraph 8:

"If there are 14 vacancies of Production Assistants with the respondents they shall consider absorbing the applicants against those vacancies as per the prevalent recruitment rules of All India Radio by giving them relaxation of age for the number of years they have been working with the respondents provided they fulfill all other eligibility criteria as mentioned in the prevalent recruitment rules of All India Radio."

5. This order of the Tribunal was challenged by the appellants by filing a writ petition before the Calcutta High Court which came to

be dismissed on 22.11.2007 and no appeal was preferred therefrom to this Court and as a result of which this direction became final.

6. Inasmuch as this direction was not being complied with, the respondents took out a contempt petition and it is the order on that contempt petition which was challenged by the appellants herein by filing the above referred Writ Petition No.704 of 2007, which also came to be dismissed by the Calcutta High Court by its impugned judgment dated 25.6.2008. In this judgment also the High Court noted that the Tribunal was aware that regularization was not possible, yet it directed absorption of the artists against the existing vacancies relaxing the age bar. The High Court again repeated that the question of absorption has to be considered as against the existing 14 vacancies since the order of the Tribunal was subsisting and remained valid.

7. Mr. Rajeev Sharma, learned counsel for the appellants submitted that the appellants are following their policy and the scheme framed on 9.6.1992, and the respondents do not fit in the scheme. He drew our attention to the fact that similar applications for regularization have been rejected as recently as on 12.9.2013 on the basis of the application of same criterion with respect to the Artists from the Calcutta Center itself. He, therefore, submits that this Court ought to interfere and set aside the impugned order. He has, however, very fairly filed an affidavit of one Dileep Kumar Bhat, who is working as Deputy Director (Administration), Directorate General, Doordarshan, Prasar Bharati, New Delhi, in view of the instructions sought by this Court. In this affidavit affirmed on 11th February, 2014, it is stated in paragraph 3 that though Prasar Bharati had issued an advertisement in March, 2013 for filling up 72 posts of Production Assistants/Transmission Executives, 18 posts were left out at that time. These posts are still vacant. These vacancies include 14 posts which were directed to be kept vacant by the Tribunal and that is why the appellants are not, in any way, in contempt.

8. Mr. Rana Mukherjee, learned counsel appearing for the respondents submitted that the present case ought to be looked into in the peculiar facts of the case. The respondents had admittedly worked as Production Assistants though subsequent to 31.12.1991 and not prior thereto. He, however, stated that the Tribunal was conscious of that fact, and yet having noted the vacancies were existing, it had directed their absorption when the order came to be passed in 2005. This was considering that by that time the respondents had put in more than 13-14 years as Artists with the Calcutta Center of Doordarshan. He, therefore, submits that since that order has been left undisturbed and not challenged, there is no reason as to why this Court should entertain the present appeals.

9. We have noted the submissions of both the counsel. Considering the fact that the order of the Tribunal was passed in the peculiar facts of the present case, and it directed absorption of the respondents on the existing vacancies and also considering that the said order had obtained finality, the High Court of Calcutta declined to interfere vide the impugned order. We are conscious of the fact that the appellants have to follow uniform policy which they have been following, and yet in the peculiar facts of the present case, noting that the respondents had worked for a very long time from 1992 onwards and still continue to work, and also noting that there were vacancies which continued till that point of time and even now, we are of the view that it will not be in the interest of justice to interfere with either the order passed by the High Court or that of the Tribunal.

10. In the circumstances, we dismiss these appeals, and with a view to do complete justice we direct the appellants to absorb the

respondents on the same terms as directed by the Tribunal in the order quoted earlier, though with effect from 26.6.2007 which is the date of the order passed by the Tribunal. We make it clear that this order is passed in the peculiar facts of the present case, and this does not mean any requirement for the appellants to depart from its policy in other cases. We also make it clear that the respondents will not be entitled to any back-wages. They will get their benefits only from the date of their absorption order when passed. We, however, direct the appellants to pass necessary orders within eight weeks. These appeals are disposed of accordingly.

(H.L. GOKHALE)

.....J

.....J
(KURIAN JOSEPH)

New Delhi;
February 12, 2014.

ITEM NO.101 COURT NO.10 SECTION XVI
(Part-heard)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NOS. 1458-1459 OF 2010

DIR.GEN., PRASAR BHARATI & ANR. Appellant(s)

VERSUS

DILIP ROY & ORS. Respondent(s)

(With appln(s) for directions and office report)

Date: 12/02/2014 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.L. GOKHALE
HON'BLE MR. JUSTICE KURIAN JOSEPH

For Appellant(s) Mr. Rajeev Sharma, Adv.
Mr. Sahil Bhalaik, Adv.
Mr. Uddyam Mukherjee, Adv.

For Respondent(s) Mr. Rana Mukherjee, Adv.
Mr. Indranil Ghosh, Adv.
Mr. Biswajit Choudhary, Adv.
Mr. Samiron Borkatky, Adv.
Ms. Dharitry Phookan, Adv.

Mr. Vishal Arun, Adv. (N.P.)

UPON hearing counsel the Court made the following
O R D E R

Heard the learned counsel for the parties.

The appellants are directed to absorb the respondents on the same terms as directed by the Central Administrative Tribunal and the appeals are dismissed in terms of the signed order.

(A.S. BISHT)
A.R.-CUM-P.S.

(SNEH LATA SHARMA)
COURT MASTER

(Signed order is placed on the file)