

ONGC EMPLOYEES MAZDOOR SABHA

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v.

THE EXECUTIVE DIRECTOR BASIN MANAGER,
OIL & NATURAL GAS CORPORATION (INDIA) LTD.

(Civil Appeal No. 1570 of 2020)

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FEBRUARY 13, 2020

[R. F. NARIMAN, S. RAVINDRA BHAT AND
V. RAMASUBRAMANIAN, JJ.]

Industrial Disputes Act, 1947: Regularisation – Entitlement of – Names called from employment exchange to fill up sanctioned posts by respondent – Interview conducted – Issuance of appointment order as per inter se merit of available candidate – Thereafter, demand of regular appointment to term based employees appointed by appellant-Union – Industrial dispute – Tribunal directed regularisation of some of these workmen – Appellant-Union filed civil application that the Tribunal had not granted appointment to the workmen with effect from the date on which they had been initially appointed and/or from the date on which they completed probation – Single Judge of the High Court directed the respondent Corporation to treat the concerned workmen on regular employment with effect from the date the four year term comes to an end or the date of first reissuance of appointment order as the case may be – Letters Patent Appeals, filed thereagainst, dismissed by the Division Bench – Issue as regards the date to treat the concerned workmen to be on regular appointment – Held: Corporation must treat the concerned workmen who have been regularized earlier to be in regular employment on and from the date on which the industrial dispute was referred and grant all actual benefits from the said date till the date of decision by Single Judge of the High Court.

Allowing the appeal, the Court

HELD: On facts in the instant case, as soon as the four year period got over, the employees collectively through their Union approached the Central Government and the Central Government in exercise of its powers under the Industrial Disputes Act referred an industrial dispute immediately on 21.12.2004. This dispute was ultimately answered by the Central

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- A **Government Industrial Tribunal many years later only on 08.11.2011. On the facts of this case, therefore, the Corporation must treat the concerned workmen which includes 111 out of these 577 employees who have been regularized earlier, to be in regular employment on and from the date on which the industrial dispute was referred i.e. 21.12.2004 and accordingly grant all actual benefits from the said date till 01.04.2013. The other directions that have been given by the Single Judge will remain intact. [Para 14][969-A-C]**
- B **actual benefits from the said date till 01.04.2013. The other directions that have been given by the Single Judge will remain intact. [Para 14][969-A-C]**

Oil and Natural Gas Corporation Limited v. Petroleum

- C ***Coal Labour Union and Others (2015) 6 SCC 494; Surendra Kumar and Others v. Greater Noida Industrial Development Authority and Others (2015) 14 SCC 382 – distinguished.***

State of Karnataka v. Umadevi (2006) 4 SCC 1;

- D ***Divisional Manager, A.P. SRTC and Others v. P. Lakshmoji Rao and Others, (2004) 2 SC 433 – referred to.***

Case Law Reference

(2015) 6 SCC 494	distinguished	Para 9
E (2015) 14 SCC 382	distinguished	Para 12
(2006) 4 SCC 1	referred to	Para 12
(2004) 2 SCC 433	referred to	Para 13

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1570

- F of 2020.

From the Judgment and Order dated 29.04.2015 of the High Court of Gujarat at Ahmedabad in Letters Patent Appeal No. 290 of 2014.

K.V. Viswanathan, Sr. Adv., V.N. Subramanian, Apoorva Singhal, Ms. Madhusmita Bora, Advs. for the Appellant.

- G K.M. Nataraj, ASG, Sunil Kumar Jain, Abhishek Jain, Ms. Anusha Agarwal, Ms. Kririka Bodha, Advs. for the Respondent.

The Judgment of the Court was delivered by A

R. F. NARIMAN, J.

1. Leave granted.

2. Between 1999 and 2001, the respondent-Oil & Natural Gas Corporation (India) Ltd. (for short ‘the ONGC’) called for names from the Employment Exchange to fill up sanctioned posts (Class III & IV) of about 800 persons on a term basis i.e. for 4 years. Interview call letters were issued and after conducting interviews, appointment orders for the said period was issued as per *inter se* merit of the available candidates. It must be stated that the only error in this order of employment is that no public advertisement in the newspapers was first given. C

3. The appellant-Union thereafter demanded regular appointments to 577 term based employees who were appointed by the respondent-ONGC during 1991 to 2001. The conciliation proceedings which took place in 2003 failed as a result of which an industrial dispute was referred to the Industrial Tribunal at Ahmedabad in the following terms: D

“Whether the demand of the ONGC Employees Majdoor Sabha, Baroda to give regular appointment to 577 term based appointees (list enclosed) is proper or just? If so, what relief the workmen are entitled for and what directions are necessary in the matter?” E

4. By an Award dated 08.11.2011, the Industrial Tribunal, Ahmedabad partly allowed the reference and directed regularization of some of the services of these 577 workmen in the following terms:

(i) Out of 577 term based appointees of 1999, 2000 and 2001 as per list attached to the reference, those who either expired or resigned or terminated or tenure completed or are absent are now out of the court and so those are not entitled to get any relief inspite of raising demand by the union under the reference. F

(ii) Out of 577 term based appointees as per list attached to the reference those who have been selected and appointed against regular vacancies so far and those who were also appointed on regular post being dependants of deceased employees (DOD’s) so far are not entitled to get any relief in this reference case. G

(iii) Out of 577 term based appointees as per list attached to the reference, those who raised dispute for their regularization also H

- A on completing 240 days of works in the preceding calendar years and the award passed in their favour and the list of such employees covered under Hon'ble Supreme Court's Judgment in Civil Application No. C607/2005 regarding field party workman read with order dated 08.02.2008 in IA No. 10/2007 in Civil Application No. 6607/2005, selected against regular post under order of the Court are, also excluded from getting any relief in this reference, if, (here has been no change in condition of service of any of them by way of removal etc. without getting approval/permission from the tribunal and if, condition of service of any one has been changed and any complaint case is pending, then the person if any, shall be entitled to the relief.
- B (iv) Out of 577 term based appointees as per list attached to the reference, those whose term had not been extended in the year 2004 and filed complaint in this reference case which are pending are entitled to get relief in this case for considering them for regular appointments by the 1st parties.
- C (v) Out of 577 appointees as per list attached to the reference, 30 persons who are separated as per list of Field Operator furnished by the first parties on 18.07.2011 are not entitled to get any relief.
- D (vi) Out of the remaining of 577 term based appointees, who are still continuing on the posts on which they were appointed and are getting extensions of term/tenure are directed to be treated and covered within priority case of consideration zone for given them regular appointment by the management of ONGC (1st parties). The 1st parties are directed to work out such number of appointees with intimation to the 2nd party union.
- E (vii) The first parties are directed to undertake exercise of giving regular appointment to the remaining term based appointees calling them for interview if, necessary, and not to import recruitment from open market inviting fresh applications for the regular posts unless term appointees are given regular appointments of class III & IV posts.”
- F 5. The appellant-Employees Union being aggrieved by this Award approached, by way of a Special Civil Application, the High Court of Gujarat to the extent that the Tribunal had not granted appointment to the workmen with effect from the date on which they had been initially
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appointed and/or from the date on which they completed probation. By A
a judgment dated 26.04.2013, a learned Single Judge of the Gujarat High
Court allowed this writ petition in part stating:

“15. In view of the fact that the workmen have already undergone B
the procedures of recruitment such as examinations and interviews
and have been working with the respondent Corporation for years, C
their case deserves to be considered. However, it is pointed out
that some of the employees have undergone fresh interview and D
were appointed on regular basis. In that view of the matter, in
order to avoid any complication with regard to seniority and other
aspects, interest of justice would be met by directing the respondent
Corporation to treat the concerned workmen on regular
employment with effect from 24.01.2005 or the date of first
reissuance of appointment order as the case may be, and
accordingly grant notional benefits from the said date till 31.03.2013
and to pay them regular pay and allowances with effect from
01.04.2013. Accordingly, the following directions are issued:

[i] The concerned workmen involved in these cases are not E
required to undergo any more recruitment examinations since they
have been appointed after following necessary procedure and are
working with the corporation since then.

[ii] The respondent Corporation shall treat the concerned workmen F
on regular employment with effect from 24.01.2005 or the date
of first reissuance of appointment order as the case may be.

[iii] Accordingly the respondent Corporation shall grant notional G
benefits to the concerned workmen from the said date till
31.03.2013 and shall pay them regular pay and allowances with
effect from 01.04.2013.

[iv] The direction of the Tribunal not to import recruitment from H
open market inviting fresh applications for the regular posts unless
term appointees are given regular appointments of Class III and
IV posts is quashed and set aside.

[v] It shall be open to the respondent Corporation to initiate action
for recruitment for remaining vacancies, if any, after absorption
of concerned workmen from open market.

- A [vi] In case the regular salary is being paid to the concerned workmen pursuant to the interim order of this Court, no recovery thereof shall be effected by the Corporation.
- B 16. The award of the Labour Court is modified accordingly. Special Civil Applications No. 2248 of 2012 and No. 2813 of 2012 are partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs. Special Civil Application No. 16777 of 2012 is dismissed. Rule is discharged with no order as to costs. In view of the order passed in Special Civil Application No. 2248 & 2813 of 2012, no orders are required to be passed in Civil Application No. 14144 of 2012 and the same is accordingly disposed of.”
- C 6) Two Letters Patent Appeals from this judgment that were filed were both dismissed, one by the Workers Union, and one by the ONGC by the impugned judgment dated 29.04.2015. What was held by the judgments of the learned Single Judge and the Division Bench is that at the highest the initial appointment of the members of the appellant-Union could be termed to be irregular but not illegal. The ONGC appealed from the Division Bench judgment dated 29.04.2015, which was dismissed by this Court’s order dated 17.08.2015 stating as follows:
- E “Taking into consideration the peculiar facts and circumstances of these special leave petitions, we are not inclined to interfere with the impugned judgment and order passed by the High Court of Gujarat. Accordingly, the special leave petitions are dismissed.”
- F The limited question that arises before us today is on what date to treat the concerned workmen to be on regular appointment.
- G 7) Mr. K.V. Viswanathan, learned Senior Advocate appearing on behalf of the appellant-Union has taken us through the record and has stated that his clients ought to be regularized from the date of the initial appointment/completion of probation and that the learned Single Judge in confining relief only from 24.01.2005 or the date of first reissuance of the appointment order as the case may be and granting notional instead of actual benefits from the said date is wholly incorrect and ought to be set aside by this Court.
- H 8) Mr. K.M. Nataraj, learned Additional Solicitor General appearing for the respondent, on the other hand, points that that what has been done by the learned Single Judge is absolutely correct in law inasmuch as regularization has been given but cannot be given on actuals

retrospectively. Hence, the date of 24.01.2005 which is the last date on which the four year term comes to an end is a date which is just and could well have been given. Regular pay and allowances, therefore, as was correctly given to the employees union from 01.04.2013 (that is the date of the month in which the learned Single Judge decided the Special Civil Application) was also something well within the jurisdiction of the learned Single Judge in exercising powers under Article 226 and 227 of the Constitution of India.

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9) Mr. K.V. Viswanathan has strongly relied upon *Oil and Natural Gas Corporation Limited vs. Petroleum Coal Labour Union and Others*, (2015) 6 SCC 494, which, according to the learned senior advocate applies clearly to the facts of this case, this Court having granted regularization to similarly placed employees from the date of their entitlement i.e. after completion of 240 days of service in a calendar year in the Corporation as was provided in the Certified Standing Orders that were relied upon in that case.

10) On the other hand, Mr. K.M. Nataraj, learned ASG has pointed out that this judgment is distinguishable on facts in that the Award passed by the Industrial Tribunal in that case itself directed the appellant-Corporation to regularize services of the workmen concerned with effect from the date on which they completed 480 days. Also, since this was expressly provided for in the Certified Standing Orders of the Corporation, the case is completely distinguishable. We have also been informed that this judgment is pending consideration of a larger Bench by a reference order dated 07.02.2020.

11) The learned ASG appears to be correct in that the judgment reported in *Oil and Natural Gas Corporation Limited (supra)*, in any case, does not lay down any law with respect to the entitlement of the workers to regularization in that case. It was a case which depended entirely on its own facts and was dependent upon a reading of Certified Standing Orders of the Corporation in this behalf. The question of law that was decided by this judgment has no bearing whatsoever on the issue that is before us.

12) The Learned ASG then cited *Surendra Kumar and Others vs. Greater Noida Industrial Development Authority and Others* (2015) 14 SCC 382, which, on facts, concerned a policy decision to regularize the services of 27 contractual employees of the respondent taken in 2003 which was approved by the Government in 2008, the

- A appellants being appointed only on 06.08.2010. On the facts of that case, it was held that when vacancies were initially advertised the appellants had no substantive right against the notified vacancies and applying the principles contained in *State of Karnataka vs. Umadevi*(2006) 4 SCC 1, this Court stated that the appellants cannot seek regularization with retrospective effect from 2002 as the regularization policy itself was not in vogue at that time. This judgment again is far removed from the facts of this case and is wholly distinguishable in that in the present case the only irregularity in the appointment was the lack of a public advertisement apart from which each and every other condition for employment is met.
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- C 13) The learned ASG then cited *Divisional Manager, A.P. SRTC and Others vs. P. Lakshmoji Rao and Others*, (2004) 2 SC 433 and, in particular, relied upon para 16 of the said judgment which reads as follows:-
 - D “16. In the light of the above discussion, we are of the view that the law laid down or the directions given in various writ petitions/writ appeals are not legally sustainable for more than one reason. Firstly, wrong criterion based on Section 25-B of the ID Act was applied in case after case. Secondly, the respondents and other similarly situated employees approached the Court under Article 226 long after their regularization, thereby unsettling the settled position. Thirdly, on the facts of these cases, it is evident that the services of the employees who were recruited as conductors were regularized within a reasonable time. The respondent employees were therefore treated fairly. No service rule or regulation or any other principle of law has been pressed into service by the respondents to claim regularization from an anterior date i.e. right from the date of their initial appointment as daily-wage employees.”
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- G On a perusal of para 16, it is clear that that case turned upon the mis-application of Section 25-B of the Industrial Disputes Act in case after case. Secondly, it was also mentioned that the respondents and other similarly situated employees approached the Court long after regularization thereby unsettling the settled position and, (presumably) affecting the rights of other employees as well. Thirdly, on facts it was also found that the persons who are recruited as conductors were regularized within a reasonable time. Based on these three factors it was finally held that it would be unjust on the facts of that case to grant regularization from an anterior date i.e. from the date of initial appointment as daily-wage employees.

14) On facts in the present case, what is clear is that as soon as the four year period got over, the employees collectively through their Union approached the Central Government and the Central Government in exercise of its powers under the Industrial Disputes Act referred an industrial dispute immediately on 21.12.2004. This dispute was ultimately answered by the Central Government Industrial Tribunal many years later only on 08.11.2011. On the facts of this case, therefore, we are of the view that the Corporation must treat the concerned workmen which includes 111 out of these 577 employees who have been regularized earlier to be in regular employment on and from the date on which the industrial dispute was referred i.e. 21.12.2004 and accordingly grant all actual benefits from the said date till 01.04.2013. The other directions that have been given by the learned Single Judge will remain intact. The appeal is allowed in the aforesaid terms.

Nidhi Jain

Appeal allowed.