

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NOS. 11 AND 12 OF 2009

IN

CIVIL APPEAL NO.6607 OF 2005

O.N.G.C. Ltd.

... Appellants

Vs.

Engineering Mazdoor Sangh

... Respondent

O R D E R

ALTAMAS KABIR, J.

1. The Oil and Natural Gas Corporation Ltd., (hereinafter referred to as 'the O.N.G.C.') is a public sector undertaking which carries out geological and geophysical surveys for the exploration of petroleum. Such work is seasonal and is confined to the period between November each year and the months of April or May of the following year. Every year, at

the commencement of the new season, the O.N.G.C. starts recruiting casual/contingent/temporary workmen for specified periods and their services are terminated at the end of the field season. Having regard to the nature of the work involved, such practice is said to have been in existence from 1956 when the O.N.G.C. was incorporated.

2. With the increase in the workforce over the years, the aforesaid practice came to be questioned by the Engineering Mazdoor Sangh, the respondent herein, on behalf of its members who had been employed as such casual/contingent or temporary workmen and an industrial dispute was raised in the form of a demand for regularization of such workmen. The dispute was ultimately referred by the Government of India to the Industrial Tribunal (Central) at Vadodara by way of Reference (ITC) No.6 of 1991 to decide whether the demand of the Respondent-Sangh for regularisation of such employees and for other consequential benefits, was justified and if the answer to the said question was yes, to what relief would the workmen be entitled.

3. The aforesaid Reference was answered in favour of the workmen though the Tribunal made it clear that the Reference was to be restricted to those workmen whose names appeared in the Schedule to the affidavit filed by the O.N.G.C. The Tribunal directed the O.N.G.C. to consider the names of those workmen in the same descending order in which they were mentioned in the Schedule as and when vacancies occurred and to regularize them provided they satisfied the prescribed educational qualifications and had also put in 240 days of work in a year. The O.N.G.C. was also directed to give such workmen who were eligible, age relaxation of one year for every completed 240 days of work in a year.

4. The aforesaid order of the Tribunal was challenged by the Respondent-Sangh before the Gujarat High Court in Special Civil Application No.12850 of 1994. The learned Single Judge hearing the matter observed that though regularization could not be effected in the absence of permanent posts, the availability of permanent posts is a fortuitous circumstance and

consequential confirmation is, therefore, uncertain, but that there was no bar against treating a person to be regular even if a permanent post was not available. The learned Single Judge accordingly modified the order of the Tribunal and directed the respondents to treat the employees who were covered by Standing Order 2(ii) as regular employees.

5. The matter was taken by the O.N.G.C. to the Division Bench in Letters Patent Appeal No.729 of 1999. During the pendency of the Appeal, the Respondent-Sangh gave-up its claim with regard to the first direction given by the learned Single Judge and only pressed for implementation of the second direction. Similarly, the O.N.G.C. gave up its challenge in respect of the third direction. Accordingly, the controversy in the appeal was restricted to the challenge in respect of the second direction only. While granting such relief to the parties to the appeal, the Division Bench also directed that the workmen concerned should be notionally treated as regularized with effect from 1.5.1999. It was clarified that the directions given

would apply to the surviving employees within the 189 employees who had been accepted as having acquired temporary status and whose employment had been saved by the order dated 30.5.1999 in Complaint (ITC) No.5 of 1993.

6. When the matter was brought to this Court by the O.N.G.C., this Court restored the order of the Tribunal whereby the 153 workmen identified to be eligible for regularization were to be treated at par with the regular employees and their services were to be treated as having been notionally regularized from 1.5.1999. While disposing of the appeal on 20.11.2006, this Court injuncted the respondents from making any recruitment from outside till such time as the 153 workmen were absorbed against regular vacancies in the concerned category. A further direction was given that even in matters of seasonal employment, the said 153 workmen or those who remained after regularization from time to time, were to be considered first for employment before any other workmen were engaged for the same type of work in the field. This Court also directed the O.N.G.C. to make a serious attempt to

regularize the services of the workmen concerned in terms of the order passed by the Tribunal as quickly as possible, but preferably within a period of two years from the date of the order.

7. While the aforesaid judgment was delivered on 20.11.2006, it was only on 23.2.2009 that I.A. No.11 of 2009 was filed and I.A. No.12 of 2009 was, thereafter, filed on 9.4.2009 in Civil Appeal No.6607 of 2005. While I.A. No.11 of 2009 has been filed for a modification of the order passed by this Court on 20.11.2006 in Civil Appeal No.6607 of 2005, I.A. No.12 of 2009 has been filed by the Respondent-Sangh, inter alia, for suitable directions to be issued to the O.N.G.C. to absorb all the remaining workmen on the completion of two years, as directed by this Court in its judgment dated 20.11.2006.

8. When the applications were taken up for consideration, Mr. Raju Ramachandran, learned Senior Advocate, who appeared for the O.N.G.C., submitted that while implementing the aforesaid directions given by this Court, the O.N.G.C. was faced with an

industrial dispute from candidates who were also waiting for appointment from the compassionate appointment category. Mr. Ramachandran submitted that no person from the said category could be appointed over the last 9 years having regard to the pendency of the proceedings before the Court and that apart from the 153 workmen, who were before the Court, the Court should also allow O.N.G.C. to make appointments from the compassionate appointment category.

9. Mr. Ramachandran also urged that, in fact, 138 workmen were admittedly covered by the Award of the Industrial Tribunal. In order to implement the Award, as also the judgment of this Court, the said 138 workmen were invited by the O.N.G.C. to attend the selection process strictly in accordance with the directions issued by this Court. Mr. Ramachandran submitted that 137 workmen attended the selection process and only 77 of the said workmen were found qualified and eligible for being empanelled for jobs in different categories. Learned counsel urged that 60 workmen were found to be unfit for regular

employment. He also submitted that out of the 77 workmen found to be eligible, 58 workmen had been given appointment while 19 workmen were kept on a panel and were still left to be absorbed against regular vacancies. He urged that having regard to the complexity of the matter, serious thought had been given as to how the controversy could be resolved. Mr. Ramachandran submitted that one of the proposed methods to resolve the issue was to offer a settlement package to the 19 workmen, who were yet to be absorbed against regular vacancies, in lieu of absorption, and to permit appointment of dependents of deceased employees on compassionate grounds. The compensation package is as follows :-

"COMPENSATION PACKAGE

1. Amount equivalent to two month's wages for each completed year of service in ONGC or amount equivalent to wages of left over period upto 60 years of age, whichever is less.
2. Provident Fund.
3. Amount of wages for balance period of leave at credit."

10. Mr. Ramchandran submitted that on account of the ban imposed by this Court on recruitment before the 153 employees could be absorbed, no fresh appointments

could be given in the category of compassionate appointment, which has created growing resentment among other categories of workmen who were waiting for appointment in similar posts.

11. The relief prayed for by the O.N.G.C. for leave to offer the compensation package in lieu of appointment was opposed on behalf of the said workmen, as also the prayer made for leave to appoint persons from the compassionate appointment category without absorbing all the workmen, who were yet to be absorbed.

12. Mr. Ranjit Kumar, learned Senior Advocate, appearing for the Sangh, submitted that the order passed by this Court on 20.11.2006, and subsequently clarified on 8.2.2008 was very clear and unambiguous. Learned counsel submitted that the rights of the 153 workmen identified before the Tribunal had crystallized in the order of the Tribunal, which was subsequently upheld by this Court and till such time as they were absorbed, no fresh appointments could be given from any other category, notwithstanding the

fact that there were other candidates waiting to be appointed on compassionate grounds. Mr. Ranjit Kumar also submitted that as far as Mr. Ramchandran's contention that 60 workmen were found to be ineligible for appointment, the same could not be accepted having regard to the fact that the Award of the Tribunal and the order passed by this Court clearly indicated that the Reference was to be restricted to the workmen, whose names appeared in the schedule to the affidavit, which was ultimately identified as far as 153 workmen are concerned. Mr. Ranjit Kumar pointed out that ONGC was directed that as and when vacancies to the regular posts arose, they would be required to consider the names of those workmen in the same descending order in which they were mentioned in the schedule and that they would be regularized provided they satisfied the specific prescribed educational qualifications. It was also indicated that for each 240 days work in a year put in by each workmen, ONGC would give such workmen, age relaxation of one year. Mr. Ranjit Kumar submitted that on account of the ban imposed by this Court on

recruitment before the 153 employees were absorbed, no fresh appointments could be given in the category of compassionate appointment, which has created growing resentment amongst other categories of workmen, who were also waiting for appointment for similar posts.

13. The relief brought for by the ONGC for leave to offer the compensation package in lieu of the appointment was opposed on behalf of the said workmen, as also the prayer made for leave to appoint persons from the compassionate appointment category without absorbing all the workmen, who were yet to be absorbed.

14. Mr. Ranjit Kumar, learned Senior advocate, appearing for the Sangh, submitted that the order passed by this Court on 20th November, 2006 and subsequently, clarified on 08/02/2008, was very clear and unambiguous. Learned counsel submitted that the rights of the 153 workmen identified before the Tribunal had crystallised in the order of the Tribunal, which was subsequently upheld by this Court and till such time as they were absorbed, no fresh appointments could be given from any other category,

notwithstanding the fact that there were other candidates waiting to be appointed on compassionate grounds. Mr. Ranjit Kumar also submitted that as far as Mr. Ramachandran's contention that 60 workmen who were found to be ineligible for appointment were concerned, the same could not be accepted having regard to the fact that the Award of the Tribunal and the order passed by this Court clearly indicated that the Reference was to be restricted to the workmen whose names appeared in the schedule to the affidavit comprising 153 workmen. Mr. Ranjit Kumar also referred to paragraph 16 of our judgment dated 20th November, 2006, wherein we had categorically indicated that till such time as 153 workmen were not absorbed against the regular categories in the category concerned, no recruitment from outside would be made by the appellant.

15. Mr. Ranjit Kumar urged that the submission now being made on behalf of the ONGC runs counter to the directions contained in the Award of the Tribunal, as upheld by this Court and also contrary to the directions given by this Court in support thereof.

16. From the order dated 20th November, 2006, it is quiet obvious that the intention of this Court was that till such time as the 153 workmen, who were identified after the Award of the Tribunal were not absorbed against regular vacancies in the concerned category, no recruitment from outside could be made by the applicant ONGC in the same or similar posts. Similar provision was also made with regard to the workmen, who were to be employed on a seasonal basis. However, we must also record Mr. Ramachandran's submissions at this stage that out of the 153 persons whose names were available, 15 persons were found to be not eligible for consideration, leaving 138 persons who were eligible for consideration in terms of the Award of the learned Tribunal and the judgment of this Court.

17. Accordingly, at least the case of the 138 workmen, who had, in fact, been found to be eligible for appointment had to be considered.

18. However, the picture, as portrayed by Mr. Ramchandran, is not as grave as has been made out by him since all the persons concerned, namely, the

candidates, who are yet to be absorbed in regular vacancies in terms of the Tribunal's order, as upheld by this Court on 20th November, 2006, and those waiting for compassionate appointment, have been provided with employment, as contingent staff. There should not have been any difficulty for the ONGC to implement the Tribunal's Award in respect of the 137 workmen, who were found eligible by ONGC within the period of two years after the passing of the Award. Apart from the orders passed by the Tribunal and this Court, equity demands that the workmen who have been in continuous employment as contingent workmen from 1992, should be considered first for regularisation before those, who come in at a later stage.

19. At this juncture, we may also refer to the submission which had been made on behalf of one of the intervenors from the compassionate appointment category that there were large number of vacancies available in which all could be accommodated. Mr. Ramachandran has denied such submission and in the affidavit filed with regard to the copy of the

Minutes of the 71st meeting of the Joint Committee, it has been pointed out that the number of vacancies indicated represented vacancies in various departments and particularly of a technical nature and did not necessarily include the vacancies against which appointments were to be made as far as the concerned workmen and the compassionate appointees were concerned.

20. From the order dated 20.11.2006 it was clearly the intention of this Court that till such time as the 153 workmen were not absorbed against regular vacancies in the concerned category, no recruitment could be made by the applicant. Similar provision was also made with regard to the workmen who were employed on seasonal basis.

21. Having considered the submissions made on behalf of the O.N.G.C. and the Mazdoor Sangh, we are not inclined to grant the prayer made on behalf of the O.N.G.C. for leave to appoint candidates from the compassionate category group before all the

workmen who were identified after the Award of the Tribunal to be eligible for appointment, are absorbed, as that would not only go against the order passed by us on 20th November, 2006, but would also amount to modifying the same.

22. While rejecting the prayer made on behalf of the ONGC, we, however, make it clear that such rejection would not prevent the ONGC from offering the compensation package either to those workmen from amongst the 137 workmen, who are yet to be absorbed or those waiting for appointment from the compassionate appointment category. If such package is accepted by any of those candidates, both the ONGC as well as such candidate will be at liberty to act on the basis of such acceptance and shall not be fettered in any way by the directions given either by the Tribunal or this Court on 29th November, 2006.

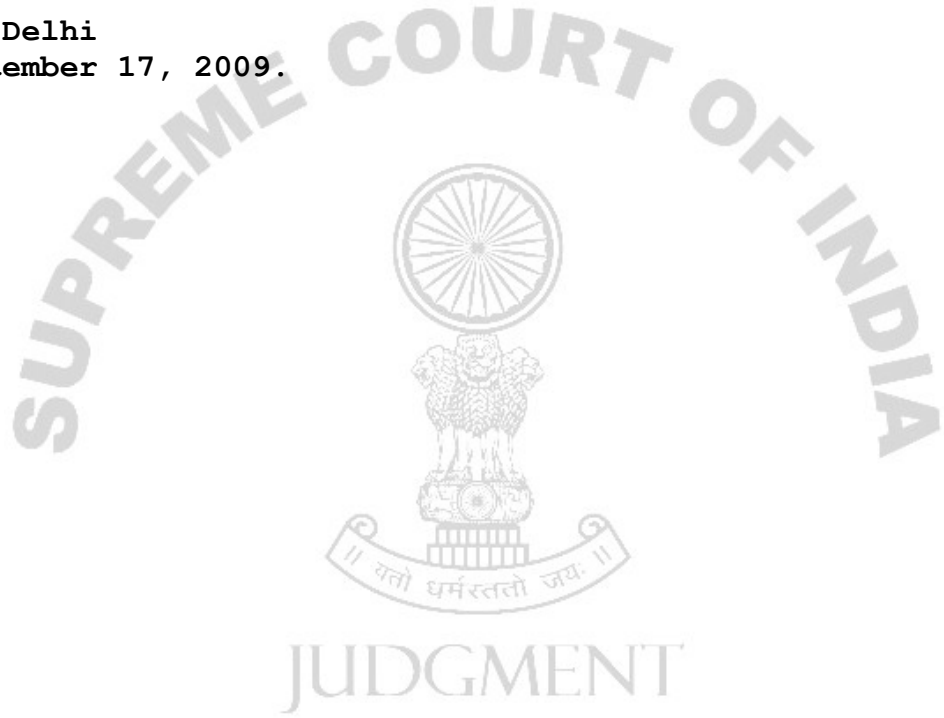
23. This order shall dispose of I.A. Nos.11 and 12 of 2009, but we also make it clear that we are not passing any orders in terms of prayer (b) of

I.A. No.12 of 2009.

.....J.
(ALTAMAS KABIR)

.....J.
(CYRIAC JOSEPH)

New Delhi
September 17, 2009.



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ALTAMAS KABIR, J.

In the reportable order dated 17/09/2009, paragraphs 13 and 14 stand deleted and paragraph Nos.15 to 23 are re-numbered as paragraph Nos. 13 to 21.

The Registry is directed to issue Corrigendum accordingly.

.....J.

(ALTAMAS KABIR)

.....J.

(CYRIAC JOSEPH)

New Delhi

November 13, 2009.

