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O.A.No.1178/2000

Parashuram @ Bombay Lal
s/o Sh. Babu Lal
r/o House No.1085
Gulab Bag
Delhi - 110 007.

... Applicant

(By Advocate: Shri S.K.Sinha)

Vs.

1. The Union of India
through the Secretary
Department of Posts
New Delhi.
2. Chief Post Master
Delhi G.P.O.
Delhi - 110 006.
3. Senior Post Master
Bara Tooti Post Office
Delhi - 110 006. ... Respondents

(By Advocate: Shri R.N.Singh)

O R D E R(Oral)

By Shanker Raju, Member (J):

The grievance of the applicant is that despite having worked as Part-time Waterman for 1,690 days, he has not been considered for the regularisation as provided under the Scheme of DoPT dated 17.5.1989. The applicant further states that the requirement as to the sponsorship of the name from Employment Exchange has already been done away in several pronouncements of this Court on the basis of the decision of the Apex Court in Malkapatnam's case. It is also stated that as to the issue of regarding whether the applicant alias Bombai Lal or Parsu Ram the respondents have never afforded a reasonable opportunity to prove his case by issuing a show cause notice or holding any enquiry.

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2. On the other hand, strongly rebutting the contentions of the applicant, it is demonstrated by the learned counsel for the respondents that the applicant had taken resort to the alias name of Shri Bombai Lal to get the benefit of sponsorship of Employment Exchange by virtue of this he has entered into service. It is also stated that from the School certificate produced by the father of the applicant, which indicated that Shri Parsu Ram s/o Shri Babu Lal was reading in 7th class during the relevant period, i.e. 14.5.1991 to 13.12.1991. He also stated that School Leaving Certificate also indicates that Shri Parsu Ram passed 8th standard and attended the School during the period from 30.7.1993 to 30.3.1994. He also submits that the identity card of Employment Exchange and caste certificate issued on 21.7.1993 shows his name as Parsu Ram and the registration card issued by the Employment Exchange on 16.9.1993 shows the name as Bombai Lal. In these circumstances the learned counsel for the respondents submitted that it appears that both these are two different persons. The learned counsel for the respondents has further stated that as regards the claim for regularisation of a Part-time casual worker it is submitted that the same has been rejected by the Apex Court in Secretary, Ministry of Communication Vs. Sakhu Bhai, 1997(11) SCC 224. Alternatively, he also argued that if the claim of the applicant is considered on the basis working for one year as a substitute that would not give him any right for regularisation in view of the decision of the Full Bench of five judges of this Court in D.M.Nagesh and Others Vs. UOI & Others.

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3. I have carefully considered the rival contentions of the parties and perused the available records. As regards, whether the applicant's name is Bombai Lal or Parsu Ram, both the parties have presented their claims and the same has not been gone into or enquired into by the respondents and merely on the basis of certain documents annexed the respondents had come to the conclusion that these are two different persons and the applicant by adopting wrong method, entered into service and as such there is no legal right to continue as he has come with unclean hands. Admittedly, the applicant has not been accorded an opportunity, in this regard, to rebut as claimed by the respondents by way of holding an enquiry and for this view of the matter without going into the question whether the applicant is a Parsu Ram or Bombai Lal, I deem it proper to leave this question to the respondents to be enquired into in a proper manner in accordance with principles of natural justice. As regards the claim of the applicant on the basis that he has worked as Part-time casual labour, my attention has been drawn to a circular dated 17.5.1989 wherein priority No.1(iii) has been observed that casual labour of part time or full time are being included and to be considered for regularisation. The Apex Court in Sakhubai's case supra and on the basis of Scheme framed on 12.4.1989 in the Department of Posts where the regularisation and accord of temporary status was provided to the Full-time casual workers. In this conspectus, the Apex Court has come to the conclusion that the observations of the Tribunal that the Scheme of temporary status is applicable to even

Part-time casual employees was reversed but as regards the Scheme dated 17.5.1989 the same has not been rejected but letter dated 17.5.1989 is treated to be independent of the Scheme of 1991 and as declared to be in vogue. The applicant who has rendered about more than 1000 days service as a Part-time casual labour is legally entitled to be considered for in the above stated Scheme contained in letter dated 17.5.1989.

4. Having regard to the reasons recorded above, the present OA is disposed of with the directions to the respondents to hold an enquiry into the issue whether the applicant has committed any fraud at the time when he entered in the service with the respondents and after according a reasonable opportunity in accordance with the instructions and rules a final order shall be passed within four months from the date of receipt of a copy of this order. After the enquiry is completed and in the event the applicant is not found at fault, he would be considered for accord of regularisation in accordance with their letter dated 17.5.1989 and other claims and shall be entitled for all the consequential benefits. Till the respondents issue an order as directed above, and in view of the interim directions on 7.7.2000 that in case the work of the same nature as done by the applicant is available he would not be disengaged would be continued till then. The OA is accordingly disposed of. No costs.

S. Raju

(SHANKER RAJU)
MEMBER(J)

/rao/