

21

2-11-2001

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OA - 1330/2000

MA - 1665/2000

Present: Shri S. K. Gupta, Ad. Counsel
for applicant

None for the respondents.

List on 5-11-2001.

(Shanker Ray)

MCJ

11-11-2001

Admit

Item No. 29.

PH - OA 1330/2000

MA - 1665/2000

Present: S. K. Gupta, proxy for Shri B. S. Gupta,
Ad. Counsel for the Respondent

Shri K. P. Bhatia, Ad. Counsel for
the Respondent.

OA disposed of by

Hon'ble Mr. Justice Ray, MCJ
by an oral order on 5-11-2001.

21

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Hon'ble Shri Shanker Raju, Member (Judicial)

O.A.No.1330/2000
M.A.No.1665/2000

New Delhi, this the 5th day of November, 2001

1. T.Shekhar
s/o Shri T.Swami
r/o Shastri Market
South Moti Bagh
New Delhi.
2. Neem Bahadur
s/o Shri Shid Bahadur
r/o E-97, Moti Bagh
New Delhi. Applicants

(By Advocate: Shri B.S.Gupta, through Shri S.K.Gupta)

Vs.

1. Union of India
through Secretary
Ministry of Rural Development
Krishi Bhawan
New Delhi - 110 001.
2. Secretary (R.D)
Ministry of Rural Development
Krishi Bhawan
New Delhi. Respondents

(By Advocate: Shri K.R.Sachdeva)

O R D E R(Oral)

By Shanker Raju, Member (J):

Heard both the parties.

2: The applicants, who have been accorded temporary status, have sought for setting aside the order passed on 5.4.2000 and also fixing of salary in the pay scale as per the Scheme of DoPT dated 10.9.1993. The applicants further sought regularisation on the ground that his juniors have been regularised in the year 1996. The learned counsel for the applicants by placing reliance on the rejoinder filed to the additional affidavit and by pointing out, towards the certificate issued by the

educational authority, wherein contended that both applicants No.1 and 2 are 8th Passed having acquired the requisite qualification their claims have not been considered by the respondents as per the DoPT's Scheme and their juniors have been regularised which is violative of Articles 14 and 16 of the Constitution of India. As regards the counting of service, and counting of increment is concerned placing reliance on the decision in OA No.524/2000, wherein a reference has been made to Full Bench, it is contended that the Full Bench has answered the reference in positive as far as increment part is concerned.

3. The learned counsel for the respondents, at the outset, has stated that the decision of the Full Bench of this Court is being under challenge in a review and what has been referred to the Full Bench, the Full Bench has not answered the same and has gone beyond the scope of the reference and set aside the OM dated 29.1.1998. In this regard, it is stated that matter has been referred back to the Division Bench the same is still under consideration. Further drawing my attention to the relief clause of the applicant, it is stated that the applicant has sought for quashing an order dated 5.4.2000 which is an internal correspondence between the respondents and the copy of the same has not been marked to the applicant. Further, it is stated that no where in the OA the applicant has stated that on 26.11.1996 when the similarly circumstance temporary status casual labourers have been considered for regularisation the applicants were fully eligible. While replying to the documents attached with the rejoinder by the

3
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applicants, it is stated that the applicants' documents if were available the respondents have not been apprised of the same. The applicants have not brought in their notice the fact of having their passed 8th class and fully eligible as per the extant Rules for regularisation against the Group 'D' posts.

4. The learned counsel for the respondents in the case of applicant No.1 contended that he has filed an affidavit before the respondents duly sworn wherein he has declared his date of birth as 10.6.1971 whereas the certificate issued by the School, it is shown that the applicant has passed 8th Standard and his date of birth is shown as 10.6.1964. In the case of Applicant No.1 as per the seniority list of the daily waged casual labourers his date of birth has been shown as 6.7.1962 where as in the case of applicant No.2 it has been shown as 4.9.1967. Further placing reliance on an order of the daily wage casual labourers, it is stated that the date of births are figured differently what has been declared and what has contended in the educational certificates. In this back ground, it is stated that the applicants have not come with clean hands there is certainly some discrepancy which leads to the conclusion that the documents produced by the applicants are not valid. In this back ground, having regard to the fact that the applicants have not sponsored their names through employment exchange the respondents had no occasion to know about their educational qualifications and their proof of age. It is lastly contended that the OA is liable to be dismissed with heavy costs.

29

5. I have carefully considered the rival contentions of both the parties and perused the material on record. In my considered view, one who does not come with clean hands before the Court has no right to be accorded the relief. The applicants have been accorded temporary status and in the year 1996 when their cases for regularisation have taken up by the respondents the applicants having no valid proof of their educational qualifications and have not been found eligible as per the extant recruitment rules for the Group 'D' post, the claim of the applicants for accord of a regularisation with effect from the day when their juniors have been considered cannot be countenanced and is rejected on the ground that having found not eligible and failed to produce the relevant record, the action of the respondents cannot be found fault with in any manner. For regularisation on Group 'D' post, a casual labour with temporary status has to be fully eligible to the Recruitment Rules on the subject. As there was nothing on the record to indicate that the applicants have passed 6th Standard which was the minimum qualification for consideration for the post of Group 'D' the applicants have no case.

6. As regards the issue regarding the increments and pay of the applicants is concerned and there resort to place reliance on a Full Bench decision, the Full Bench of this Court in Ganga Ram & Others Vs. Union of India & Others, Full Bench Judgements Vol.II Page 441 (OA No.184/90 with connected cases, decided on 13.2.1991), has held that an order is to be treated as a precedent till is set aside or modified by the appellate Court the Full

28

Bench decision is binding on Single Bench until it is setaside by the High Court and it has to be treated as a precedent. The contention of the respondents that in peculiar facts and circumstances of the present case, where a decision of the Full Bench which is referred back to the Division Bench and which has been objected by the respondents and the review is being filed against it on the ground that the Full Bench has exceeded the jurisdiction and had gone beyond the scope of the reference and set-aside the OM of the DoPT dated 29.1.1998 which has not been the reference by the Division Bench to the Full Bench the same cannot have any application in the cases. I do not agree with the same. The Full Bench decision unless modified or set-aside is to be a precedent and to be followed by a Single Bench. Had it been a case on filing a review the Full Bench has modified the orders, the same would have no application in the case. But the facts are the Full Bench decision which is yet to be modified or set-aside the same is to be applied as per the reference answered in the decision. Applying the ratio of the Full Bench, i.e., Nathu Singh & Ors. Vs. UOI & Others, OA 524/2000, decided on 11.9.2001, I find that the applicants are to get the benefit of increments only at the time of regularisation against Group 'D' post as the applicants are yet to be regularised to the Group 'D' posts they would not be entitled for accord of increments.

7. Yet another plea which has taken by the learned counsel for the applicants by referring to Clause 8 of DoPT Scheme of 1993, that in case the

26

illiterate, casual labourers or those who fail to fulfil the minimum qualification prescribed for the post their regularisation shall be considered only against those posts in respect of which literacy or lack of minimum qualification will not be a requisite qualification. Having regard to this provision of the fact that the applicants have themselves produced the certificate of their having passed 8th Standard they cannot get the benefit of this provision.

6. Coming to the conduct of the applicants in the present case, I find that having taken no pleadings to the fact that though possessing the requisite educational qualification the documents could have been verified for the purpose of ascertaining as to their eligibility under the relevant rules for regularisation against Group 'D' post. I certainly found that the date of birth in the affidavit in the seniority list as well as in the educational certificates vary. This clearly shows that there is certainly an interpolation in the documents and these documents do not inspire confidence.

9. Coming to the claim of the applicants for their regularisation, these documents rightly not placed any reliance by the respondents and their claims have been rightly rejected. The applicants in such circumstances do not deserve any benefit or relief from this Court. However, ultimately, rule of law is to prevail. Admittedly, the certificates of the applicants have not at all been subjected to verification by the respondents. They are at liberty

(27)

to conduct a verification of these documents and in case these are found in order, and also on verification if the date of births of the applicants are found correct, which make them eligible and entitled for consideration for regularisation against Group 'D' posts, they may be considered for the same.

10. In this view of the matter having regard to the reasons recorded, the OA is disposed of with a direction to the respondents to verify the records of the applicants pertaining to their educational qualifications as well as their age and to take a decision regarding their regularisation against Group 'D' post, subject to their being conforming to the eligible criteria as per the extant instructions and recruitment rules.. This exercise shall be completed within a period of four months from the date of receipt of a copy of this order. However, the applicants cannot be allowed to be scot free having regard to their reprehensible conducts coming to this Court with unclean hands. They are ordered to pay a cost of Rs.2000/- each to the learned counsel for the respondents within one month from today.

S. Raju
(SHANKER RAJU)
MEMBER(J)

/RAO/