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CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 608 of 2012

Mondays, this the 14th day of October, 2013

CORAM:

Hon'ble Dr. K.B.S. Rajan, Judicial Member

C.G. Radhakrishnan, Gate Keeper,
 (Temporary status casual labourer),
 MMS, M.G. Road, Ernakulam. **Applicant**

(By Advocates – Mr. V.D. Balakrishna Kartha)

V e r s u s

1. Union of India, represented by the Secretary to Government of India, Ministry of Communications, New Delhi – 1.
2. The Post Master General, Central Zone, Kochi-682 016.
3. Senior Superintendent of Post Offices, Ernakulam Postal Division, Kochi-682 011. **Respondents**

(By Advocate – Mr. Varghese P. Thomas, ACGSC)

This application having been heard on 27.09.2013, the Tribunal on 14.10.2013 delivered the following:

O R D E R

The applicant approached the Tribunal in OA No. 41 of 2005 seeking the following reliefs:-

- (i) To call for the records leading to the issue of Annex. A8 order to quash the same.
- ii) Direct the 4th respondent to produce order book and other registers in respect of the appointment, work and payments, available with you for the entire period while the applicant was in service.
- iii) To issue necessary direction to 2nd and 3rd respondents to absorb

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the applicant in Group D post in accordance with the Casual Labourer (grant of temporary status and Regularization) Scheme.

iv) To issue direction to 2nd and 3rd respondent to regularize the service of the applicant from the date of initial appointments and to grant all consequential benefits thereon."

2. The said OA was allowed holding as under:-

"8. A careful reading of the first paragraph of the Scheme, it squarely shows that the casual labourers in employment as on 29.11.89, who continues to be currently employed and have rendered continuous service of at least one year during the year, he would be entitled to the grant of temporary status. The applicant has been in employment from 1988 onwards and continued to be currently employed in accordance with the spirit of the scheme. In such circumstances, I am of the view that the applicant is eligible for grant of temporary status, when he completed 240 days continuous service in any year. Therefore, the stand taken by the respondents that he was engaged intermittently for substitute service in addition to the casual labourer service and therefore, the benefit to be denied to the applicant cannot be accepted and it is not tenable in tune with the scheme that has been formulated for conferment of temporary status to the casual laborers. This is the dictum laid down in decisions in the above OAs. I am in respectful agreement with the decisions in the above OAs. I am of the considered view that the respondents are duty bound to consider the applicant for grant of temporary status and regularization in a Group-D post; in his turn, in accordance with the provisions of the Scheme framed in this regard.

9. In the result, the application is allowed. Impugned order A8 is quashed and set aside, and direct the respondents to consider the applicant for grant of temporary status with effect from the date of filing of this OA i.e. 29.12.2004 and regularize him forthwith from that date, in accordance with the provisions of the scheme and instructions in this regard. Respondents are also directed to pass appropriate orders granting all the consequential benefits within a time frame of two months from the date of receipt of a copy of this order. In the circumstances, no order as to costs."

3. Review application filed by the respondents vide RA No. 8 of 2006 had been dismissed vide order dated 10th October, 2006.

4. Writ petition No. 3123(C) of 2007 (S) filed by the Respondents had

been dismissed vide Judgment dated 16-03-2007.

5. In pursuance of the above, the respondents have granted temporary status to the applicant w.e.f. 29-12-2004, vide Annexure A-4 order dated 20-07-2007.

6. As the applicant felt that the above order is not in full compliance of the order of the Tribunal as upheld by the High Court, he filed Contempt Petition No. 25 of 2010 and the same was dismissed vide order dated 9th June, 2010 as under:-

"As per direction given by this Tribunal the petitioner is entitled to get permanent appointment on conferring temporary status with effect from 29.12.2004 and as per the scheme followed by the Department he is entitled for permanent appointment after the completion of three years of assigning temporary status namely with effect from 29.12.2007. The petitioner is also entitled for financial benefits with effect from 29.12.2004. Now as per the order passed by the Senior Superintendent of Post Offices, Cochin dated 22.3.2010 it is recorded that "Now therefore, the undersigned hereby order that Sri C.G.Radhakrishnan be extended such benefits as are admissible to Group D employees on regular basis with effect from 29.12.2007 as enunciated in DG letter No. 66-9/91-SPB-1, dated 30.11.1992". A reading of the above would show that the petitioner has been regularly appointed as Group-D with effect from 29.12.2007. If so, the first part of the grievance of the petitioner has been already met by the Department. The second part, i.e. the monetary benefits awarded by this Tribunal with effect from 29.12.2004 remains. For that as per the affidavit filed on behalf of the respondents, it is assured that the monetary benefits with effect from assigning temporary status namely 29.12.2004 will be calculated and paid to the petitioner within a period of three months time from today."

7. In tune of the above, the respondents have passed the following order:-

Now, therefore, the undersigned hereby order that Sri C.G. Radhakrishnan be extended such benefits as are admissible to Group

D employee on regular basis with effect from 29-12-2007 as enunciated in DG letter No. 66-9/91-SPB-I dated 30-11-1992.

8. Not satisfied with the above order, the applicant filed representation vide Annexure A-7 requesting the authorities to grant him regularization too w.e.f. 29-12-2007.

9. Respondents have passed the impugned Annexure A-8 order, in which it has been held that he was not appointed as regular basis and only after appointing as regular group D his designation can be changed as Group D. His request for regularization as Group D will be considered when permission to fill up the Group D vacancies of the year 2011 are received from Circle Office.

10. Being aggrieved by the above order, the applicant has filed this OA seeking the following reliefs:-

- “i) Call for the records leading to the issue of Annex. A8 and to quash the same.
- ii) Direct the 3rd respondent to post the applicant in Group 'D' post regularly with effect from 29.12.2007 and allow all service benefits from that date.
- iii) Direct the respondents to set aside Annex. A8 order.
- iv) Direct the respondents to comply with the Annex. A1 and A4 order of this Honourable Tribunal.
- v) To issue any other further order or direction this Honourable Tribunal may deem fit on the circumstances of the case.”

11. Respondents have contested the O.A. They have stated that the

applicant could be considered for regularization only on the basis of his seniority. They have also referred to an order dated 08-02-2012 in OA No. 547 of 2010 wherein it has been held that regularization is subject to availability of vacancies and on the basis of seniority.

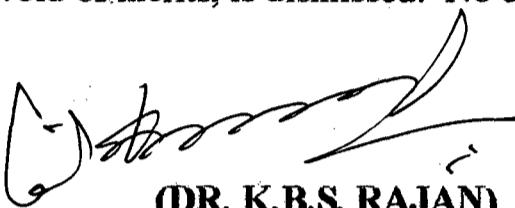
12. Counsel for the applicant argued that the applicant having been granted temporary status from 2003, ought to have been given regular appointment from 2007, whereas he was granted the same only from a later date.

13. Counsel for the respondents submitted that the applicant was granted temporary status in 2004 and on completion of three years of service, he was treated as a temporary Group D employee with all the benefits attendant to the post. However, in so far as regularization is concerned, the same depended upon the availability of vacancies and thus on arising of a vacancy he was granted regularization from the year of vacancies.

14. Arguments were heard and documents perused. Instructions on grant of temporary status and affording of the benefits as of temporary government servants as also regularization are available. In so far as regularization is concerned, two out of three of the vacancies were to be earmarked for accommodating the temporary status casual labourers on the basis of their seniority. Thus, merely on account of having completed three years of temporary status service, a casual labourer cannot claim regularization. After the said three years of temporary status,

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notwithstanding the fact that there may not be any vacancy available, he would be treated at par with temporary government servant for certain purposes, whereas for regularization, availability of vacancy is a sine-qua-non. It is not the case of the applicant that vacancies did exist from 2007 onwards. As such, there is no scope for judicial interference in this matter. The OA being devoid of merits, is dismissed. No costs.



(DR. K.B.S. RAJAN)
JUDICIAL MEMBER

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