

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 166 OF 2012

Friday this the 30th day of August, 2013

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

V.Jayakumari
(C/o Income Tax Canteen, Trivandrum)
Kulangara Panayil Veedu
Ravi Nagar, Peroorkada
Trivandrum

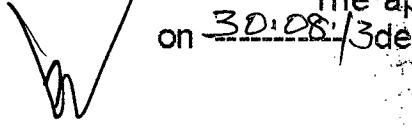
... Applicant

(By Advocate Mr.Arun Raj S)

versus

1. Union of India represented by the Secretary
Ministry of Finance
North Block
New Delhi – 110 001
2. The Chief Commissioner of Income Tax
Central Revenue Building
I.S Press Road, Kochi – 682 018
3. The Commissioner of Income Tax
Aayakar Bhavan, Kowdiar
Thiruvananthapuram – 695 003
4. The Chief Commissioner of Income Tax
Aayakar Bhavan, Kowdiar
Thiruvananthapuram – 695 003
5. Director (Canteens)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel & Training
3rd Floor, Lok Nayak Bhawan
New Delhi – 110 003
6. The Central Board of Direct Taxes
North Block
New Delhi – 110 001 represented by Chairman... Respondents

(By Advocate Mr.Sunil Jacob Jose, SCGSC)

 The application having been heard on 27.08.2013, the Tribunal
on 30.08.2013 delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant has been functioning as a contingent sweeper cum peon since March, 1995 in the Income Tax Department. In the wake of the directions of the Apex Court in the case of **State of Karnataka vs Umadevi (2006) 4 SCC 1**, a scheme for regularization of the casual labours was to be drawn for regularization, subject to fulfillment of certain conditions. Accordingly, the Nodal Ministry (DOPT) had issued Office Memorandum dated 11th December, 2006 (Annexure A-1). In turn, the Ministry of Finance, under the administrative control of which the Income Tax Department falls, had, vide Annexure A-2 letter dated 18th November, 2008 informed all the Chief Commissioners and the Director General of Income Tax to take necessary action accordingly for regularization of the casual labourers engaged under them.

2. The applicant had penned a representation dated 09-12-2008 vide Annexure A-3 for consideration of her case. This request was further renewed vide letter dated 12-01-2009.

3. Vide Annexure A-4 letter dated 28-01-2009 issued by the Office of the Chief Commissioner of Income Tax Kerala, a tabular statement was enclosed to the same indicating the extent of defects observed in various cases and as regards to the case of the applicant the deficiency was that certificate from CIT Trivandrum as to whether the applicant had worked in Range 2, Trivandrum from March, 1995 to March, 2004 as claimed by her was to be obtained. The Additional Commissioner of Income tax Range II, Trivandrum had, vide Annexure -5 letter dated 6th February, 2009 did confirm

that the applicant had worked since 1995 onwards. However, due to lapse of time and weeding out operation, all the contingent vouchers are, not forthcoming. Large number of vouchers from 1997 to 2003 alone could be traced out.

4. Like the applicant, at least three more individuals were aspiring for such regularization and in those cases as well, the question of confirmation of their past engagement was awaited. Vide Annexure A-6 dated 19th May, 2009, request was made again by the office of the Chief Commissioner of Income tax for confirmation in respect of two individuals including the applicant. Again, vide Annexure A-7 dated 20th October, 2009 the Chief Commissioner of Income tax had narrated the information furnished by the Additional Commissioner of Income Tax, Range II, Trivandrum and advised the said authority to make one more effort to trace out the documentary evidence of the applicant's engagement prior to 1997. Vide Annexure A-8 series, in respect of all others regularization orders were passed, to the exclusion of the applicant. Hence, this OA seeking the following reliefs:-

(i) *To declare that the applicant is eligible to be regularised / declared as a Central Government Group D employees in the Income Tax Department as per Annexure A-1 and A-2 orders and extend to the applicant all the benefits that are available to the other Central Government Group D employees.*

(ii) *To issue appropriate direction to the respondents to pass necessary orders regularizing / declaring the applicant as a Central Government Group D employee and extend to the applicant all the benefits available to the other Central Government Group D employees without any further delay.*

5. Respondents have contested the O.A. They have contended that in view of DoPT's OM dated 11-12-2006, the posting orders were issued only to eligible persons since the condition of age limit prescribed was not fulfilled

as the applicant had completed 30 years of age on 10-04-1996 itself, and as per the Recruitment Rules the age limit for regularization of casual labourers is 18-27 years at the time of commencement of service, the applicant's casual labour services cannot be regularized.

6. The applicant filed her rejoinder in which she had also annexed a copy of the Rules relating to the general age relaxation of two years in respect of all the posts and also the extent of age concession available for casual labourers. According to the same, the extent of service rendered as a casual labour service would be excluded. Thus, the applicant would be within the age limit.

7. In their additional reply, the respondents have contended that the applicant not being a government servant, there is no age relaxation.

8. Counsel for the applicant argued that in all other cases, save to the exclusion of the applicant the respondents have already regularized the services. In respect of the applicant, if the period of casual labour service from March, 1995 is excluded, the applicant would be within the age limit. As such, she is also entitled for regularization.

9. Counsel for the respondents submitted that the decision of the respondents is as per the rules.

10. Arguments were heard and documents perused. Two aspects are to be addressed:-

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- (a) The extent of casual service rendered by the applicant.
- (b) Age factor.

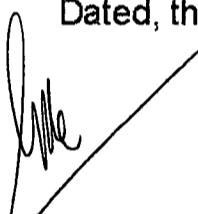
11. As regards (a) above, Annexure A-5 in unambiguous terms signify that the applicant had worked in Range II since 1995, though documentary evidences could be available only from 1997. For the non availability of the documentary evidence prior to 1997, the applicant cannot be blamed. Since the certification that the applicant had been engaged since 1995 had been made by no less than the Additional Commissioner of Income Tax, a senior Group A officer, the same can be taken into account without insisting upon the documentary evidence in proof of having worked since 1995. Thus, the applicant fulfills the requisite period of ten years of casual labour service.

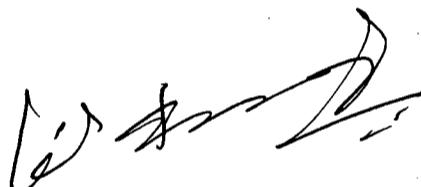
12. As regards (b) above, the respondents have relied upon the Recruitment Rules, which stipulate 27 years as the maximum age limit. In fact, by Annexure A-9 the general Rules enhancing the age limit by two years in respect of general candidates, the above said 27 should be taken as 29. Thus it is to be seen that as of March, 1995 the applicant is within 29 years of age. Admittedly, as on 10-04-1996, the applicant was stated to be 30 years, vide para 8 of the reply, which would then mean that as of March, 1995, she would be less than 30 years of age. Since the actual date of birth of the applicant has not been indicated in the documents available with the Tribunal, the exact age as of March, 1995 could not be worked out. Even if there be a marginal difference, the case deserves age relaxation to that extent for, even in Umadevi, vide para 47 there has been a latitude given in respect of age restriction. In this regard, in the case of **Satya Prakash vs State of Bihar (2010) 4 SCC 179**, the Apex Court has observed as under:-

18. In Umadevi (3) case in para 55 of the judgment, the Constitution Bench has also permitted such persons to participate in selection process waiving the age restriction and giving the weightage for having been engaged or worked in the Department for a significant period of time.

13. Keeping in view the above and the fact that the applicant has been functioning since 1995 onwards, i.e. almost 18 years, if the case of the applicant is viewed, the applicant fully deserves to be considered for regularization. Accordingly, the OA is allowed. Respondents are directed to pass suitable orders for such regularization the terms of which would be the same as others vide Annexure A-8 series. This order shall be complied with, within a period of four months from the date of communication of the order. No costs.

Dated, the 30th August, 2013.


K GEORGE JOSEPH
ADMINISTRATIVE MEMBER


Dr.K.B.S.RAJAN
JUDICIAL MEMBER

VS

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
Contempt Petition No.180/115/2014
in
Original Application No.166 of 2012

Thursday, this the 28th day of May, 2015

CORAM:

**Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mr.R.Ramanujam , Administrative Member**

V.Jayakumari
(C/o.Income-tax Canteen
Trivandrum)
Kulangara Panayil Veedu
Ravi Nagar, Peroorkada
Trivandrum

..... **Petitioner**

(By Advocate – Mr.Arunraj.S)

V e r s u s

1. Mr.Sanjay Kothari
Secretary, Union of India
Ministry of Finance, North Block
New Delhi – 110 001
2. Mr.D.K.Das Sarma
Principal Chief Commissioner of Income Tax
Central Revenue Building
I.S Press Road
Kochi – 682 018
3. Mr.P.Selva Ganesh
Commissioner of Income Tax
Aayakar Bhavan
Kowdian
Thiruvananthapuram – 695 003
4. Mr.Anil Goel
Chief Commissioner of Income Tax
Ayakar Bhavan, Kowdian
Trivandrum – 695 003

5. Mrs.Pratima Tyagi
 Director (Canteens)
 Govt of India,
 Ministry of Personnel Public Grievances and Pensions
 Department of Personnel & Training
 3rd Floor , Lok Nayak Bhavan
 New Delhi – 110 003

6. Mrs.Anitha Kapoor
 Chairperson
 Central Board of Direct Taxes
 North Block
 New Delhi – 110 001

..... **Respondents**

(By Advocate – Mr.N.Anil Kumar, Sr.PCGC(R))

This Contempt Petition having been heard on 28.05.2015, the Tribunal on the same day delivered the following:

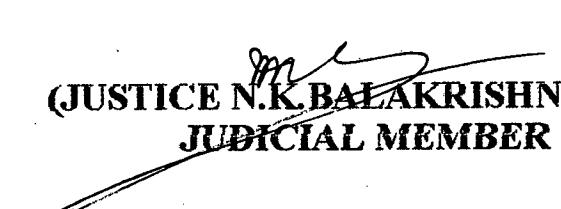
ORDER

By Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member

It is submitted by both sides that the directions of this Tribunal have already been complied with. The Contempt Petition is closed accordingly.


(R RAMANUJAM)
ADMINISTRATIVE MEMBER

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(JUSTICE N.K.BALAKRISHNAN)
JUDICIAL MEMBER