

19

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH,
CHANDIGARH.**

O.A.No.060/00724/2014

Date of Decision : 10.8.2015

Reserved on : 06.08.2015

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, JUDICIAL MEMBER
HON'BLE MRS. RAJWANT SANDHU, ADMINISTRATIVE MEMBER**

Gurmail Singh, aged 59 years, son of Sh. Kaka Singh, working as Work Charge Chowkidar, O/o SDE Municipal Corporation, Public Health Sub Division No. 10, Sector 39, Water Works, Chandigarh.

Applicant

Versus

1. Union Territory, Chandigarh Administration, through its Secretary Department of Engineering, U.T. Civil Secretariat, Sector 9, Chandigarh.
2. Chief Engineer, Union Territory, Chandigarh Administration, Engineering Department, U.T. Civil Secretariat, Sector 9, Chandigarh.
3. Commissioner, Municipal Corporation, Chandigarh.
4. Chief Engineer, Municipal Corporation, Chandigarh.
5. Executive Engineer, Project, Municipal Corporation, Public Health, Division No.1, Chandigarh.

Respondents

Present: Mr. Barjesh Mittal, counsel for the applicant
Mr. Arvind Moudgil, counsel for respondents no.1 & 2
None for respondents no.3 to 5.

ORDER
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

As —

"8 (ii) A direction be given to the respondents to consider the case of the applicant for regularization of his services as Chowkidar in view of judgments passed by Hon'ble Apex Court vide Annexure A-1, Uma Devi's case, Dharampal's case, Nihal Singh's case and also this Hon'ble Court judgment (Annexure A-3) and also strictly in terms of regularization policy of Government of Punjab dated 18.03.2011 (Annexure A-7) and also the regularization policies / scheme formulated by Chandigarh Administration (Annexure A-2) and further direct the respondents to create requisite number of posts in the concerned Department for regularization of services of the applicant in view of notification dated 18.03.2011 (Annexure A-7) and dated 05.04.2013 (Annexure A-2) and further grant all consequential benefits to which he may be found entitled to under the rules and law.

(iii) Subsequent to his regularization, the respondents be directed to allow the applicant, extension in service by granting 1st extension of one year and then 2nd extension after obtaining due option from the applicant for such extension of continuation in service for another two years as per orders annexure as Annexure A-11 to A-13 and thereafter at the time of retirement on attaining the age of superannuation from the regular post of Chowkidar, the applicant be granted pension and other pensionary benefits to which he may be found entitled to in the interest of justice."

2. It has been stated in the OA that the applicant joined respondent Chandigarh Administration as a daily wager on 15.03.1985 as Chowkidar and was brought on the work charge establishment as Chowkidar on 17.11.1989 (Annexure A-4). As per the seniority list of Chowkidars Annexure A-4/A in the seniority list the applicant is at Sl.No.09 showing him as working on work charge basis w.e.f. 06.05.1986 and since then services of the applicant had not been regularized till date. Hence, this O.A.

As

g

3. In the grounds for relief it has, inter-alia, been stated as follows:-

- i) The applicant has been continuing working as Daily Wage Chowkidar under Respondent Chandigarh Administration since 15.03.1985 on daily wage basis and thereafter w.e.f. 17.11.1989 on work charge basis and thereafter on the formation of Municipal Corporation Chandigarh was transferred on deemed deputation basis to MC where he is still working and till now has worked for more than 25 years to the entire satisfaction of his superiors without any complaint against him. Therefore, pursuant to the judgment passed by Hon'ble Supreme Court in Dharampal's case, he has completed much more than 240 days of regular service with the respondents Chandigarh Administration. Further the case of the applicant is also squarely covered by the Constitution Bench decision of Hon'ble Supreme Court in Uma Devi's case as well as the Punjab Govt. Notifications dated 18.03.2011 (Annexure A-7) which have been issued in view of the decision of Hon'ble Apex Court in Uma Devi's case and are ipso-facto applicable on the respondent Chandigarh Administration vide notification dated 13.01.1992 (Annexure A-5) and order dated 13.07.1995 (Annexure A-6) whereas the respondents have denied consideration to the case of the applicant for regularization of his service pursuant to the above notifications issued by Punjab Government and therefore the action of the respondents is unreasoned, illegal, arbitrary and in violation of the Apex Court Judgment in Uma Devi's case and notification (Annexure A-7) referred above. Therefore, the whole action on the part of the respondents in non-regularizing the services of the applicant is illegal, arbitrary and in violation of the judgments mentioned above as well as in the body of the petition. Hence, whole action is non-est in law and is liable to quashed / set aside.
- ii) Pursuant to the Punjab Govt. Notification dated 18.03.2011 (Annexure A-7) which is ipso-facto applicable on the respondent Chandigarh Administration as well as in view of the decision given by Hon'ble Supreme Court of India in Uma Devi's case, the respondents Chandigarh Administration after detailed discussions / deliberations and on the recommendations of the Coordination Committee issued regularization policy dated 05.04.2013 (Annexure A-2 Coliy.) and decided that employees working on Daily Wages / Work Charge who completed 10 years of service till December,

Rs

88

2006 and who fulfill the educational qualifications, their services be regularized by creating the requisite number of posts in the concerned Department. Subsequently, the respondent Administration issued another regularization policy dated 10.02.2014 (Annexure A-2) wherein in furtherance to the earlier policy dated 05.04.2013, it was provided that while regularizing the services of Group 'D' work charge / daily wage employees on the same post on which he / she was engaged in the Department, "Relaxation in Educational Qualification may be allowed to those who have completed 10 years of service till December, 2006 as a onetime measure." Consequently, the applicant being fully eligible and fulfilling the requisite requirements in terms of the regularization policy of respondent Chandigarh Administration dated 05.04.2013 and 10.02.2014 (Annexure A-2) being in employment for more than 17 years as on December, 2006, was required to be considered for regularization by the Department but even inspite of the representations preferred by the applicant through his Union dated 15.11.2013 (Annexure A-10), the respondents have failed to consider his case for regularization till date as per the seniority list of employees in the respective cadre of Chowkidar whereas as is apparent from perusal of order dated 01.08.2014 (Annexure A-9), the respondents are regularizing the services of juniors to the present applicant in a illegal manner ignoring the claim of the applicant being much senior to them and serving the respondent Department for more than 25 years till date. Therefore, the whole action on the part of the respondents in non regularizing the services of the applicant in view of their own regularization policies (Annexure A-2) is illegal, arbitrary and such action of the respondents is liable to be quashed / set aside by this Court

- iii) The case of the applicant is squarely covered by the latest decision of Hon'ble Apex Court in the case of "UT Chandigarh & Ors. Vs. Sampat & Ors." decided on 03.04.2014 (Annexure A-1) wherein the Hon'ble Apex Court has dismissed the several SLPs filed by the Chandigarh Administration against the order / judgment dated 28.07.2003 in Badri's case and has directed the respondent Chandigarh Administration to expedite the regularization of service of those employees who have not yet been regularized. The case of the present applicant being wholly identical and similar to the respondents therein deserves to be considered by the respondents by granting the benefit of the said judgment. In "Uttranchal Forest Rangers' Assn. (Direct Recruit) Vs. State of U.P.", (2006) 10 SCC 346, the Hon'ble Apex Court has referred to the decision

As —

in the case of "State of Karnataka Vs. C. Lalitha", (2006) 2 SCC 747 and held that "Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situate should be treated differently. If the administrative authorities discriminate amongst persons similarly situated, in matters of concessions and benefits the same directly infringes the constitutional provisions enshrined under Articles 14 & 16 of the Constitution of the India".

4. In the short reply filed on behalf of respondents no.1 & 2, it has been stated that the applicant was transferred to Municipal Corporation, Chandigarh on its formation in May, 1996 as Work Charge employee along with works, till date he is working with Municipal Corporation, Chandigarh and his salary is being paid by the Municipal Corporation, Chandigarh. Thus, the applicant is not an employee of Chandigarh Administration. At present there are two regular posts of Chowkidars lying vacant with the answering respondent Department i.e. Engineering Department of Chandigarh Administration for which the agenda for regularization is under process from purely Work-charge Chowkidar as per seniority who are working in the Engineering Department of Chandigarh Administration. Since the applicant has been transferred to Municipal Corporation, Chandigarh on its formation in May, 1996, he is permanent employee of Municipal Corporation, Chandigarh i.e. respondents no.3 to 5 and hence the responsibility to regularize the services of the worker rests with the Municipal Corporation.

As—

5. In the written statement filed on behalf of respondents no.3 to 5, it has been stated that the main relief has been claimed against the Municipal Corporation whereas the Municipal Corporation, Chandigarh, does not fall within the jurisdiction of this Tribunal. Hence, the OA is not maintainable and deserves to be dismissed on this ground alone. Vide decision dated 03.04.2014 in the SLP titled "U.T. Chd. & Ors Vs. Sampat & Ors, the Hon'ble Supreme Court of India has made it clear that if no post is available in the regular establishment, the employees may continue in the work charged establishment but they will be entitled to full salary which they are already drawing. In order to comply with the judgment of the Hon'ble Supreme Court of India, the seniority list of the work charge / Daily wage workers has been prepared for consideration of regularization of their services as per seniority and as per availability of posts. The process of regularization has already been set in motion.

6. When the matter was taken up for hearing on 06.08.2015, Sh. Barjesh Mittal, learned counsel for the applicant stated that the claim in the OA was squarely covered by judgment dated 02.12.2014 in OA No.060/00501/2014 titled "Rajinder Singh Vs. UT Chd Admn. & Ors." and judgment dated 13.03.2015 in OA No.060/00410/2015 titled "Fazar Khan Vs. UT Chd Admn. & Ors."

7. Sh. Arvind Moudgil, learned counsel for respondents no.1 & 2 did not controvert these submissions made by learned counsel for the

As —

applicant and stated that the respondents could be directed to consider the claim of the applicant in the light of the cited judgments.

8. We have given our careful consideration to the matter. The applicant has superannuated on 30.06.2015 while working in the capacity of work charged Chowkidar. As per the directions in UT Chandigarh & Ors. Vs. Sampat & Ors. (supra) decided on 03.04.2014 (Annexure A-1), the applicant is entitled to pension considering his deemed regularization on the date of his superannuation i.e. 15.06.2015 and there can be no dispute regarding this. The claim for extension of service can however not be considered in respect of the applicant as he has superannuated as a work charge employee and the policy for granting extension is only applicable to employees in regular service. Accordingly, the respondents are directed to release the pensionary benefits to the applicant within a period of sixty days from a certified copy of this order being served upon the respondents.

9. No costs.


(RAJWANT SANDHU)
ADMINISTRATIVE MEMBER.


(SANJEEV KAUSHIK)
JUDICIAL MEMBER

Place: Chandigarh
Dated: 10.8.2015
SV: