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CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

Order Reserved on : 20.10.2016
Order pronounced on: 24.10.2016

Review Application No.060/00081/2015 &
MAs No. 060/01204/15 & 060/01205/15
In
O.A. NO. 060/01039/2014

Coram: Hon'ble Mr. Justice L.N. Mittal, Member(J).
Hon'ble Mrs. Rajwant Sandhu, Member(A).

Jagpal Singh

..... Applicant in OA/Respondent in RA

VERSUS

Union of India & Ors.

.....Review Applicants/Respondents in OA

Present: Sh. Sanjay Goyal, counsel for the review applicants.
Sh. R.K. Gautam, counsel for the respondent in RA.

ORDER

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

1. This RA has been filed under Section 22(3)(f) of the Administrative Tribunals Act, 1985 on behalf of applicant/respondents for reviewing the order dated 27.08.2015 in OA No. 060/01039/2014.

2. MA No. 060/01205/15 has been filed under CAT (Procedure) Rules, 1987 seeking condonation of delay of seven days in filing the RA.

3. MA No. 060/01204/15 has been filed under CAT (Procedure) Rules, 1987 seeking that order dated 27.08.2015 that is the subject of the RA, be stayed.

4. In the RA, the applicants/respondents in OA have stated that the order that is the subject of review, was passed by this Tribunal in the absence of the Government counsel who did not put in appearance on the day of hearing. Earlier, Sh. Deepak Agnihotri, Sr. CGSC was handling the matter on behalf of the respondent department and he resigned in July, 2015. Thereafter, the case was attended by the present Sr. CGSC on 28.05.2015. However, on the date of final hearing, the respondent department was not represented and the case was decided by only hearing the counsel for the applicant on 24.08.2015 when the order was reserved and subsequently on 27.08.2015, the order was pronounced.

5. In the grounds for review, it has, interalia, been stated as follows:-

(i) The respondent department was not represented by the Government counsel on the date of hearing arguments.

(ii) This Tribunal had issued directions to consider the applicant's claim for regularization of his services with immediate effect against any vacant post of Safaiwala that maybe available with the applicant-respondents. In this regard, applicant-respondents submit that since the applicant was never appointed against any vacant post and was only engaged on daily wages as per the need of the Department and was accordingly, getting wages as such, the applicant cannot be considered for regularization as the process for appointing the person on regular basis as well as for regularization against vacant post is entirely different and those posts need to be advertised and then the persons who applied through proper channels are considered as per the guidelines issued from time to time. This fact has been brought up by the applicant-respondents in the reply, which has not been appreciated while passing the final orders.

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(iii) In terms of the orders dated 04.03.2014 passed by this Tribunal, the speaking order was issued as per the policy of Government of India dated 10.09.1993. Moreover, the applicant had initially approached the Labour Court for seeking relief and accordingly, in pursuance to the same, award dated 13.02.2002 (Annexure A-2) was passed, whereby, the applicant was held entitled to be reinstated with back wages and continuity of service. In terms of the same, applicant was reinstated and the requisite benefits were granted to him. If applicant had any grouse, he should have moved before the Labour Court, wherein he had earlier sought relief. Moreover, the applicant is not the Central Government employee for knocking the doors of this Tribunal. This objection has been taken by the applicant respondents in their written statement. However, the same has not been considered and thus, there is an error apparent on the face of the record. Thus, the applicant respondents seek review of the order on the ground of jurisdiction as well.

(iv) This Tribunal has allowed the applicant to continue drawing the salary that he was getting on the basis of the rates approved by the D.C., Chandigarh by holding that since the order dated 06.03.2012 on the basis of which his salary had been reduced is disadvantageous to the applicant. In this regard, the applicant-respondents submit that since the applicant-respondents are working under the Ministry of Information and Broadcasting governed by the Central Government rules and notifications and as per the order dated 16.03.2012, it specifically prescribes category of workers and rates of wages including V.D.A. The applicant being unskilled and belonging to "B" Area is being rightly paid in view of the notification. Thus, the applicant is not bound by the notification issued by the Chandigarh Administration being under the control and administration of Central Government and is working under the Ministry of Information and Broadcasting. The applicant being unskilled and belongs to "B" area, was being rightly paid in view of the notification. Once the applicant is governed by the Central Government rules, his wages were rightly reduced. Thus, the order dated 27.08.2015 is liable to be reviewed on this ground as well keeping in view the notification dated 06.03.2012.

(v) The applicant-respondents further seek review of the order dated 27.08.2015 on the ground that no regular post had been advertised till date. Had the position been such, the

applicant was free to participate in the same and if at all he was found eligible, he would have been considered alongwith others who had applied for such posts. Since neither any post had been advertised nor the applicant was appointed against any vacant posts, the order dated 27.08.2015 is liable to be reviewed keeping in view the facts and circumstances of the present case.

6. Reply to the RA has been filed on behalf of the respondent/applicant in the OA.

7. Sh. Sanjay Goyal, learned counsel for the review applicant/respondents has been heard in the matter when he reiterated the grounds taken in the RA.

8. Sh. R.K. Gautam, learned counsel for the applicant in the OA stated that wages being allowed to the applicant had been reduced without giving him opportunity of being heard in the matter and since the applicant had been drawing his wages on the basis of the rates approved by DC Chandigarh earlier to the order dated 16.03.2012, it was unfair to hold that the applicant was entitled to daily wages as per the rules of the Central Government and not as per DC approved rates although the applicant was working in the office of All India Radio, Chandigarh. Besides, the applicant had been working against a regular vacant post since 2005 and the respondents had not tried to fill this post on regular basis, but were utilizing the cleaning service provided by Sh. Jagpal Singh. As per Annexure NA-1 dated 18.11.1991, it had been recorded by the Assistant Station Director that "Sh. Jagpal Singh, S/o Sh. Mange Ram has

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worked in this office on daily wages basis for purpose of cleaning the office premises for about four months. His work and conduct was satisfactory". As per document at Annexure NA-2 dated 04.01.1995, another certificate was issued that reads as follows:-

> "Certified that Sh. Jagpal Singh, S/o Sh. Mange Ram, resident of 567, Ram Darbar Colony, Phase-II, Chandigarh was sponsored by the Regional Employment Exchange, Chandigarh for Casual Safaiwala vide their letter No. CW-829/91-541-20/12677, dated 1.5.92. He was selected for Casual Safaiwala (on daily wages) and was engaged w.e.f. 13.5.92 TO 30.11.92."

From the document at Annexure NA-2, it was evident that the appointment of the applicant was not a case of back door entry, but his name had been sponsored by the Regional Employment Exchange, Chandigarh, for Casual Safaiwala by letter dated 01.05.1992. He was selected for Casual Safaiwala on daily wage basis and was engaged from 30.05.1992 to 30.11.1992. Later, the issue of disengagement of the applicant from the job was considered by the Labour Court and in its award dated 13.02.2002, it was held that Sh. Jagpal Singh was entitled to reinstatement with full back wages from the date of Demand Notice and continuity of service. It was in this context that it was held in order dated 27.08.2015 that it had to be assumed that the applicant had continuity of service of more than 18 years and hence, there was very good ground for the claim of the applicant for regularization of his service.

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9. We have carefully considered the matter. The Tribunal has been dealing with cases related to claims of regularization of daily wage workers and many of these orders have been upheld by the Jurisdictional High Court. Hence, this ground in the RA is rejected. The order dated 27.08.2015 is a reasoned one and it takes into account the submissions made in the written statement. Sh. Sanjay Goyal, learned counsel for the review applicant/respondents has now had the opportunity to present his case, but no error apparent on the face of the record in the judgement dated 27.08.2015 has been established by the counsel. Moreover, this order even covers the points raised in the course of arguments by Sh. Sanjay Goyal. Hence, we conclude that this Review Application is without merit and the same is dismissed. MAs No. 060/01204/2015 & 060/01205/2015 are also disposed of accordingly.

(RAJWANT SANDHU)
MEMBER (A)

(JUSTICE L.N. MITTAL)
MEMBER (J)

Dated: 24.10.2016
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