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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO.060/00111/2014

Order Reserved on 10.04.2015

Pronounced on 16.4.2015

...
**CORAM: HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)
HON'BLE DR. BRAHM A. AGRAWAL, MEMBER (J)**

...
Vijay Kumar S/o Om Parkash, Sweeper with the Head Post Office Karnal,
R/o H. No.B-31, Sadar Bazaar, Near Nika Singh Schook, Karnal.

... Applicant

Versus

1. The Senior Superintendent of Post Offices, Karnal Division, Karnal.
2. The Chief Post Master General, Haryana Circle, Ambala.
3. The Secretary, Ministry of Communication, Government of India, New Delhi.

... Respondents

Present: Sh. R.P. Mehra, counsel for the applicant.
Sh. Deepak Agnihotri, counsel for the respondents.

ORDER

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

1. Through this OA the applicant who is a Safai Karamchari has sought direction to the respondents to convert him from part timer to full timer and allow him pay and allowances of Group 'D' post.

2. It has been claimed in the OA that the applicant was appointed as sweeper during the year 1987 and was entitled to be

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conferred temporary status w.e.f. 29.11.1989 as he had rendered 26 years of service. The applicant served legal notice dated 28.10.2013 upon the respondents (Annexure A-1) and the respondents had replied to the same on 30.12.2013 (Annexure A-2) rejecting the claim of the applicant. Hence this O.A.

3. Averment has been made in the OA that the Department of Posts vide its letter dated 12.04.1991 directed its subordinate offices to convert part time casual labourers to full time workers. Reference has also been made to Para 1 of letter dated 30.11.1998 (Annexure A-4). It is stated that in many CPMG offices action had been taken in compliance of these directions and the services of some Chowkidars and Malis were converted to full time in 1997. The applicant was further entitled to Group 'D' promotion vide OM No.49014/2000 Esstt. (c) dated 19.07.2000 issued by Government of India, DoPT (Annexure A-5). C.A.T. Chandigarh Bench had also ordered that one Sh. Guddan, Sweeper in the SSPO Post Office at Rohtak be converted to full time worker as per order passed in OA No.1250/HR/2011 (Annexure A-6). Since the respondents had been directed vide letters dated 12.04.1991, 16.06.1992, 28.04.1997 and 30.11.1998 by the DG Post to convert the part timers into full timers hence the applicant was entitled to relief sought through the present OA.

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4. In the written statement filed on behalf of the respondents preliminary objection has been taken that in view of the judgment of Hon'ble High Court in the case of Secretary, State of Karnataka and others Vs. Uma Devi and others, Appeal (Civil) 3595-3612 of 1999 decided on 10.04.2006 the claim of the applicant for regularization was not maintainable. It has been stated that the applicant was not recruited by following procedure prescribed in the recruitment rules. He was engaged to sweep a portion of the premises of Karnal Head Post Office and paid Rs.3555/- out of contingency head sanctioned for the purpose by the Department. It is further stated that in the case of State of Manipur and others vs. Ksh. Moirangninthou Singu and another, (2008) 1 SCC (L&S) 35, the Hon'ble Supreme Court of India has held that following Uma Devi (Supra) there is no power in the court to direct regularization.

5. In the reply on merits it has been stated that the Casual Labourers (Grant of Temporary Status and Regularization) Scheme is applicable only to the full time casual labourers (Annexure R-1). The applicant had sent a legal notice dated 27.10.2013 (Annexure A-1). A detailed response was sent by respondent no.1 (Annexure A-2). The Department of Posts vide letter dated 12.04.1991 introduced the Casual Labourers (Grant of Temporary Status and Regularization) Scheme.

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Further, the letter dated 30.11.1998 (Annexure A-4) mentioned in para No.2 to consider the feasibility of deploying part time casual labourers in split duty to form full time casual labour position. Hence the Department had not directed to convert the part timers to full timers. The applicant does not come under the purview of this Scheme. The instructions dated 19.07.2000 are not applicable in the present case as in the Postal Department, separate instructions dated 28.01.2011 (Annexure R-3) have been issued for filling the vacancies on the basis of latest recruitment rules for the post of multitasking staff. These provide that 25% vacancies are to be filled by appointment of casual labourers but the applicant till date is not eligible for such appointment.

6. In the Guddan matter, C.A.T had directed the respondents to grant an order in the light of instructions dated 19.07.2000. This order was challenged by way of filing WP No.23610 of 2013 before the Hon'ble High Court of Punjab and Haryana and stay has been granted in the matter.

7. In the rejoinder filed on behalf of the applicant, reference has been made to the instructions dated 12.04.1991 and it has been stated that half of the service rendered by the applicant as part time casual labourer should be taken into account and keeping in view service rendered by the applicant as part timer he had effectively rendered 13

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years of service as full timer. Hence his services should be regularized. Reference has also been made to various judgments of C.A.T. Principal Bench-New Delhi, Chandigarh Bench, Ernnakulam Bench-Kerala and Hyderabad Bench etc. to support the claim of the applicant for regularization.

8. Arguments advanced by learned counsel for the parties were heard when learned counsel for the applicant reiterated content of the OA. He submitted that even on humanitarian grounds, keeping in view the long service rendered by the applicant in this OA, his services should be regularized.

9. Learned counsel for the respondents reiterated the content of the written statement and asserted that after the judgment in Uma Devi (Supra), there was no scope for regularization of part time workers who have been engaged without following proper procedure. The applicant had not been appointed against a regular post but he was a contingent paid worker who was cleaning the area assigned to him in the office of SSPO (Karnal Division).

10. We have given our thoughtful consideration to the matter. The judgments cited by learned counsel for the applicant relate to the 1990s and have lost relevance after Uma Devi (Supra). The

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Department of Posts has no policy regarding regularization of part time workers. Recruitment Rules of Multi Tasking Staff have been issued in December 2010, where there is some scope of regularization of casual labourers as per following provision:

"Vacancies in Subordinate Offices:

- i. 50% by direct recruitment amongst Gramin Dak Sevaks of the recruiting Division or Unit, on the basis of Selection cum seniority.
- ii(a) 25% by direct recruitment on the basis of Competitive Examination restricted to the Gramin Dak Sevaks of the Division or Unit failing which by,
 - (b) Appointment of Casual Labourers engaged on or before 01.09.1993, working for full hours viz. 8 hours a day, on the basis of selection cum seniority failing which by,
 - (c) Appointment of Casual Labourers conferred with temporary status in the neighbouring Division or Unit on the basis of selection cum seniority failing which by,
 - (d) Appointment of Part-time Casual Labourers engaged on or before 01.09.1993, of the recruiting Division or Unit on the basis of selection cum seniority failing which by,
 - (f) Direct recruitment amongst Gramin Dak Sevaks on the basis of their seniority in the Division or Unit."

Even though the applicant has been working for the last 26 years as part time Safai Worker, legal notice was issued on his behalf only in October 2013 and the OA has been filed in February 2014. Hence the claim of the part time Safai Karamchari/casual labourers could only be considered for regularization as per these Rules and it is presumed that those who

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fulfill the criteria prescribed as per these rules shall be considered for regularization from time to time as per availability of vacancies. We on our part cannot direct regularization of these part time Safai Karamcharis keeping in view the following judgments:

1. State of Manipur and Another Vs. Ksh. Moirangninthou Singh and Others, Civil Appeal Nos.1897-1901 of 2000 decided on 26.02.2007 wherein it has been held as follows:

"Regularization-Power of court to direct-Absence of-Held, following Umadevi (3), (2006) 4 SCC 1, there is no such power in the court-Constitution of India-Art.226."

2. State of Rajasthan and Others Vs. Daya Lal & Others, Civil Appeal Nos.486-495 of 2011, decided on 13.01.2011, wherein principles relating to regularization have been stated:

"(i) High Courts, in exercising power under Article 226 of the Constitution, will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularization of services of an employee which would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

- (ii) Mere continuation of service by an temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even temporary, ad hoc or daily- wage service*

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for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.

(iii) Even where a scheme is formulated for regularization with a cut off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut off date), it is not possible to others who were appointed subsequent to the cut off date, to claim or contend that the scheme should be applied to them by extending the cut off date or seek a direction for framing of fresh schemes providing for successive cut off dates.

(iv) Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of part time temporary employees.

(v) Part time temporary employees in government run institutions cannot claim parity in salary with regular employees of the government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute."

3. Secretary to Government, School Education Department, Chennai Vs. Govindaswamy and Others, Civil Appeals Nos.2726-29 of 2014 with Nos.2730-31 of 2014 decided on 21.2.2014, wherein it has been held as follows:

"Service Law-Regularization-Non-entitlement of regularization-Part-time Sweepers of appellant Bank working for more than 10 years-Reiterated, mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment' which has been proscribed by the Constitution Bench in Umadevi (3), (2006), 4 SCC1- Even temporary, ad hoc or daily-wage service for a long number of

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years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post-Thus, held, respondent employees were not entitled to regularization even when they had put in long service because they were not working against sanctioned posts-Sympathy and sentiment cannot be valid grounds for regularization of services in absence of legal right-Impugned judgment set aside".

Hence in view of the above discussion, this OA being devoid of merit is rejected.

(DR. BRAHM A. AGRAWAL)
MEMBER (J)

(RAJWANT SANDHU)
MEMBER (A)

Place: Chandigarh.

Dated: 16.9.2015.

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