

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/020/00344/2015

Date of CAV : 24.08.2018
Date of Order : 07-09-2018

Between :

Smt.Vaddadi Adi Lakshmi W/o V.Appa Rao,
Hindu, Aged 47 years, Occupation : Employee,
Working as Casual Sweeper in the office of the
Deputy Director, National Institute of Fisheries,
Post Harvest Technology and Training,
Vizag Unit, Old Minerva Theatre, Beach Road,
Visakhapatnam – 530 001, R/o C/o Gurumurthy,
D.No.14-4-9, Maharanipeta, Venkatapathiraju Nagar,
Visakhapatnam – 530 002.

...Applicant

AND

1. Union of India, Ministry of Agriculture,
Department of Agriculture & Cooperation,
Represented by its Secretary,
Krishi Bhavan, New Delhi – 110 001.
2. The Director, National Institute of Fisheries,
Post Harvest Technology and Training,
Fine Arts Avenue, Fore Shore Road,
Cochin – 682 016, Kerala.
1. The Deputy Director, National Institute of
Fisheries Post Harvest Technology and Training,
Vizag Unit, Old Minerva Theatre, Beach Road,
Visakhapatnam – 530 001, Andhra Pradesh.

...Respondents

Counsel for the Applicant: Mr. T. P. Acharya
Counsel for the Respondents : Mr. V. Vinod Kumar, Sr. CGSC

CORAM :

THE HON'BLE MR.B.V.SUDHAKAR, ADMINISTRATIVE MEMBER
THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

This application is filed under section 19 of the Administrative Tribunal's Act, 1985, seeking to direct the respondents to regularize the services of the applicant forthwith from the date her immediate junior was regularized and grant her all consequential benefits that will accrue on that basis and release the same within a specified time and pass such other and further order or orders as are deemed fit and in the circumstances of the case.

2. It is the case of the applicant that she belongs to SC category and passed 5th class. She joined as part time sweeper in the 3rd Respondent office from September 1992 and worked as such till 15.02.1998. Thereafter, basing on her representation, the Respondents have converted her services as Casual Sweeper with effect from 16.02.1998 and were paying an amount of Rs.96/- per day on all working days. Subsequently the pay was enhanced from time to time and was paid accordingly.

3. Thereafter the applicant submitted representation in the year 2001 for regularization of her services but no orders were communicated on her representation and she was continued up to 18.11.2001 and was orally directed not to attend to duties from 19.11.2001 onwards. Thereafter the applicant filed I.D.No.ITI(C) 31/2002 before the Industrial Tribunal cum-Labour court, Visakhapatnam and the same was transferred to the Hon'ble Central Govt., Industrial Tribunal cum Labour Court at Hyderabad

and renumbered as Industrial Disputes LCID No.116 of 2004. Respondents 2 and 3 herein were parties to the said L.C.I.D.

4. Thereafter the Hon'ble Central Government Industrial Tribunal cum Labour Court at Hyderabad passed an award dated 29.05.2006 directing the 2nd and 3rd Respondents to reinstate the applicant into service without back wages. The said award was published by the Union of India, Ministry of Labour as per Section 17 of the Industrial Dispute Act, 1947 vide notification dated 13-07-2006. In pursuance of the said award, the applicant has been reinstated to duty by Office Order dated 29.12.2006 with effect from 19.11.2011 and thus she is in continuous service in the office of Respondents from September, 1992 onwards as part time up to 15-12-1998 and from 16-12-1998 onwards on casual basis but putting in more than 22 years of service.

5. The applicant also submits that the Respondents have filed WP No.26257 of 2006 before the Hon'ble High Court of Andhra Pradesh assailing the award dated 29.05.2006 and the same is pending without any stay and the applicant is continuing as casual sweeper till date.

6. Relying on the decisions of the Ernakulam Bench of this Tribunal in OA Nos.1259/1992, dated 05-08-1993 and 90/1994, dated 09-02-1995, the applicant is claiming for regularization of her services against Group-D vacancies.

7. Respondents have filed reply statement stating that, the applicant was engaged as a part time Sweeper at IFP Vizag Unit on 04.09.1992 on a consolidated wage of Rs.300/- per month and the same was not against a sanctioned post. Thereafter the consolidated wages was increased to Rs.400/- p.m with effect from 07.09.1993 and again increased to Rs.500/- p.m with effect from 01.12.1994. Thereafter, in response to her representations, she was engaged on casual basis on all working days on the minimum wages of Rs.96/- per day pending Ministry's orders for creating the post of Sweeper / Safaiwala for NIFPHATT Vizag Unit. Thus the applicant was engaged as a Casual Sweeper with effect from 16.02.1998 and the same has continued after obtaining sanction from the headquarters after a lapse of every three months.

8. The Respondents further submit that six posts of Processing Workers from Headquarter (Cochin) were transferred to NIFPHATT, Vizag Unit and they were filled by regularizing the six casual Processing Workers who were engaged at Vizag Unit with effect from 1989. Since no more vacancy was available for regularizing the applicant, her representation could not be considered and the matter was intimated to the Officer-in-Charge, NIFPHATT Vizag Unit and thereafter applicant's casual services were terminated with effect from 19.11.2001. Thereafter the applicant had also filed a petition before the Labour Court, Vizag and the same was transferred to Central Government Labour cum Industrial Court, Hyderabad (LCID No.116/2004) which was disposed of on 29.05.2006 observing that the applicant was entitled for reinstatement without backwages. In due compliance thereof,

the applicant was reinstated into service without backwages vide office order dated 29.12.2006 and continuing as such in the office of 3rd Respondent.

9. The Respondents further submit that, the Original Applications referred to by the applicant were filed by the Casual Processing Workers / Net Menders etc., at IFP Cochin for regularization and they were regularized in the post / duties which were actually performed by them when regular vacancies arose. It is also contended by the Respondents that, as per the recommendations of VI CPC, the minimum qualification prescribed for appointment to Group-D now is 10th Standard pass or ITI and the applicant is only 5th standard pass. Hence, as per the existing norms and guidelines of the Government of India, the Respondents are not in a position to consider the applicant's case for appointment to any Group-D vacancies existing in the Institute. The Respondents also contend that the applicant also crossed the upper age limit for appointment and she does not possess the required experience as per the Recruitment Rules for the post of Processing Worker.

10. It is also stated in the reply statement that, the applicant had filed WP No.10982/2013 in the Hon'ble High Court of Andhra Pradesh wherein the Respondents were directed to consider the applicant's case for regularization in accordance with law. As the applicant does not fulfil the eligibility condition of any of the existing Group-D posts as per Recruitment Rules either in terms of qualification or age, her case cannot be considered. In view of these submissions, Respondents pray for dismissal of the OA.

11. Learned counsel for the applicant filed rejoinder stating that, the applicant is aggrieved for not regularizing her services as Processing Worker though processing work was also extracted from her apart from Sweeper work on part time basis. It is also contended in the rejoinder that the prescribed qualification of 10th standard pass or ITI and the upper age limit for regularization of the existing casual workers does not arise.

12. We have heard Mr. T.P. Acharya, learned counsel for the applicant and Mr.V.VinodKumar, learned Sr Central Government Standing Counsel for Respondents, perused the records and material placed on the file.

13. It is submitted by the learned Senior Central Government Standing Counsel for Respondents that at the time the applicant was employed as Sweeper, there was no sanctioned post of Sweeper and no material was placed on record to show that sanctioned post of Sweeper / Safaiwala was available in the Respondents organization. The applicant was continuing only on casual basis till December, 2006, with intermittent breaks and the said service will not confer any right on the applicant.

14. It is also not in dispute that the applicant is working in the Fish Processing Plant. In the said circumstances, it is urged by the learned counsel for the applicant that direction may be issued to the Respondents to consider the case of the applicant to work in the Fish Processing Unit as a Sweeper / Safaiwala.

15. It is seen that the manner in which the applicant has been initially engaged was an irregular appointment as there was no sanctioned post of Sweeper was available. Therefore taking into consideration the judgement rendered in the case of **Secretary, State of Karnataka & others Vs. Umadevi & Others (2006 (4) SCC 1)** and **Yogesh Tyagi & Another Vs. State of Haryana & Others 2018 (3) SLR 923**, the applicant cannot be regularized when there is no sanctioned post of Sweeper / Safaiwala and further more the applicant does not have the minimum qualification of pass in 10th class to work as Processing worker. The applicant failed to show on the basis of any materials on the record that at the time she was initially engaged as Part Time Sweeper any sanctioned post of Sweeper was available in the said office or organization. Simply because her name has been sponsored by the Employment Exchange cannot cure illegality. It has been held in the judgment of the Hon'ble Supreme Court in **2011 (3) SCC 436 : 2011 (2) SLR (3) SC (State of Orissa & Another Vs. Mamata Mohanty)**, in para-36 as follows :-

“36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the employment exchange or putting a note on the notice board, etc. That will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered.....”

16. We have also gone through the judgment of the Hon'ble Apex Court in the case of **Khagesh Kumar & Others Vs. Inspector General of Registration & Ors (1995 SCC Supl.(4) 182)**, and we are of the view that the

same is not applicable to the facts and circumstances of this case.

17. Accordingly the OA is dismissed as devoid of merits. No order as to costs.

(SWARUP KUMAR MISHRA) (B.V.SUDHAKAR)
JUDICIAL MEMBER ADMINISTRATIVE MEMBER

Dated : 7th September, 2018.

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