

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

C.P.No.260/11/2017

Date of Reserve:27.03.2019

Date of Order:14.05.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Laxmidhar Dash, aged about 52 years, S/o. Late Prafulla Kumar Dash, At/PO-Mahulia, PS-Badamba, Dist-Cuttack – at present continuing as Belder in the office of the Assistant Engineer, Bhubaneswar Central Sub-Division No.1, C.P.W.D., Bhubaneswar 12, Dist-Khurda.

...Applicant

By the Advocate(s)-Mr.R.N.Acharya

-VERSUS-

1. Rajib Gauda, Secretary to Government of India, Ministry of Urban Housing Development Department, Lodhi Road, New Delhi-1.
2. Abhai Sinha, Director General (Works), C.P.W.D., Nirman Bhawan, New Delhi-110 001.
3. A.S.Arora, Additional Director General, Eastern Zone, C.P.W.D., 234/4, AJC Bose Road, Nizam Palace, Kolkata-20.
4. Rakesh Kumar Sharma, Chief Engineer (Civil), Central Public Works Department, Nirman Bhawan, Pokhariput, Bhubaneswar, Dist-Khurda.
5. Ramesh Chandra Mishra, Superintending Engineer (Civil), Central Public Works Department, Nirman Bhawan, Pokhariput, Bhubaneswar, Dist-Khurda.
6. Kalandi Charan Nayak, Executive Engineer (Civil), Central Public Works Department, Bhubaneswar Central Division No.1, Unit-8, Bhubaneswar-12.

...Respondents/Contemnors

By the Advocate(s)-Mr.C.M.Singh

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

This Contempt Petition has been filed alleging wilful and deliberate violation of the orders dated 04.10.2016 passed by this Tribunal in O.A.No.894 of 2014.

2. The background and the basis on which this C.P. has been filed are that the petitioner had approached this Tribunal in O.A.No.894 of 2014 for direction to be issued to regularize his service in a permanent cadre with effect from the date of his joining in any Group-D/MTS category post by quashing the impugned order of rejection dated 07.10.2014. This impugned order, as it reveals from the record, had been passed by the respondents with an observation that the case of the applicant cannot be considered for regularization since he was engaged on casual basis and conferred with temporary status, but was not recruited through a regular selection process. After considering the matter on merit, this Tribunal disposed of vide order dated 04.10.2016 in the following terms:

"19. In view of the discussion above, and particularly in view of the judgments of the Hon'ble Apex Court in the matter, we have no hesitation to hold that the respondent-Department have not considered the prayer for regularization of the applicant in conformity with the extant guidelines, and as per the law established in this regard in the pronouncements of the Hon'ble Apex Court. We, therefore, quash the order dated 07.10.2014 issued by the respondents and direct the respondents to reconsider the matter of regularization in the light of the observations of the Tribunal given above and communicate the decision to the applicant in a speaking order within a period of 90 days of receipting a copy of this order".

3. The respondents in complying with the aforesaid direction of this Tribunal passed an order dated 15.02.2017 (A/4), the relevant part of which reads as follows:

"Accordingly respondent authorities are required to implement above order from Hon'ble Court. In this circumstances respondents authority considered the case of the petitioner in the light of the CAT Cuttack Bench, Cuttack judgment and came to the conclusion that the petitioner is not eligible for regularization of service on the following grounds:

The Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training) vide OM No.49014/2/86/Estt.(C) dated 07.06.1988 while issuing instruction for engagement of casual worker had enunciated, as amplified from time to time, inter-alia provided that casual worker and persons on daily basis should not be recruited for work on regular nature. They could be engaged only for work of casual or seasonal or intermittent nature or for work which is not of full time nature for which regular post cannot be created. Instruction was further issued for not making appointment of Adhoc post by direct recruitment from open market.

A Constitution bench of the Supreme Court in civil appeal No.35953612/1999 etc. in the case of Secretary, State of Karnataka and Ors. Vs. Uma Devi and others has reiterated that any public appointment has to be in terms of the Constitution scheme. However, the Supreme Court in Para-44 of the aforesaid judgment dated 10.04.2005 has directed that the Union of India, the State Governments and their instrumentalities should take steps to regularize as an one time measure the services of such irregularly appointed, who are duly qualified persons in terms of the statutory recruitment rules for the post and who have worked for ten years or more in duly sanctioned posts but not under cover of orders of court or tribunals. The Ape Court has clarified that if such appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularized.

The services of irregularly appointed workers who were duly qualified and worked for 10 years and more in duly sanctioned post but not under cover of order of Court or Tribunal, works were regularized as a one time measure.

In view of the foregoing Act, not fresh case can be considered for regularization".

4. On being noticed, Shri Ramesh Chandra Mishra, Superintending Engineer, Bhubaneswar Central Circle, CPWD, Nirman Bhawan, Pokhariput, Bhubaneswar (Res.No.5) has filed a show cause. According to Res.No.5, while scrutinizing the petitioner's case for regularization, it was found that he does not have the requisite qualification as mandated under Recruitment Rule for Group-D/MTS cadre as in the said rule the essential qualification for the post of the Group-D/MTS is Matriculation or equivalent or ITI pass. It the case of the alleged contemnor that the Transfer Certificate as submitted by the petitioner reveals that he has not passed Matriculation or ITI. Thus, he is not a duly qualified person for the said appointment as per Recruitment Rule. In support of this, Respondent No.5 has placed reliance on the Office Memorandum dated 16.10.2014 issued by the Government of India, Ministry of Personnel, Public Grievances & pension, Department of Personnel & Training, the relevant Paragraphs of which are as follows:

- 2. Following the acceptance of the recommendation of the 6th CPC, all Group D posts have been upgraded to Group C posts. Recruitment to erstwhile Group 'D' posts placed in Group 'C', PB-1, Grade Pay 1800/- (non technical as MT Staff) is now made only through Staff Selection Commission and minimum educational qualification for appointment is Matriculation or ITI pass. Regularisation of CL-TS therefore cannot be done by the Ministries/Departments on their own and requires relaxation of para-8 of the Appendix to the OM dated 10.09.1993.
- 3. This Department vide O.M.No.49011/31/2008-Estt.(C) dated 17th February, 2009 had requested all Ministries/Department to provide information relating to CL-TS on their rolls. Information relating to 231 CL-TS was received from 29 Ministries/Department which were processed. Since then this Department has been receiving proposals piece-meal from different Departments.
- 4. Department of Expenditure have now advised this Department that in order to avoid peace-meal examination of such proposals, a consolidated proposal for regularization of all such remaining CL-TS who were on the rolls of the Ministries/Department on 10.09.1993 and yet could not be regularized may be forwarded to them for

further consideration/examination. Therefore, all Ministries/Departments are requested to review the position at their establishments and send a consolidated proposals for regularization of services of such remaining CL-TS on their rolls(including attached/subordinate and autonomous bodies), if any, latest by 30.11.2014 to this Department in the enclosed format. It may be ensured that complete information in respect of the Ministry/Department and its Attached/Subordinate Offices is sent. The information may also be sent by e-mail (in MS Word) at dse@nic.in".

5. Based on the above submissions, it has been prayed that since the orders of this Tribunal dated 04.10.2016 in O.A.No.894 of 2014 have been complied with, the contempt proceedings should be dropped.

6. We have heard the learned counsels for both the sides in extenso and perused the records. We have also gone through the orders of this Tribunal dated 04.10.2016 in O.A.No.894 of 2014, the show cause reply and the written notes of submission and the citations filed by the parties. At the outset it is to be noted that the respondents rejected the request of the applicant for regularization of his service vide order dated 07.10.2014 on the ground that the case of the applicant cannot be considered for regularization since he was engaged on casual basis and conferred with temporary status, but was not recruited through a regular selection process.

7. In the order dated 15.02.2017 (A/4) passed in pursuance to the direction of this Tribunal in O.A.No.894 of 2014 which is the subject matter of contempt proceedings, the relevant part of which has been quoted above, Respondent No.5 has taken recourse to the OM No.49014/2/86/Estt.(C) dated 07.06.1988 issued by the Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training) and based on this, it has been submitted that casual worker and persons on daily basis should not be recruited for work on regular nature. They could be engaged only for work of

casual or seasonal or intermittent nature or for work which is not of full time nature for which regular post cannot be created. At the same time, relying on the decision of the Hon'ble Supreme Court in Secretary, State of Karnataka and Ors. Vs. Uma Devi and others (cited supra), it has been contended that as per Paragraph-44 thereof the Union of India, the State Governments and their instrumentalities should take steps to regularize as an one time measure the services of such irregularly appointed, who are duly qualified persons in terms of the statutory recruitment rules for the post and who have worked for ten years or more in duly sanctioned posts. It has been clarified that if such appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularized.

8. In the show cause filed, it has been pointed out that the petitioner does not have the requisite qualification as mandated under Recruitment Rule for Group-D/MTS cadre as in the said rule the essential qualification for the post of the Group-D/MTS is Matriculation or equivalent or ITI pass and to this effect, reliance has been placed on the Office Memorandum dated 16.10.2014 issued by the Government of India, Ministry of Personnel, Public Grievances & pension, Department of Personnel & Training, the relevant paragraphs of which are already quoted above.

9. From the above, it is quite apparent that that like chameleon the respondents are taking different pleas at different stages of the proceedings. The order dated 15.02.2017 (A/4) which they have passed on the basis of OM No.49014/2/86/Estt.(C) dated 07.06.1988 has already been dealt by this Tribunal at Paragraph-14 of the order dated 04.10.2016. Similarly, in Paragraph-16 of the order, this Tribunal had quoted and taken note of the guidelines issued by the Hon'ble Supreme Court in Paragraph-44 in Uma Devi

case. As regards the educational qualification, this Tribunal in Paragraph-10 of the order mentioned as under:

"....It is admitted by the respondent department that the applicant was sent for training after he attained temporary status (non-matriculate) as per the Recommendations of the VI Central Pay Commission as communicated by the DOP&T vide its order dated 23.11.2012...."

10. Since this Tribunal after considering pros and cons of the matter in an exhaustive and detailed order, issued direction for reconsideration of the matter of regularization of the applicant in the light of the observation made therein, it appears that the Respondent No.5 by a stroke of pen has attempted to write another order, by overtaking the orders of this Tribunal, which prima facie, shows wilful and deliberate violation of the orders of this Tribunal and therefore, there exists a contempt liability on the part of Respondent. No.5.

11. However, as it reveals, Office Memorandum dated 16.10.2014 issued by the Government of India, Ministry of Personnel, Public Grievances & pension, Department of Personnel & Training, which the Respondent No.5 has now produced, along with the show cause, was not before this Tribunal when O.A.No.894 of 2014 was taken up for final disposal.

12. On a perusal of the said Office Memorandum, the relevant Paragraphs of which is quoted above, the following conditions are worthy of being highlighted hereunder further.

- i) Regularisation of CL-TS therefore cannot be done by the Ministries/Departments on their own and requires relaxation of para-8 of the Appendix to the OM dated 10.09.1993.
- ii) This Department vide O.M.No.49011/31/2008-Estt.(C) dated 17th February, 2009 had requested all Ministries/Department to provide information relating to CL-TS on their rolls.

iii) Therefore, all Ministries/Departments are requested to review the position at their establishments and send a consolidated proposals for regularization of services of such remaining CL-TS on their rolls(including attached/subordinate and autonomous bodies), if any, latest by 30.11.2014 to this Department in the enclosed format. It may be ensured that complete information in respect of the Ministry/Department and its Attached/Subordinate Offices is sent. The information may also be sent by e-mail (in MS Word) at dse@nic.in".

13. The above Office Memorandum as relied on by Respondent No.5 rather strengthens the case of the petitioner for regularization and it is quite conspicuous that the petitioner's grievance by operation of rules would have been redressed even before passing of the impugned order dated 07.10.2014 which formed the subject matter of O.A.No.894/2014. In this context, we are compelled to observe that the fate of the menial employee should not be made a laughing stock at the whims and fancies of the authorities at the helm of affairs. They are expected to be sensible and realistic to the genuine grievances of those employees who are faltering enough to articulate their grievance in its entirety, lest the authorities should be annoyed. At the same time, we cannot brush aside the fact that it is only because of administrative callousness, the petitioner has been made to suffer.

14. As already held above, Shri Ramesh Chandra Mishra, Superintending Engineer, Bhubaneswar Central Circle, CPWD, Nirman Bhawan, Pokhariput, Bhubaneswar (Res.No.5) is *prima facie* guilty of flouting the orders of this Tribunal. The order as passed by Respondent No.5 which is the subject matter of contempt, can by no stretch of imagination be construed to mean that a fresh cause of action has arisen which is remediable by way of proceedings otherwise than the contempt proceedings.

15. However, considering the factual matrix of the matter, we feel that Respondent No.5 should be given a final opportunity to comply with the

direction of this Tribunal in O.A.No.894/2014 with due application of mind to the observations made therein and pass a further order which will be in supersession of the order dated 15.02.2017. This exercise shall be completed within a period of sixty days from the date of communication of this order. However, we make it clear that by this order, we are not dropping this C.P.

Call on 15.7.2019 for filing compliance report and for further orders.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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