

000000

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

O.A.No.1763/2016

Dated Tuesday, the 22nd day of January, 2019

PRESENT

Hon'ble Mr.R.Ramanujam, Administrative Member

M. Rajaram

No. 1/2814, Chakkammal Puram

Virudhunagar.

...Applicant

By Advocate M/s S. Ramaswamyrajarajan

Vs.

1. Union of India rep. by

The Chief Postmaster General

Tamil Nadu Circle

Chennai – 600 002.

2. The Senior Superintendent of RMS

'MA' Division

Madurai – 625 001.

...Respondents

By Advocate Mr. C. Kulanthaivel

(Order: Pronounced by Hon'ble Mr.R.Ramanujam, Member(A))

Heard. The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

“To call for the connected/relevant records from the second respondent and on perusal

- i. To quash the impugned order No. B2/CLR/DLGS, dated 18.10.2016, passed by the 2nd respondent and to direct the respondents to confer temporary status on the applicant with effect from 10.09.2000 and to give consequential benefits such as arrears of allowance, bonus etc and later on to regularise him into Group-D Cadre or MTS Cadre and
- ii. To pass such further or other orders as this Tribunal may deem and proper in the circumstances of the case with cost.”

2. It is submitted that the applicant was initially engaged as a Casual Labourer in the year 1999 and has been working as Full Time Casual Labourer, i.e., for 8 hours per day under the 2nd respondent till date. The applicant is entitled to conferment of temporary status on completion of 240 days of continuous service and subsequent regularization in Group D cadre. The applicant made a representation to the second respondent in this regard but the same was rejected by Annexure A-3 communication dated 18.10.2016. Aggrieved by such rejection, the applicant is before the Tribunal.

3. Learned counsel for the applicant would argue that the impugned order is untenable in as much as it rejects the claim of the applicant on the ground that the applicant was not sponsored through employment

exchange. In this connection, he seeks to rely on the order passed by the Hon'ble Madras High Court dated 18.06.2009 in WP No.25385/2003 wherein the order of the Tribunal granting relief to the applicant therein had been upheld although admittedly the applicants therein had also not been sponsored by the employment exchange. He would also seek to rely upon the order passed by the Hon'ble High Court of Madras dated 22.01.2014 in WPs No.27344-27347/2013 wherein relief was granted to Casual Labourers who were appointed purely on temporary basis without any sanctioned post. Atleast one of the respondents therein, i.e., M.Abraham, in WP 27345 had been in service from 01.02.1994 though appointed after the cut off date. Accordingly, it is argued that neither the fact that the applicant was not appointed through employment exchange nor the fact that he was appointed after the cut off date could be held against him. The applicant is entitled to be conferred temporary status after completion of 240 days of service, it is contended.

3. Learned counsel for the respondents would, however, submit that the scheme for grant of temporary status and regularization of Casual Workers as per OM dated 10.09.1993 did not allow casual employees not sponsored through employment exchange to be bestowed with temporary status. He would also contend that the benefit of temporary status was available only to those Casual Labourers who were in employment as on 01.09.1993 as the scheme itself was applicable only to those who had been appointed prior to such date. He seeks to rely on the order of the Hon'ble High Court of Madras dated 22.01.2014 in the cases cited supra

as also in WPs No.6474 & 9071/2015 dated 14.07.2015 wherein it has been held clearly that the scheme of the year 1993 was not meant to be applied endlessly for conferring regularization. The Hon'ble High Court has relied on five settled principles extracted by the Hon'ble Supreme Court in Secretary to Government, School Education Department Vs. R.Govindasamy [CDJ 2014 SC 146], culled out from various decisions of the Hon'ble Supreme Court. It is accordingly contended that granting temporary status and regularization to such persons would violate Article 14 & 16 of the Constitution of India. One of the principles recorded therein is that it is not possible for persons 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 scheme providing for successive cut off dates. Accordingly, the OA is liable to be dismissed, it is contended.

4. Learned counsel for the applicant would, however, submit that there were contrary judgements of the Hon'ble Apex court in similar matters and seeks time to produce copies thereof.

5. I have considered the pleadings and submissions made by the rival counsel. On the applicant's own admission, he was appointed as a Casual Labourer in the year 1999 only long after the cut off date. It is also not in dispute that the applicant had not been sponsored through the employment exchange. In the light of the order of the Hon'ble Madras High court dated 14.07.2015 in the case cited supra relying on the settled

principles culled out from various decisions of the Hon'ble Supreme Court, it would appear that the applicant would have no right to be granted temporary status. However, since it is submitted by the learned counsel for the applicant that more recently, courts had directed grant of temporary status though the person concerned had not been appointed through the employment exchange or long after the cut off date, I am of the view that liberty could be granted to the applicant to produce evidence thereof by way of a representation to the competent authority.

6. In the event of a representation being made by the applicant with supporting judicial precedents where similarly placed persons had been granted the benefit of temporary status, the respondents may consider the matter appropriately and pass a reasoned and speaking order thereupon within a period of four months from the date of receipt of such representation. OA is disposed of.

**(R.RAMANUJAM)
MEMBER (A)
22.01.2019**

M.T.