

**Central Administrative Tribunal
Madras Bench**

OA 310/01015/2015

Dated Thursday the 6th day of December Two Thousand Eighteen

P R E S E N T

Hon'ble Mr. R.Ramanujam, Member(A)

1. S. Jayaseelan
10/93, Bhuvaneswari Nagar
1st Main Road, Velachery
Chennai – 600 042.

2. P. Velayudham
48/1, 1st Street
Rajesh Garden, Chettiar Agarm
Chennai – 600 077. .. Applicant

By Advocate M/s. Akbar Row

Vs.

1. The Union of India
Rep. by the Secretary to Government
Ministry of Finance, Department of Revenue
Central Board of Excise and Customs
North Block, New Delhi 110 001.

2. The Chief Commissioner of Central Excise
Chennai Zone
26/1, Mahatma Gandhi Road
Nungambakkam, Chennai – 600 034.

3. The Commissioner of Central Excise
Chennai – I
26/1, Mahatma Gandhi Road
Nungambakkam, Chennai – 600 034.

4. The Commissioner of Central Excise
Chennai – II
MHU Complex, Nandanam
Chennai – 600 035. .. Respondents

By Advocate Mr. S. Rajasekar

ORAL 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:

- “i. To direct the first, second and third respondents to consider the names of applicants for conferring temporary status taking into account their long 17 years of service as Casual Labourer with all consequential benefits and
- ii. To pass such further or other orders as this Court may deem fit and proper in the circumstances of the case”

2. It is submitted that the applicants were engaged as Casual Worker in the respondent Department in the year 1998 and have been continuously working in the same capacity till date. The applicants were entitled to conferment of temporary status after completion of 240 days of service. However, the respondents denied the claim of the applicants on the ground that the relevant OM dated 10.09.1993 providing for regularisation of the casual employees was applicable to those who were working as on 01.09.1993. As the applicants were only working only from the year 1998, they could not be granted temporary status and regularisation.

3. Learned counsel for the applicant would submit that persons similarly placed as the applicant had approached this Tribunal in OAs 406/2006, 824/07, 428/06, 48/06 etc wherein temporary status from appropriate dates were directed

to be granted. The orders were challenged in the Hon'ble Madras High Court in WPs 16733/2009, 16889/2009, 11492/2006 and 18969/2006 which were decided by an order of the Hon'ble Madras High Court dated 19.07.2011 directing the Writ Petitioners therein to consider the case of the applicants in the OAs for regularisation by framing a Scheme similar to the one issued under OM dated 10.09.1993 so as to grant them security in accordance with law and in a manner known to law.

4. It is further submitted that the order of the Hon'ble Madras High Court in the aforesaid cases was challenged in Civil Appeals No. 9988-9991 of 2013 in the Hon'ble Supreme Court. The Hon'ble Supreme Court by an order dated 19.04.2018 dismissed the CAs with the observation that in the facts of those cases, the court was not inclined to interfere with the impugned order and that it was expected that the appellants would implement the order of the High Court in three months. Accordingly the order of this Tribunal and the Hon'ble Madras High Court had been given effect to in respect of the applicants therein who have since been granted the temporary status.

5. No representation for the respondents. However, a perusal of the reply filed by the respondents would show that the respondents have taken the plea that the 1993 scheme was not applicable to the applicants and that persons appointed thereafter could not be granted temporary status and regularisation in terms of the Hon'ble Supreme Court decision in *Uma Devi* (AIR 2006 SC 1806). It is submitted that the applicant was not appointed through any regular process or a

sanctioned post against a regular vacancy. The respondents seek to rely on an order passed by the Hon'ble Supreme Court in Union of India Vs Arulmozhi Iniarasu (2011) 7 SCC 397 wherein it was held that an illegality committed cannot be directed to be perpetuated. Further it is a well established principle of law that there cannot be equality in illegality.

6. The respondents contend that in terms of the Hon'ble Supreme Court decision in Arulmozhi Iniarasu supra, the doctrine of legitimate expectation could not be invoked by the applicant. Further the applicants had not moved the competent forum for redressal of their grievance in time and approached the Tribunal only after the judgments were passed by the Hon'ble Madras High Court and the Hon'ble Andhra Pradesh High Court which were only applicable in personam to the litigants therein.

7. I have considered the pleadings and the submissions made by the counsel at the time of hearing. It is not in dispute that similarly placed persons had been granted relief by this Tribunal in the OAs cited which were upheld and a specific direction was given by the Hon'ble Madras High Court to formulate a Scheme similar to the 1993 Scheme in respect of the applicants therein though they were all appointed after 1993. The Civil Appeals filed by the respondents in the Hon'ble Apex Court have not only been dismissed but the Hon'ble Apex Court recorded in their order that they expected the appellants to implement the order of the Hon'ble High Court within three months.

8. A perusal of the facts of the precedent cases would indicate that similar pleas were taken by the respondents to reject the claim for temporary status such as the appointments having been made without any proper procedure and sanctioned post and the applicants not being covered by the 1993 scheme etc. The orders of the Courts do not indicate that they were meant to be order/judgment in personam as the observations are more in the nature of the rights of the applicants under Article 14 and 16 of the Constitution and, therefore, must be regarded as judgment in rem.

9. The Hon'ble Apex Court has, in its judgment dated 17.10.2014 in the case of ***State of U.P. & Ors vs. Arvind Kumar Srivastava & Ors – CA 9849/2014*** enumerated the legal principles for dealing with requests made by similarly placed persons in the following terms:

“23) The legal principles which emerge from the reading of the aforesaid judgments, cited both by the applicants as well as the respondents, can be summed up as under:

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach in the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognised exceptions in the form of latches and delays as well as acquiescence. Those persons who did not challenge the wrongful action their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated

persons be extended to them. They would be treated as fencesitters and latches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see **K.C.Sharma & Ors. V. Union of India** (supra)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either latches and delays or acquiescence.”

10. The respondents have relied upon the law laid down by the Hon'ble Apex Court in Union of India Vs Arulmozhi Iniarasu and others. However, from the extract of the portion of the order relied upon by the respondents it is not clear whether the relevant observations were made by the Hon'ble Supreme Court in the case of persons similarly placed as the applicants in the respondent department or in respect of some other case. In any case, since in respect of the most recent order in the relevant case of the Hon'ble Madras High Court, the Hon'ble Apex Court dismissed the case of the respondents by an order dated 19.04.2018, it would appear that the applicants are entitled to be treated similar to the applicants in the said case.

11. In view of the above, the respondents are directed to consider the claim of the applicants on par with the applicants in the relevant OAs and the respondents in the WP before the Hon'ble Madras High Court and the Hon'ble Apex Court

unless sufficient facts are available to distinguish their cases and pass an order regarding temporary status within a period of three months from the date of receipt of copy of this order.

12. OA is disposed of with the above directions. No costs.

(R. Ramanujam)
Member(A)
06.12.2018

AS