IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: AT HYDERABAD

RA/021/00034/2019
In
OA/021/0739/2017

Date of Order: 21.10. 2019

Between:

K. Durga Mani
Aged about 59 years
W/o (Late) Sri K. Dasaradh, Peon-cum-Sweeper
Regional Development Monitoring & Evaluation Office (RDMEO)
NITI AAYOG, Kendriya Sadan, Sultan Bazar,
Hyderabad – 500 095.
R/o H.No.3-4-411/D, Kachiguda `X' Roads
Basanth Colony, Kasiram Jira, Hyderabad-500 027. …. Applicant

AND

1. The Union of India
   Represented by the Chief Executive Officer
   NITI AATOG, Yojana Bhawan
   Parliament Street,
   New Delhi – 110 001.

2. The Director
   Regional Development Monitoring & Evaluation Office (RDMEO)
   NITI AAYOG, Kendriya Sadan, Sultan Bazar, Hyderabad-500 095.

3. Smt. M. Shiva Kumari
   Aged about 54 years
   W/o Sri M. Pentaiah, Peon/MTS
   Regional Development Monitoring &
   Evaluation Office (RDMEO)
   NITI AAYOG, Kendriya Sadan,
   Sultan Bazar, Hyderabad-500 095. … Respondents

Counsel for the Applicant … Mr. T. Koteswar Rao
Counsel for the Respondents … Mr. A. Surender Reddy, Addl. CGSC
Dr. A. Raghu Kumar for R-3

CORAM:
Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER (By Circulation)
{As per Mr. B.V. Sudhakar, Member (Admn.)}

2. The RA is filed seeking review of the judgment delivered by this Tribunal in OA 739 of 2017, dt. 13.08.2019. The operative portion of the order is as under:

> *"7. I) Applicant's main ground is that she is similarly placed like the 3rd respondent and hence her services are to be regularised. However, the essential differences are that the 3rd respondent was having the required educational qualification of 8th standard, i.e., middle school, as required under the recruitment rule (Page 34 of reply statement) whereas applicant did not. As per the Transfer certificate she was only studying 8th standard (Annexure – IX). Further she was 34 years old when she was engaged in 1992 as per part time sweeper and hence over aged as per recruitment rules. Hence the applicant is not similarly situated like the 3rd respondent to claim the relief sought. The regularisation of the 3rd respondent was consequent to detailed legal scrutiny and orders of the Honourable High Court of A.P in the writ petition cited supra.*
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> *II) Besides, Uma Devi judgment does not come to her support since the applicant was not engaged against a sanctioned post and was not duly qualified as per recruitment rules. Para 44 of the judgment, extracted here under, drives home the point referred to :*
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> > *"44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.*
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> *III) Respondents also relied on this para in support of their contentions and they have made it clear that the applicant was never given any order of regular appointment. Her wages were drawn and paid as per wages prescribed by the State Govt.*

IV) Moreover, to create or not to create a post comes under the policy ambit of the respondents Organisation and, hence, cannot be called into question on grounds of arbitrariness.

V) Besides, applicant banked on Section 15 of the Minimum Wages Act of 1948 to press forth her claim which states as under:

> *"15.* ***Wages of worker who works for less than normal working day****.- If an employee whose minimum rate of wages has been fixed under this Act by the day works on any day on which he was employed for a period less than the requisite number of hours constituting a normal working day, he shall, save as otherwise hereinafter provided, be entitled to receive wages in respect of work done by him on that day as if he had worked for a full normal working day:*
>
> *Provided, however, that he shall not be entitled to receive wages for a full normal working day—*
>
> *(i) in any case where his failure to work is caused by his unwillingness to work and not by the omission of the employer to provide him with work, and*
>
> *(ii) in such other cases and circumstances as may be prescribed."*

The said section only speaks of granting full wages under Minimum Wages Act but does not in any way support her contention to regularise her services. Hence, it is not relevant to the case.

VI) Lastly, learned counsel for the respondents has vehemently argued that the representation dated 5.12.2016 was never received by the respondents organisation. There is no record submitted by the applicant to confirm that the respondents have received the representation. Respondents admitted that representations were received only for enhancement of wages intermittanlty.

VII) Therefore, based on the aforesaid circumstances the OA being devoid of merit, merits dismissal and, hence, dismissed with no order as to costs. "

3. As no hearing is considered necessary, the Review Application is being disposed under circulation as per Rule 17(3) of the C.A.T. (Procedure) Rules.

4. The Tribunal after examining all the contentions raised in the OA has come to the conclusion in the OA. The contentions raised in the RA do not call for any further intervention by this Tribunal. There is no error apparent on the face of the record in the order passed in OA. Thus, this Tribunal does not find any grounds to review the judgment.

5. Further, a plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon. A forensic defeat cannot be avenged by

an invitation to have a second look, hopeful of discovery of flaws and reversal of result. [Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi, (1980) 2 SCC 167]. Further, Hon'ble Apex Court in the case of State of W.B. vs Kamal Sengupta (2008) 8 SCC 612 has held as under:-

" 35. *The principles which can be culled out from the above noted judgments are:*

(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.

(vii) While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.

6. In view of the above observations and the law laid down by the Hon'ble Supreme Court (*supra)*, RA is devoid of merit and hence, merits dismissal and is accordingly dismissed, in circulation. No order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated: the 21st October, 2019

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