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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: May 20, 2013

+ **W.P.(C) 8081/2012**

UNION OF INDIA & ORS.

..... Petitioners

Represented by: Mr.S.U Abbas, Advocate

versus

RAJ KUMAR

..... Respondent

Represented by: Mr.S.K Gupta and Mr.Vikram
Singh, Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J. (Oral)

1. Respondent Raj Kumar is a casual labour engaged in the office of CCIT, Ghaziabad. He was granted temporary status on August 26, 1996. His grievance before the Tribunal was non regularization by extending the benefit of judgment of this Court dated September 10, 2010 in Writ Petition (Civil) No.13013/2009. The said writ petition was filed by 5 casual labours who were primarily aggrieved by regularization of 88 casual labours including persons junior to them. The 5 casual labours filed O.A No.842/2009 before the Tribunal. The Tribunal dismissed their O.A vide

order dated July 31, 2009. Two of these five casual labours i.e. Lala Ram and Kanhaiya Lal challenged the Tribunal's order before this Court in writ petition No.13013/2009. This Court while allowing the writ petition has held as under:

“Thus a fraud which was perpetuated by the respondents was rightly made the subject matter of a grievance by the petitioners when they filed Original Applications in the year 1997. Needless to state they won. Thus, the Tribunal is completely wrong in holding that merely because the petitioners had to resort to an earlier litigation, their claim for regularization stood differently viz-a-viz the others whose services were regularized. The long and short of it is that the petitioner No.1 joined as a daily wager in the year 1992. Petitioner No.2 joined as a daily wager in the year 1993. Persons appointed in the year 1997 and the last person to be appointed, namely, Shiv Dayal who was appointed as a daily wager on 19.12.1997 has been regularized in service.

Petitioners cannot be discriminated against. Suffice would it be to state that the respondents have not denied that persons junior to the petitioners have been regularized in service.

Accordingly, we allow the writ petition and set aside the impugned order dated 31.07.2009. OA No.842/2009 filed by Lala Ram and Kanhaiya Lal (alone) is allowed. Mandamus is issued to the respondents to forthwith regularize the services of Lala Ram and Kanhaiya Lal w.e.f. 30.01.2009 i.e. the date when services of 88 daily wagers were regularized.

Petitioners would be entitled to all consequential benefits w.e.f. 30.01.2009.”

2. The above judgment of this Court was implemented by the respondents vide order dated February 18, 2011 whereby the services of Lala Ram and Kanhaiya Lal were regularized as Peons with all consequential benefits.

3. The petitioner had got issued a legal notice through his counsel on October 18, 2011 and wherein he made a claim for regularization on the basis of the fact that persons junior to him have been regularized. He has also called upon the petitioners to comply with directions of this Court in writ petition No.13013/2009 dated September 10, 2010. The petitioners vide their communication dated December 13, 2011 by referring to DoP&T instructions issued vide O.M dated December 11, 2006 rejected the request of the respondent. The Tribunal rejected the stand of the petitioners in the impugned order and was of the following view:-

“The respondents’ reiteration of the case of the applicant being barred, as once disengaged he had been reengaged and given Temporary Status in pursuance of judicial directions is no more tenable in the light of the view taken by the Hon’ble Delhi High Court in Lala Ram’s case. The factual matrix of the two cases virtually remains the same.

The other ground taken about the SLP by the Department, the same stands dismissed vide the Apex Court’s Order dated 2.1.2012. Similarly, the plea adduced by the Respondents’ counsel about the directions of Delhi High Court in Lala Ram’s case being restricted only to the petitioners therein, is not found acceptable. The Delhi High Court in another Writ Petition (C) No.8546/2011 Uma Shankar & Anr vide its order dated 27.7.2012, on the other two applicants of the OA No.842/2009 i.e Uma Shankar and Rajiv Kumar rejected such a plea and considering them similarly situated granted the same relief as to Lala Ram and Kanhaiya Lal.

We also would not set store by the contention by Shri V.K. Uppal, the learned counsel for the respondents, that the order dated 30.10.2009 has to be taken as a general order and the actual regularizations were done by respective appointing authorities. Further, it would be submitted that in Ghaziabad where the applicant has been working, no one had been regularized after Shri Daya Shankar. However, a reading of the order shows that this was an exercise on the basis of the entire Western U.P. Region comprising various offices. The order of regularization had been done by the order of the Chief Commissioner, Income Tax, U.P., Western Region and the respective authorities had a limited role to verify various certificates before issuing the appointment letters.

The applicant who had initially been engaged in 1995 and completed 206 days as on 16.8.1996 was certainly senior to many others included in the list (Sl. 55 to 88). The fact of his having been disengaged in 2000 and being re-inducted on the directions of the Tribunal w.e.f. 19.1.2001 followed by Temporary Status certainly goes in his favour; applying the view taken in the matter by the Delhi High Court in Lala Ram's case."

4. Learned counsel for the petitioner would reiterate the submissions made before the Tribunal. Mr.S.K Gupta, learned counsel for the respondent has brought to our attention the order passed by this Court dated September 10, 2010 in writ petition No.13013/2009, a reference of which has been given above.

5. In view of the fact that this Court has already concluded that when persons junior, are regularized senior can't be discriminated, the petitioners in the said writ petition were granted the relief. It is noted that the respondent was engaged in the year 1995 and completed 206 days as on August 16, 1996 and was senior to many others included in the list (serial No.55 to 88), and has been granted temporary status, the Tribunal had

rightly granted the relief. We do not see any merit in the writ petition. The same is, accordingly, dismissed.

6. No costs.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

MAY 20, 2013
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