In the High Court of Judicature at Madras

Dated : 17.3.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice P.R.SHIVAKUMAR

Writ Petition No.1107 of 2015

S.Murugesan ...Petitioner

Vs

1.The Union of India, rep.by Chief Commissioner of Central Excise, Chennai-34.

2.The Commissioner of Central Excise & Service Tax, No.1, Williams Road, Cantonment, Tiruchirapalli-620001.

3.The Registrar, Central Administrative Tribunal, Madras Bench, Chennai-104. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records in O.A. No.1322 of 2011 dated 28.8.2014 on the file of the Central Administrative Tribunal, Chennai confirming the order passed by the second respondent dated 8.10.2009 in C.No.11/31/10/2009-Estt, quash the same and further direct the respondents to reinstate the petitioner with continuity of service by granting temporary status.

For Petitioner : Mr.V.Chandrakanthan
For Respondents 1 & 2 : Mr.T.Chandrasekaran, SPC

Order of the Court was made by V.Ramasubramanian,J

The petitioner has come up with the above writ petition, challenging an order of the Central Administrative Tribunal rejecting the request of the petitioner for regularisation.

2. Heard Mr.V.Chandrakanthan, learned counsel for the petitioner and Mr.T.Chandrasekaran, learned Senior Panel Counsel appearing for the respondents 1 and 2.

3. The petitioner was appointed as a casual labourer by the

proceedings dated 28.12.1999 and he joined duty on 3.1.2000. After a continuous service for about 8 years, he made a representation for granting the benefit of regularisation on par with other employees, who had secured court orders. The representation was disposed of, forcing him to file an application. The said application O.A.No.180 of 2008 was disposed of directing the respondents to dispose of the representation of the petitioner.

4. In pursuance of the said direction, the second respondent passed an order dated 8.10.2009 rejecting the request. Challenging the said order, the petitioner filed another application in O.A.No.1322 of 2011 on the file of the Central Administrative Tribunal, Madras Bench. The said application was dismissed by the Tribunal, forcing the petitioner to come up with the above writ petition.

5. The main plank of the argument of the petitioner is that under the scheme in OM.No.51016/2/90 Estt (C) dated 10.9.1993, the case of the petitioner deserves to be considered. The petitioner also relies upon the directions issued in cases of other persons identically placed like him.

6. We have carefully considered the above submissions.

7. Unfortunately for the petitioner, the Supreme Court has made it clear in the decision in Union of India Vs. Mohal Pal [AIR 2002 SC 2001], that the scheme dated 10.9.1993 of the Central Government for regularisation of the services of casual labourer was not an ongoing regularisation scheme and that it was only a one time measure. The relevant portion of the said judgment has been extracted by the Central Administrative Tribunal and the same reads as follows :

> "The scheme of 1.9.1993 is not an ongoing scheme and the temporary status can be conferred on the casual labourers under that scheme only on fulfilling the conditions incorporated in clause 4 of the scheme, namely they should have been casual labourers in employment on the date of commencement of the scheme and they should have rendered continuous service of at least one year i.e. at least 240 days in a year or 206 days (in case of offices having 5 days a week). We also make it clear that those who have already been given 'temporary' status on the assumption that it is an ongoing scheme shall not be stripped of the 'temporary' status pursuant to our directions."

8. Therefore, the Tribunal was right in rejecting the request of the petitioner in the light of the above decision of the Supreme

Court, in as much as the petitioner came to be appointed seven years after the one time scheme came into force. As the Supreme Court has repeatedly pointed out, appointment of casual labourers and regularisation of their service after some time are not one of the accepted modes of recruitment.

9. Relying on a decision of a Division Bench of this Court in Union of India Vs. Rita Mary [W.P.No.16733 of 2009 etc. cases dated 19.7.2011], the learned counsel for the petitioner contended that the Division Bench of this Court has issued directions, after considering the decision of the Supreme Court.

10. We have carefully gone through the said decision of the Division Bench of this Court. The Division Bench, in that case, was concerned with the cases of persons, who were appointed both before and after the 1993 Scheme. The applicability of the ratio laid down in Mohan Pal was not doubted by the Division Bench as seen from paragraph 115 of the decision.

11. However, the Division Bench chose to issue a direction in the penultimate paragraph of its decision in Rita Mary that the respondents should come up with yet another scheme, similar to the one dated 10.9.1993. In other words, there was no positive direction in the said case to regularise the services of the individuals. It was a direction for the Department to consider the framing of yet another scheme. If such a scheme is ever issued, it will always be open to the petitioner also to seek the same benefit.

12. The learned counsel for the petitioner relies upon another decision in Union of India Vs. Central Administrative Tribunal [W.P.Nos.21485 and 21486 of 2010 dated 21.9.2010]. In the said decision, the contesting respondents were already granted the benefit of temporary status pursuant to the orders passed in the first round of litigation. Therefore, they had acquired a right under the Statutory Rules and hence, the said decision may have no application to this case.

13. The second decision relied upon by the learned counsel is actually in tune with the decision in Mohan Pal, the relevant portion of which, we have extracted earlier. Hence, we find no reason to interfere with the order of the Tribunal.

14. Accordingly, the writ petition is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1.The Chief Commissioner of Central Excise, Chennai-34.
2.The Commissioner of Central Excise & Service Tax, No.1,
Williams Road, Cantonment, Tiruchirapalli-620001.
3.The Registrar, Central Administrative Tribunal,Madras Bench,
Chennai-104.

1 cc to Mr. Mr.V.Chandrakanthan,Advocate, SR.No.19839
1 cc to Mr.T.Chandrasekaran, ,Advocate, SR.No.19898

RS

W.P.No.1107 of 2015

vsn(co)
pmk.24.3.2015