

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2015

CORAM:

THE HON'BLE MR.JUSTICE M.JAICHANDREN
AND
THE HON'BLE MR.JUSTICE T.MATHIVANAN

W.P. No.4459 of 2015
and
M.P.No.1 of 2015

V.Devi

...Petitioner

vs.

1. Union of India
Rep. By the Joint Secretary to the Government,
Ministry of Law and Justice,
Department of Legal Affairs,
4th Floor, 'A' Wing, Shastri Bhawan,
New Delhi-110 001.

2. The Deputy Secretary to the Government,
Government of India,
Ministry of Law and Justice,
Department of Legal Affairs,
4th Floor, 'A' Wing, Shastri Bhawan,
New Delhi-110 001.

3. Deputy Legal Advisor,
Government of India,
Ministry of Law and Justice,
Department of Legal Affairs,
Branch Secretariat, Chennai.

4. The Registrar,
Central Administrative Tribunal at Chennai,
Chennai.

...Respondents

Prayer: Writ Petition is filed to issue a writ of certiorarified mandamus to call for the records relating to the Order dated 30.12.2014 made in O.A.No.816 of 2013 on the file of the Registrar,

Central Administrative Tribunal, Madras Bench, Chennai, the 4th respondent herein and consequently direct the respondent Nos.1 to 3 to regularize the service of the petitioner as a Sweeper or Multi Task Service (MTS-Group C) or as a Peon or in any other suitable post with all consequential benefits.

For Petitioner : Mr. M.T. Arunan for
Mr.Y.Praakash

For Respondents : Mr. Su. Srinivasan / ASGI
for R1 to R3

R4 - Tribunal

ORDER

[Order of the Court was made by M.Jaichandren, J.]

Heard the learned counsels appearing on behalf of the parties concerned.

2. This Writ Petition has been filed by the petitioner challenging the order of the Central Administrative Tribunal, Madras Bench, Chennai, dated 30.12.2014, made in O.A.No.816 of 2013.

3. The petitioner had filed the Original Application, in O.A.No.816 of 2013, before the Tribunal praying for a direction to direct the respondents to regularise the services of the petitioner as a Sweeper or MTS (Group-C) or as a Peon or in any other suitable post, with all consequential benefits and for further orders.

4. It has been stated that the mother of the petitioner, namely, Adhilakshmi had been working as a sweeper on part-time basis in the office of the third respondent for about 35 years. She had died on 4.1.2006, while in service. As the mother of the petitioner had not been regularised in service, no terminal benefits had been paid to her legal heir including the petitioner. The petitioner belongs to the scheduled caste community. She had been appointed by the third respondent, as a part-time Sweeper cum Scavenger, with effect from 15.1.2006. Thereafter, she had been appointed as a full time menial staff from 1.6.2006 and she had been allotted several works such as making/serving tea to the officers, staff and other department representatives, for maintaining cleanliness of the office premises and for attending to the officers and the staff as and when such services were required.

5. It had been further stated that the petitioner made a number of representations to the authorities concerned for regularising her services. Even though she was entitled to be regularised the third respondent instead of regularising her service had recommended her name to be continued in service sponsored through M/s.Urban-Rural Outsourcing Consultancy. However, the petitioner had declined to accept the said offer. In such circumstances, the petitioner had preferred an Original Application before the Central Administrative Tribunal, Madras Bench, in O.A.No.816 of 2013 for the regularisation of her services and for other consequential benefits. By an order, dated 30.12.2014, the said Tribunal had dismissed the Original Application filed by the petitioner stating that she was not entitled to regularisation of her service, as she had no vested right for seeking such a relief. Referring to a number of decisions of the Supreme Court the Tribunal had held that it is well settled position of law that no person can seek a relief for the regularisation of his/her services merely on the ground that the said person had rendered service for a number of years. It had been held that all recruitments should be made in accordance with the provisions of the service rules applicable to the service in question except in certain exceptional cases.

6. Mr.Y.Prakash, the learned counsel appearing on behalf of the petitioner had vehemently argued that the services of the petitioner ought to have been regularised, as she had put in a number of years of service as a menial staff on full time basis under the third respondent. The denial of the request of her services by the third respondent is arbitrary and illegal. He had further submitted that the mother of the petitioner had also been working as a Sweeper/Scavenger for a period of nearly 35 years, without being regularised in service. She had died on 4.1.2006. Therefore, the petitioner had been employed by the third respondent, taking into consideration the indigent circumstances of the petitioner and her family members. Even though the petitioner has been working for a number of years under the third respondent as a full time menial staff, she had not been regularised in service. Instead she had been asked to continue her service through an outsourcing agency, arbitrarily. It is highly unfair on the part of the authorities concerned to deny the petitioner the relief of regularisation of her service. In fact such an act on the part of the authorities concerned would amount to the violation of her fundamental rights enshrined in the Constitution of India. It would also amount to violation of human rights of the petitioner including the right to live.

7. The learned counsel had further submitted that the Tribunal had passed the impugned order, dated 30.12.2014, in O.A.No.816 of 2013, erroneously, without following the rules and regulations applicable to the services of the petitioner. The petitioner ought to have been regularised in service on compassionate grounds, as her mother had died while in service and that the petitioner and her family members were in indigent circumstances. In spite of several representations having been made the respondents had not considered the request of the petitioner for the regularisation of her services. As such, the impugned order of the Tribunal, dated 30.12.2014, made in O.A.No.816 of 2013, rejecting the request of the petitioner for the regularisation of her services ought to be set aside by this court and a direction ought to be issued to the authorities concerned for regularising the services of the petitioner and for providing the consequential benefits.

8. Per contra, the learned counsel appearing on behalf of the respondents had submitted that the petitioner had no vested right for the regularisation of her services. She was working only as a temporary menial staff, for a few days in a month. The petitioner had not been employed on a permanent basis in a sanctioned post. No service rules were applicable to her services. The appointment and continuation of the petitioner, as a menial staff, under the third respondent was purely temporary in nature. While so, it was not open to the petitioner to seek the regularisation of her services under the third respondent.

9. The learned counsel had further submitted that the Central Administrative Tribunal, Madras Bench, Chennai, had rightly held by its order, dated 30.12.2014, in O.A.No.816 of 2013, that the petitioner cannot seek regularisation of her services, as she had no vested right to seek such a relief. The Tribunal had relied on several decisions of the Supreme Court wherein it had been held that there is no vested right to seek regularisation of the service of the person concerned, even though the said person might have continued in such service for several years, especially, when the appointment had been made without following the rules and regulations applicable to such appointment and when such appointments had not been made in a sanctioned post.

10. In the decisions cited by the Tribunal it had also been made clear that unless the person had been appointed by following the service rules applicable to such appointment and even if such appointment had been made in a sanctioned post the person concerned cannot seek regularisation of his services, even though he had been employed for a number of years. Therefore, it had been held that

the writ petition filed by the petitioner seeking the regularisation of the services of the petitioner is devoid of merits.

11. In view of the submissions made by the learned counsels appearing on behalf of the parties concerned and on a perusal of the records available, it could be noted that the petitioner had been appointed as a full time menial staff under the third respondent. Even though the petitioner had been employed for a number of years, as claimed by her, she cannot have any vested right to seek relief of regularisation of her services. It is not in dispute that the petitioner had not been employed as per the relevant service rules applicable to such appointment. Further, the petitioner has not been in a position to show that the appointment of the petitioner was in a sanctioned post by following the necessary procedures.

12. It is a well settled position in law that a person, who had been appointed, temporarily, without following the service rules applicable to such appointment, cannot seek the relief of regularisation of the services even though he had been employed for a number of years. Only when the appointments are made in respect of the sanctioned post by following the relevant rules of recruitment, the person concerned would seek the regularisation of his services if he had been employed on a temporary basis for a number of years. As there is no vested right in the petitioner for seeking the relief of regularisation of her services, as she had not been appointed in a permanent sanctioned post, by following the relevant service rules applicable to such appointment, the relief prayed for by the petitioner cannot be granted. As such, we do not find any cause or reason to interfere with the decision of the Central Administrative Tribunal, Madras Bench, Chennai, dated 30.12.2014, made in O.A.No.816 of 2013. In such circumstances, the present writ petition is devoid of merits and therefore, we are inclined to dismiss the writ petition. Hence, it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

csH

To

1. The Joint Secretary to the Government,
Union of India,
Ministry of Law and Justice,
Department of Legal Affairs,
4th Floor, 'A' Wing, Shastri Bhawan,
New Delhi-110 001.

2. The Deputy Secretary to the Government,
Government of India,
Ministry of Law and Justice,
Department of Legal Affairs,
4th Floor, 'A' Wing, Shastri Bhawan,
New Delhi-110 001.

3. Deputy Legal Advisor,
Government of India,
Ministry of Law and Justice,
Department of Legal Affairs,
Branch Secretariat, Chennai.

4. The Registrar,
Central Administrative Tribunal at Chennai,
Chennai.

1 CC to Mr.Y.Prakash, Advocate SR.No. 27575

SV (CO)
PSI (07.08.2015)

W.P. No.4459 of 2015

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