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

+ **W.P. (C) 9922/2015**

% *Date of Judgment: 19th October, 2015*

VIKRAM PRASAD

.....Petitioner

Through : Mr. M. K. Singh, Advocate

Versus

UNION OF INDIA & ORS.

.....Respondents

Through : Mr. Ruchir Mishra and
Mr. Mukesh Kumar,
Advocates.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J.

C.M. APPL. 24071/2015

1. Exemption allowed subject to just exceptions.
2. Application stands disposed of.

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3. The present writ petition challenges the correctness of the order dated 05.08.2015 passed by the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal') in O.A. 1642/2013, whereby the Tribunal dismissed the said O.A. filed by the petitioner.

4. The facts of the present case are as under:

"The applicant was initially employed as a casual worker on 25.03.1997 with the respondents. According to him, he was paid at the rate of daily wage out of contingency fund on muster roll. Sanction for his engagement was for a period of 89 days, which was extended from time to time after giving a technical break of a day or two. He continued up till

18.10.2007 after which he was disengaged on verbal orders. On 03.09.1997 the respondents had employed one Smt. Kusum Singh in his place. The applicant approached this Tribunal by filing O.A. 1811/2007. This was disposed of by the Tribunal at the admission stage itself on 21.02.2008 with a direction to the respondents to consider the case of the applicant for regularization in accordance with exceptions set out by the Apex Court in their judgment in the case of State of Karnataka & Ors. Vs. Umadevi & Ors., 2006 (4) SCC 1. The respondents were directed to decide the claim of the applicant by passing a speaking order. The respondents in compliance thereof passed order dated 21.04.2008 rejecting the claim of the applicant. Meanwhile, DoP&T issued O.M. No. 49019/1/2006-Estt. (C) dated 11.12.2006 pursuant to the judgment of Hon'ble Supreme Court in the case of Umadevi (supra). By this O.M. directions were given to the Ministries to regularize as a onetime measure the services of such irregularly appointed and duly qualified persons who have worked for 10 years or more against duly sanctioned post without the protection of orders of any Court or Tribunal. In compliance of these directions, the respondent No.2 issued a circular on 06.11.2008 to their subordinate offices to take action accordingly. When the applicant came to know about the circulars, he made a representation to the respondents on 28.12.2011 stating therein that he was fully covered by the directions of Hon'ble Supreme Court in the case of Umadevi (supra) as well as Apex Court's directions in the matter of State of Karnataka & Ors. Vs. M.L. Kesari & Ors., 2010 (9) SCC 247 in which it has been held that process of regularization as a onetime measure cannot be regarded as completed till all eligible persons who have a right to be considered in terms of Para-53 of Umadevi's case are so considered. However, the respondents did not give any reply to the same. Meanwhile, on 04.01.2013, respondent No.2 issued another circular to its subordinate offices calling for information about all the left over cases of regularization of casual labourers."

5. Mr. M. K. Singh, learned counsel appearing on behalf of the petitioner submits that the order passed by the Tribunal is unjust, illegal, arbitrary and against the principles of natural justice.
6. The counsel for the petitioner strongly urged that the period of limitation should be considered from the date of circular dated 04.01.2013 issued by the respondent No.2 and not from the decision of O.A. 1811/2007 dated 21.02.2008. The counsel for the petitioner has further submitted that it was a fit case where the delay ought to have been condoned and the Tribunal has committed an error in not entertaining the O.A. on merits.
7. To substantiate his arguments learned counsel for the petitioner has relied upon ***State of Karnataka & Ors. Vs. Umadevi & Ors., 2006 (4) SCC 1*** wherein para 53 of the judgment the Hon'ble Supreme court observed as under:

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa AIR 1967 SC 1071, R.N. Nanjundappa (1972) 1 SCC 409 and B.N. Nagarajan (1979) 4 SCC 507 and referred to in para 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 the courts or of tribunals. The question of regularisation 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 regularise 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 the 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 regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.”

8. The counsel for the petitioner vehemently urged that the petitioner has a right to be considered for regularization in terms of the exceptions carved out by the Apex court in the above mentioned case and not considering the claim of petitioner amounts to violation of the settled law.
9. The counsel for the petitioner also relied on ***State of Karnataka & Ors. Vs. M.L. Kesari & Ors., 2010 (9) SCC 247*** wherein the Apex Court held if the employees who have completed ten years service do not possess the minimum educational qualification prescribed for the post, at the time of their appointment, they may be considered for regularization in suitable lower posts.
10. Per contra, Mr. Ruchir Mishra counsel for the respondents emphasised on the aspect of delay and laches, and submitted that the claim of the petitioner is hopelessly barred by the limitation as there was a considerable delay of 5 years in approaching the Tribunal.
11. The counsel on behalf of the respondents further contended that the petitioner has failed in submitting any certificate to establish that

he fulfilled the minimum educational qualification required for holding Group-D post.

12. The counsel for the respondent further submitted that the claim of the petitioner does not get covered under the exceptions carved out by Apex Court in para-53 of *State of Karnataka & Ors. Vs. Umadevi & Ors., 2006 (4) SCC 1*.
13. We have heard the counsel for both the parties at length and considered their rival submissions. We have also examined the impugned order passed by the learned Tribunal. It is the case of the petitioner that he was wrongfully disengaged from service by the respondents and seeks reinstatement in service with substantive absorption by regularizing him in terms of the exceptions carved out in the case of Umadevi (supra). It would be useful to reproduce Para 4.1 and 4.2 of the judgment of the Tribunal, which read as under:

“4.1 The applicant had earlier approached this Tribunal by filing O.A. 1811/2007 seeking consideration of his claim for regularization in terms of Hon’ble Supreme Court’s judgment in the case of Umadevi (supra). The respondents were directed to consider the claim of the applicant accordingly by this Tribunal on 21.02.2008 by means of a speaking order. In compliance thereof, the respondents had considered the case of the applicant and rejected the same vide their order dated 21.04.2008. If the applicant was aggrieved by the aforesaid order, he should have challenged the same within limitation period. He did not do so. His contention that the circular dated 04.01.2013 of respondent No.2 regarding consideration of left over cases gives rise to a fresh cause of action in his case is not acceptable since his case had already been considered and rejected in terms of Apex Court’s judgment in the case of Umadevi (supra). Hence, in our opinion, this case is

barred by limitation as the O.A. was filed only on 10.05.2013 i.e. almost 05 years after rejection of his case on 21.04.2008.

4.2 Even on merits, we do not find substance in the case of the applicant. A perusal of the record of the department reveals that the applicant was engaged as a casual labourer to do the work of seasonal and intermittent nature for which it was not possible to create regular post. Thus, it is obvious that the applicant was not working against any sanctioned post. Moreover, in his O.A. he has not submitted any certificates to establish that he fulfils the educational qualification required for holding Group-D post. Thus, his case does not appear to be covered by the exceptions carved out by Apex Court in Para-53 of their judgment in the Umadevi's case (supra). In that case the exceptions contained in Para-53 were those, which were covered by the following conditions:-

- (a) The employee concerned should have worked for 10 years or more.*
- (b) He should have worked against a sanctioned post.*
- (c) He should possess the prescribed minimum qualifications.*

From the above, it is obvious that the applicant herein did not fulfill all the conditions to qualify for consideration under exceptions carved out in Para-53 of the judgment because he did not work against a sanctioned post and also because he has not produced certificates to establish that he possesses the educational qualifications for holding a Group-D post."

14. At the outset, before delving into merits of the submission made by the counsel for both the parties it would be relevant to consider the settled position of Law. The issues of limitation, delay and laches as well as condonation of such delay are being examined and explained every day by the Courts. It is true that

the general rule of limitation is based on Latin maxim ***“Vigilantibus et non dormientibus, jura subveniunt”*** which means the law assists those who are vigilant with their rights and not those who sleep thereupon. Also, the law of limitation is enshrined in the legal maxim ***“Interest reipublicae ut sit finis litium”*** which means it is for the general welfare that a period be put to litigation. Rules of Limitation are not meant to destroy the rights of the parties; rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

15. In ***State of Karnataka and Ors. Vs. S.M. Kotrayya and Ors. (1996) 6 SCC 267***, the Hon’ble Supreme Court rejected the contention that a petition should be considered ignoring the delay and laches on the ground that he filed the petition just after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. The Court observed that such a plea is wholly unjustified and cannot furnish any ground for ignoring delay and laches.
16. Same view has been reiterated by the Apex Court in ***Jagdish Lal and Ors. Vs. State of Haryana and Ors. AIR 1997 SC 2366*** as under:

“Suffice it to state that Appellants kept sleeping over their rights for long and elected to wake-up when they had the impetus from Vir Pal Chauhan and Ajit Singh's ratios...Therefore desperate attempts of the Appellants to re-do the seniority, held by them in various cadre.... are not amenable to the judicial review at this belated stage. The

High Court, therefore, has rightly dismissed the writ petition on the ground of delay as well.”

17. In ***State of Uttar Pradesh Vs. Arvind Kumar Srivastava, (2015) 1 SCC 347*** the Hon’ble Supreme court held as under:

“24. Viewed from this angle, in the present case, we find that the selection process took place in the year 1986. Appointment orders were issued in the year 1987, but were also cancelled vide orders dated June 22, 1987. The Respondents before us did not challenge these cancellation orders till the year 1996, i.e. for a period of 9 years. It means that they had accepted the cancellation of their appointments. They woke up in the year 1996 only after finding that some other persons whose appointment orders were also cancelled got the relief. By that time, nine years had passed. The earlier judgment had granted the relief to the parties before the Court. It would also be pertinent to highlight that these Respondents have not joined the service nor working like the employees who succeeded in earlier case before the Tribunal. As of today, 27 years have passed after the issuance of cancellation orders. Therefore, not only there was unexplained delay and laches in filing the claim petition after period of 9 years, it would be totally unjust to direct the appointment to give them the appointment as of today, i.e. after a period of 27 years when most of these Respondents would be almost 50 years of age or above.”

18. After perusing the above case law, we are of the considered view that the courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However, the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a

condition precedent for exercise of discretion by the Court for condoning the delay. Courts have time and again held that when mandatory provision is not complied with and the delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone. The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. The fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both the parties and the said principle cannot be given a total go by in the name of liberal approach.

19. It is also a well settled principle of law that if some person has been granted relief on approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof approaching the court at a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.
20. In the instant case, after considering the facts and circumstances and the reasons for inordinate delay of more than 5 years, the Learned Tribunal did not find sufficient grounds to condone the delay on the part of the petitioner.
21. In view of the facts of the case and the above-cited judgments, we find no infirmity in the order of the Tribunal impugned before us and accordingly, the present writ petition being devoid of any merit is dismissed. No order as to costs.

C.M. APPL. 24072/2015 (Additional Documents)

22. In view of the order passed in the writ petition, the application is also dismissed.

G. S. SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

OCTOBER 19, 2015

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