

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.40388 of 2015
and
M.P.No.1 of 2015

- 1.The Chairman-cum-Managing Director
BSNL Corporate Office
Bharat Sanchar Bhavan
Janapath, New Delhi - 110 001
- 2.The Chief General Manager
BSNL, Chennai Telephones
78, Purasawalkam High Road
Chennai - 600 010 ... Petitioners

Vs.

- 1.The Registrar
Central Administrative Tribunal
City Civil Court Campus
High Court, Chennai - 600 104
- 2.G.Anbu
- 3.K.Olli ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari calling for the records of the 1st respondent in MA No.310/00624/2014 in RA in O.A.No.1371/2011 dated 14.07.2015 and to quash the same as illegal.

For Petitioners : Mr.Manoj Sreevalsan

For Respondents : Mr.Karthikraja
for Menon Karthik for R2 and 3
R1-Tribunal

ORDER

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this writ petition is to an order made in M.A.No.310/00624/2014 in R.A. in O.A.No.1371/2011, by which, the Central Administrative Tribunal, Madras Bench, declined to go into the merits of Miscellaneous Application, and while

doing so, directed the writ petitioners to take up the process of regularisation of respondents 2 and 3 herein, as expeditiously as possible, by observing that the certificates produced by them were found to be genuine, and that they were not terminated, on the date of filing of O.A.Nos.156 and 159 of 2012.

2. Earlier, when the matter came up for hearing, Mr.Karthik Raja, learned counsel representing Mr.Menon Karthik, learned counsel on record for the respondents 2 and 3, submitted that Service Verification Committee, has recorded a finding that the certificates of respondent No.2 were genuine. He further submitted that the said Committee has also found that the certificates of Mr.K.Olli, respondent No.3, were not genuine and accordingly, he has been communicated.

3. Mr.Karthik Raja, learned counsel for the respondents 2 and 3, further submitted that insofar as the relief granted in favour of respondent No.3/Mr.K.Olli, is concerned, he would not press the same. Submission of the learned counsel for the respondent 3 is placed on record.

4. Material on record discloses that respondents 2 and 3 and 46 others filed O.A.No.1371/2011 for a direction to the respondents therein/petitioners herein, to regularise them as Regular Muzdor in the second petitioner organisation from the date on which the applicants therein, were appointed as Temporary Status Muzdor (TSM), with all back wages, attendant and service benefits, and for a further direction to the respondents therein/petitioners herein, to take into account the services rendered by them, as Casual Labourers for Pensionary purpose and other benefits.

5. Challenging the legality and propriety of the order dated 07.02.2012, 51 casual labourers and muzdors, filed O.A.Nos.156 and 159 of 2012, for a direction to pay all service and attendant benefits without break in service.

6. During the course of hearing in original application No.1371/2011, contentions have been made that temporary status muzdors have been regularised as regular muzdors, and that they were similarly placed with that of the applicants therein, in O.A.Nos.156 and 159/2012, respectively.

7. After considering the rival submissions, the Tribunal, vide common order in O.A.Nos.156 and 159 of 2012 dated 22.06.2012, set aside the order dated 07.02.2012 and directed the respondents therein, to reinstate the applicants therein. The Tribunal also gave liberty to the respondents to hold regular enquiry to prove the genuineness of the certificates of date of birth, transfer certificate and other certificates and if the applicants prove the same, they would be entitled

for regularisation. The Tribunal also observed that if the applicants therein fail to establish that their certificates are not genuine, the official respondent No.1 was directed to take appropriate action, in accordance with law.

8. After considering the orders passed in O.A.Nos.156 and 159/2012 dated 22.06.2012, at paragraph No.24 of the said order, the Tribunal disposed of OA No.1371/2011 on 18.07.2012, in the following terms:

"2. The present applicants are the applicants in the earlier OA 156 & 159 of 2012. The relief in the present OA is for regularisation. In respect of regularisation of the service of the applicants we have already expressed in the earlier OA 156 & 159 of 2012 vide order dated 22.06.2012, para 24 of the said judgment reads as under:

" Accordingly, we are of the considered view that the impugned order dated 7.2.2012 is liable to be set aside and quashed and accordingly the same is set aside and quashed. The respondents are directed to reinstate the applicants into service within a period of four weeks from the date of receipt of a copy of this order. They are at liberty to hold a regular enquiry to prove the genuineness of the date of birth, transfer certificate and other certificates. If the applicants prove that they had produced the genuine certificates, they are entitled for regularisation. If the applicants fail to establish that their certificates are genuine, the respondents are at liberty to take appropriate decision in accordance with Rules."

3. The applicants in the earlier and present OA are similar. We have already expressed our opinion regarding the regularisation of the service of the applicants supra. Accordingly the respondents are directed to apply the Judgment in OA 156 & 159 of 2012 dated 22.06.2012 to the present OA also. Accordingly no orders are necessary in the present O.A. OA is disposed of. No costs."

9. Seeking review of the order made in O.A.Nos.156 and 159 of 2012, Chairman-cum-Managing Director, BSNL, New Delhi and two others, filed R.A.No.32/2012 in O.A.No.156/2012 contending inter alia that the observations and directions issued for regularisation require to be reviewed in the light of the judgments of the Hon'ble Apex Court in Secretary, State of Karnataka and others reported in AIR 2006 SC 1806 and State of Karnataka and others vs M.L.Kesari and others reported in AIR 2010 SC 2587.

10. Upon considering the submissions, vide order dated 12.09.2012, R.A.No.32/2012 in O.A.No.156/2012 has been dismissed, as hereunder.

" Our observations is if the applicants in OA No.156/12 and 159/12 prove that they had produced the genuine certificates, they are entitled for regularisation. We have not given mandatory direction to regularise the applicants in the OA. Our further observation in the impugned order, liberty is given to BSNL to take appropriate decision in accordance with rules. In the facts of the case, we are of the considered view it is for the applicants in this RA to challenge the order by way of a writ petition if they are aggrieved. We find that there is no error apparent on the face of the record and there is no arithmetical mistake crept in the order. We apply the principles laid down by the Hon'ble Supreme Court in the case of State of West Bengal & Others Vs. Kamal Sen Gupta & Another reported in 2008 AIR SCW 4294. Accordingly, the RA is dismissed at the admission stage."

11. During the course of hearing of the instant writ petition, when we posed a question to Mr.Manoj Sreevalsan, learned counsel for the petitioners, as to whether the order in R.A.No.32/2012 in O.A.No.156/2012 dated 12.09.2012 has been challenged by way of any writ petition, the answer is a clear 'No'. Inference is that the observations and directions of the Tribunal in the order made in O.A.Nos.156 & 159 of 2012 dated 22.06.2012 have been sustained. At the risk of repetition, paragraph No.24 of the common order in O.A.Nos. 156 & 159 of 2012 dated 22.06.2012 is reproduced hereunder:

"24. Accordingly, we are of the considered view that the impugned order dated 7.2.2012 is liable to be set aside and quashed and accordingly the same is set aside and quashed. The respondents are directed to reinstate the applicants into service within a period of four weeks from the date of receipt of a copy of this order. They are at liberty to hold a regular enquiry to prove the genuineness of the date of birth, transfer certificate and other certificates. If the applicants prove that they had produced the genuine certificates. they are entitled for regularisation. If the applicants fail to establish that their certificates are genuine, the respondents are at liberty to take appropriate decision in accordance with Rules."

12. Order directing the official respondents/writ petitioners herein, to conduct an enquiry to prove the genuineness of the birth certificate, transfer certificate and

other certificates, and if they prove the same, they are entitled for regularisation has reached finality, as early as on 12.09.2012, when the review petition came to be dismissed.

13. Material on record discloses that thereafter, the applicants in O.A.No.1371 of 2011/respondents herein, have filed M.A.No.310/2014 in RA in O.A.No.1371/2011, to condone the delay of 731 days, in filing an application, seeking to review the order dated 18.07.2012 passed in O.A.No.1371/2011, contending inter alia that the applicants therein, stand on a different footing, and that they came to be terminated on the grounds of production of bogus certificates and whereas, the certificates produced by the applicants in O.A.No.1371/2011 were found to be genuine.

14. Taking note of the submission of the learned counsel for the official respondents that verification of the certificates of the casual labourers, as directed by the Tribunal in O.A.Nos.156 and 159/2012, would likely to come to a logical conclusion, within a short period, and declining to go into the merits of the miscellaneous application to review the order made in O.A.No.1371/2011 filed by the applicants therein, vide order dated 14.07.2015 in M.A.No.310/00624/2014 in RA in O.A.No.1371/2011, the Tribunal disposed of the said miscellaneous petition, by observing that it is suffice to say that since the process of verification of the certificates produced by the casual labourer is likely to come to a logical conclusion, directed the respondents therein to take up the process of regularisation of the applicants therein, as expeditiously as possible, as the certificates produced by them, had been found to be genuine, and that they were not terminated, as on the date of filing of O.A.Nos.156 and 159 of 2012.

15. At the beginning of this order, we have already recorded the submission of the learned counsel for the private respondents that certificates of Mr.G.Anbu/respondent No.2 were found to be genuine and whereas, the certificates of Mr.K.Olli/respondent No.3 were found to be bogus. Contention of the writ petitioners that by virtue of the judgment of the Hon'ble Apex Court, in Omprakash's case that regularisation can be made only, as a one time measure and not thereafter, cannot be accepted, for the reason that it was not the plea of the writ petitioners, in the counter affidavit filed in O.A.No.1371/2011. Only after the disposal of O.A.No.1371/2011 dated 18.07.2012, and that too, in the review application filed, writ petitioners have introduced a new plea.

16. As regards regularisation, judgment rendered in O.A.Nos.156 and 159 of 2012 dated 22.06.2012 has been found to be equally applicable to the case of the applicants in O.A.No.1371/2011. The department/writ petitioners have not filed any review of the order made in O.A.No.1371/2011 or challenged the same by way of writ petition under Article 226

of the Constitution of India. Therefore, the order of the Tribunal directing regularisation has become final. In M.A.No.310/00624/2014 in RA in OA No.1371/2011 filed by the private respondents to condone the delay of 731 days, the Tribunal has only reiterated the earlier directions issued to the official respondents, to take up the process of regularisation, as expeditiously as possible. No fresh directions have been issued. Merely because the Tribunal has reiterated the directions issued earlier, that would not confer a right on the writ petitioners to resurrect the matters, which they have not chosen to challenge.

17. That apart, after considering the judgment of the Hon'ble Apex Court in State of Karnataka v. Umadevi (3) reported in (2006) 4 SCC 1, State of Karnataka v. M.L.Kesari reported in (2010) 9 SCC 247 and Nihal Singh v. State of Punjab reported in (2013) 14 SCC 65, and taking note of the length of service of the appellant therein, who was working in unsanctioned post, with effect from 1987, for more than 29 years, in Amarkant Rai vs. State of Bihar and others reported in (2015) 8 SCC 265, at paragraph Nos.13 and 14, the Hon'ble Apex Court, ordered as thus:

"13. In our view, the exception carved out in para 53 of Umadevi (3) is applicable to the facts of the present case. There is no material placed on record by the respondents that the appellant has been lacking any qualification or bore any blemish record during his employment for over two decades. It is pertinent to note that services of similarly situated persons on daily wages for regularisation viz. one Yatindra Kumar Mishra who was appointed on daily wages on the post of clerk was regularised w.e.f. 1987. The appellant although initially working against unsanctioned post, the appellant was working continuously since 3.1.2002 against sanctioned post. Since there is no material placed on record regarding the details whether any other night guard was appointed against the sanctioned post, in the facts and circumstances of the case, we are inclined to award monetary benefits to be paid from 1-1-2010.

14. Considering the facts and circumstances of the case that the appellant has served the University for more than 29 years on the post of night guard and that he has served the College on daily wages, in the interest of justice, the authorities are directed to regularise the services of the appellant retrospectively w.e.f. 3-1-2002 (the date on which he rejoined the post as per the direction of the Registrar)."

18. In yet another judgment, in Prem Ram vs. Managing

Director, Uttarakhand Pey Jal and Nirman Nigam, Dehradun and
<https://hcservices.ecourts.gov.in/hcservices/>

others reported in (2015) 11 SCC 255, the appellant therein was appointed in the year 1988, till the decision in State of Karnataka v. Umadevi (3) reported in (2006) 4 SCC 1, was decided and by the time, he had completed more than 10 years of service. Having regard to the service and regularisation given to his juniors, the Hon'ble Apex Court, directed that the appellant therein, would be entitled for regularisation, without any arrears of salary. It is to be noted that in the above reported case, when the Hon'ble Apex Court passed order, the appellant therein, had already attained superannuation. Paragraph Nos.9 and 10 in the said judgment are extracted.

9. From the affidavit filed, in compliance with the directions issued by this Court, it appears that the Government of Uttarakhand had framed Regularization Rules 2011 for regularization of daily-wagers and temporary employees who had been appointed on or before 1st November, 2011 and had completed 10 years of continuous service by that date. The said Rules were then adopted by the Board of respondent-Jal Nigam in terms of resolution passed in its 12th Meeting and approval of the State Government for implementation of the said Rules in the Nigam sought under Managing Director's letter dated 3rd March, 2012 addressed to the Principal Secretary, Peyjal Nigam, Government of Uttarakhand. While the approval of the Government was still awaited, the Government appears to have framed fresh Regularisation Rules in supersession of the Rules of 2011. These Rules are said to be under challenge before the High Court of Uttarakhand at Nanital in which the High Court appears to have passed certain interim orders also. From the affidavits it is further evident that five persons named by the appellant appearing at serials no.78 to 82 of the list of juniors have been regularized in service. It is not in dispute that all these persons were appointed on dates subsequent to the date of appointment of the appellant. The respondent, however, has attempted to justify the regularization of juniors mentioned above on the ground that they had been appointed in work-charge establishment whereas the appellant herein was a daily-wager. We asked learned counsel for the respondent as to whether daily-wagers on the basis of their seniority or otherwise were brought on to the work-charged establishment and if there was no such practice or procedure followed, what was the basis on which the department would decide whether the person has to be engaged on a work-charged establishment or as a daily-wager. We must regretfully say that we did not get a satisfactory answer to that question nor does any of the several affidavits filed in these proceedings by the respondent-Jal Nigam point out a qualitative difference between daily-wager on the one

hand and a temporary engagement on work-charged establishment on the other. If engagement in a work-charged establishment rest on a criterion, no better than the absolute discretion of the authority engaging them or the fortuitous circumstances of a vacancy or need in a work-charged establishment, then, there is indeed no difference between a daily-wager on the one hand and work-charged employees on the other. No distinction can resultantly be made between these two categories of employees for in essence, the nature of their engagement remains the same except that in the case of work-charged employees, the wages/emoluments appear to be borne from out of the allocation for the project in which they are employed while in the other case there is no such specific allocation of funds. The classification of work-charged and other employees to say the least remains wholly unsatisfactory at least for the purposes of the case in hand leaving no option for us but to treat the case of the daily-wagers and work-charge employees on the same footing when it comes to granting regularization to them.

10. If that be so, there is no denying the fact that the persons who were junior to the appellant, having been engaged much later than him, steal a march over him in terms of regularization in service while the appellant remained embroiled in litigation over what was eventually found to be an illegal termination of his service. It is true that the appellant has already superannuated. That does not, however, make any difference. What is important is that the appellant had been appointed as early as in the year 1988 and had by the time the decision of this Court in Umadevi's (3) case (supra) pronounced, already completed more than 10 years service. Government has formulated rules for regularization of such daily-wagers, no matter the same are the subject matter of a challenge before the High Court. What is noteworthy is that neither the State Government nor the Jal Nigam has resented the idea of regularization of those who have served for over a decade. The rules providing for regularization are a sufficient enough indication of that fact. We do not, therefore, see any impediment in directing regularization of the service of the appellant on the analogy of his juniors with effect from the date his juniors were regularized and for the release of all retiral benefits in his favour on that basis by treating him to be in continuous service till the date of his superannuation. We make it clear that this direction will not entitle the appellant to claim any amount towards arrears of salary based on such regularization.

19. When the orders directing the official respondents to regularise, have already reached finality, it is not open to them to assail the correctness of an order passed by the Tribunal, at the instance of the private respondents. In the miscellaneous application, filed by the private respondents, the earlier directions issued have been reiterated, that if the certificates produced by the respondent No.2, are found to be genuine, he should be regularised. As per the certificate issued by the Certificates Verification Committee, the date of entry of Mr.G.Anbu/respondent No.2 in BSNL is 26.05.1994. As per the findings of the Certificates Verification Committee, he has also rendered continuous service of 19 years from 26.5.1994 except for a short break between 20.06.1995 and the order of termination dated 12.10.1995. Thus when he has rendered 19 years of service, and inasmuch as certificates produced by him were found to be genuine and that he was not terminated on the date of filing of O.A.Nos.156 and 159 of 2012, the Tribunal has directed the petitioners herein, to take up the process of regularisation, as expeditiously as possible. We do not find any infirmity in the order.

In the light of the above discussion, writ petition is dismissed. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai 600 104.

+1 cc to Mr.Menon, advocate,sr.66223.

+1 cc to m/s.Manoj Sreevalsan,advocate,sr.65715.

rv(co)
krd 28/12

W.P.No.40388 of 2015