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

+ **W.P.(C) 779/2014 & CM APPL. 1561/2014 (Stay)**

Date of Decision : 17th November, 2016

DELHI TRANSPORT CORPORATION & ORS. Petitioners
Through **Ms. Avnish Ahlawat, Advocate**

versus

BABU LAL BUNKAR Respondent
Through **Mr. M. R. Sinha, Advocate**

CORAM:HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

1. We have heard learned counsel appearing for the Delhi Transport Corporation (petitioner-Corporation for short) and perused the order dated 06.09.2013 whereby the OA No.2336/2012 filed by Babu Lal Bunker have been allowed.

2. The petitioner corporation has been directed to consider the respondent's case for regularisation against direct quota vacancies to a post for which he is medically suited. The Tribunal has also asked the corporation to prepare a scheme which would not operate or be applicable as a general precedence but will be applicable particularly in this case. The directions were to be complied with within a period of three months.

3. We would modify the operative portion of the order but are not

inclined to accept the plea and contention of the petitioner-Corporation regarding regularisation.

4. The respondent was appointed on 05.05.1987 as a daily waterman on a temporary basis in the petitioner-Corporation. In November 1990, the respondent had appeared for an interview for regularisation against the post of Beldar/Helper. The respondent claims that he was not selected as he is differently-abled and declared medically unfit. (This assertion as to the reason for non-selection is disputed). The respondent's service was abruptly terminated on 06.11.1990. The respondent raised an Industrial Dispute and was directed to be reinstated vide the award dated 20.08.2001. The said order was accepted by the petitioner-Corporation and the respondent was reinstated, with full backwages.

5. After having worked for about 9 years after reinstatement, the respondent filed OA No. 2722/2010 which was disposed of vide order dated 19.08.2010 directing the petitioner-Corporation to consider the said OA as a representation. The respondent had relied upon Section 33 of the person in the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995 (the Act, for short).

6. By order dated 25.11.2010 the representation was rejected stating that the petitioner-Corporation had not made fresh recruitments for the posts of Store Attendants/Peons/Helpers (Printing Press) in the last 18 years due to reduction in the Staffing Norms, non availability of vacancies, AMCs executed with the service providers as well as the excess Staff position of the

Corporation.

7. However, the Commissioner (Disabilities) took notice and in his order dated 21.12.2010 has held that the provisions of the Act required the appropriate Governments, and the agencies thereunder, to reserve 3% of all posts-permanent or contractual- for persons with disabilities. Though no express direction was passed to regularise the respondent, the order recorded that the petitioner-Corporation was competent to regularise the services of the respondent based on the statutory provisions of the Act which would override any administrative instructions ordinarily applicable. The order also rejected the petitioner-Corporation's contention that the claimed quota was meant for direct recruitment only recording that the specific provisions of Sections 38 and 41 and other provisions of the Act require the petitioner-Corporation to formulate schemes and provide incentives for employment of persons with disabilities, which could not be done if direct recruitment posts were excluded.

8. Pursuant to the said order the petitioner-Corporation re-examined the matter and as per letter addressed to the Commissioner (Disabilities) dated 14.09.2011 the petitioner/Corporation has extended 3% reservation to all posts including contractual appointments. It was however recorded that grant of regularisation to the respondent would become the precedent for other contractual employees with disability to claim the same benefit since there were 28 Conductors with disabilities employed by the petitioner-Corporation. The petitioner-Corporation was apprehensive that they may seek regularisation on the same basis.

9. In these circumstances, the respondent had again approached the Tribunal through OA No. 2336/2012 which has been allowed vide order dated 06.09.2013.

10. This is a hard, compellingly and peculiar case. The respondent is covered under the Act and suffers from 70% disability in both lower limbs. He has been working with the Petitioner/Corporation since 1987. The respondent is still a daily wager and is presently paid Rs. 367/- per day without any payment for holidays. His monthly emoluments are about Rs.9,200/-, if he works for 26 days in a month.

11. The petitioner-Corporation states that they are complying with the provisions of reservation of 3% but they have not made any submissions or produced figures/data regarding the number of employees with disabilities in the post for which the petitioner is eligible. The Act, i.e. the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995 was enforced in 1995 and as per the mandate of Section 33, quotas had to be provided. In the context of the present case, the petitioner-Corporation should have furnished relevant details and data, that from the date of enforcement of the Act, there was compliance with the stipulations pertaining to quotas and even then it was not possible to accommodate and grant regular appointment to the respondent. It is rather difficult to accept and believe that during the last 20 years there was no regular vacancy in which the respondent employee could have been accommodated, inspite of the quota/reservation. Retirements, resignations, dismissals etc. from time to time would have resulted in the said vacancies. Even if work has now been outsourced on a

contractual basis, the fact that the respondent is working would show that the work is perennial and continuous in nature.

12. In these circumstances, we are not inclined to interfere with the direction of regularization in the impugned order which is just and fair. However, we clarify that the petitioner-Corporation need not prepare a scheme which is applicable to the respondent alone. The petitioner corporation will comply with the direction for regularization within a period of two months from today.

13. With the aforesaid modification and clarification, the writ petition as well as application stand disposed of.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

NOVEMBER 17, 2016

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