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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 209/2016**

% *Date of Judgment: 11th January, 2016*

RAMESH CHANDER JAINTH Petitioner
Through: Mr. K. Venkataraman and Mr. M.C. Kashyap,
Advocates.

Versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Vivek Goyal, CGSC with Ms. Shraddha
Bhargave, Advocate for R-1, Mr. Satish
Aggarwal, Advocate for R-2 & 3.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J. (ORAL)

1. **CM APPL. 856/2016**

Exemption allowed subject to just exceptions.

Application stands disposed of.

2. **W.P. (C) 209/2016**

Present Writ Petition has been filed by the petitioner under Article 226/227 of Constitution of India seeking issuance of a writ of certiorari or any other appropriate writ thereby to set aside the order dated 10.09.2015 passed by the Central Administrative Tribunal (hereinafter referred to as "the Tribunal"), Principal Bench at New Delhi in O.A. No. 2114/2013 and order dated 03.11.2015 passed in Review Application No. 278/2015 by the Tribunal.

3. The brief facts of the case are as under:

The petitioner, a daily wager on contract basis with the respondent No.2 Directorate of Revenue Intelligence, along with others, filed O.A. No. 2347/2004 and batch for regularisation and continuation of his services and the said O.A. was disposed of by an order dated 09.08.2005 as under:

"7. In the result, OAs stand disposed of in terms of the order passed by the Jaipur Bench of the Tribunal supra with directions to the respondents to continue the applicant in service and in the wake of the Recruitment Rules being finalized to consider the cases of the applicants for regularisation in terms of Circular dated 6.6.2002."

4. The WP(C) No.330-32/2006 filed by the respondents was disposed of on 21.09.2007 as under:

"Notice in this petition was issued to the respondents on the last date of hearing i.e. 22.5.2007. When the case came up for hearing, learned counsel for the respondent took time to seek instructions as to whether the respondent will be willing to accept consideration of their cases in terms of the recruitment rules based on their qualifications, experience and seniority, subject to availability of vacant posts. Learned counsel for the petitioner also submits that he has instructions to make statement that the cases of the respondents shall be considered in aforesaid terms, subject to availability of vacancies along with others as and when recruitment process is initiated, and the respondent shall be given age relaxation to the extent they have worked with the petitioners on contract basis, subject to further fulfilment of eligibility conditions.

Accordingly, the writ petition is disposed of in the above terms."

5. The SLP, filed before the Hon'ble Supreme Court, was also dismissed by order dated 05.12.2008.
6. The respondents in pursuance of the aforesaid orders, considered the case of the petitioner along with others in pursuance of an advertisement published in the Employment News dated 26th January, 2008 to 1st February, 2008 for selection to the post of Peon. Accordingly, the petitioner was called for an interview vide call letter dated 19.03.2009 and was interviewed by a duly constituted selection committee. In the said selection, the petitioner secured 56 marks and figured at serial No.11 against the total vacancies of 8. As a result thereof, he could not be selected and appointed as Peon.
7. Aggrieved by the same, the petitioner filed O.A. No. 2114/2013 wherein the Tribunal after hearing both the sides and considering all the submissions made by the parties dismissed the O.A. vide order dated 10.09.2015. Thereafter petitioner filed a review application against the afore mentioned order before the same bench vide R.A. No. 278/2015 wherein the following grounds were raised:
 - “i) The applicant prayed for a direction to allow the applicant to continue his duty and mark his attendance till his services are regularised.*
 - ii) The applicant submitted that he is entitled for regularization in terms of the decision of the Hon'ble Apex Court in Secretary, State of Karnataka & Others. v. Uma Devi (2006) 4 SCC 1.”*
8. Mr. K. Venkataraman, learned counsel appearing on behalf of the petitioner submits that the order passed by the Tribunal is unjust,

illegal, arbitrary and against the settled position of Law. The counsel further submits that the Tribunal has failed in not considering the case of the petitioner in terms of the recruitment Rules based on his qualification, experience and seniority.

9. The counsel for the petitioner strongly urged that the respondents deliberately gave less marks in the interview to him which caused rejection of his claim and further submitted that the petitioner herein is entitled to the age relaxation to the extent that he has worked with the respondents on contract basis subject to further fulfilment of eligibility conditions.
10. The counsel for the petitioner further submitted that the Tribunal has committed gross error in not entertaining the original application of the petitioner and further clarified that the petitioner in this case is duly qualified, having adequate experience and also senior as compared to the other employees who were regularised by the respondents.
11. Learned counsel for the petitioner argued that the Tribunal has committed an error in not applying the settled principles of law with regard to the continuance of service of the casual workers and to regularise their services. To substantiate his arguments, learned counsel for the petitioner has relied on *State of Karnataka Vs. Umadevi and Ors. (2006) 4 SCC 1*.
12. Per contra, Mr. Vivek Goyal, learned counsel appearing on behalf of CGSC strongly supports the view taken by the Tribunal and apprised this court that pursuant to the order of this court the respondents have considered the case of the petitioner by granting

age relaxation to him. The Selection Committee rightly rejected the petitioner as he was less meritorious than other similarly placed persons.

13. The counsel for the respondents contends that the existing status should not be disturbed by this Court and heavily relied upon the judgment of Hon'ble Supreme Court in ***State of Karnataka Vs. Umadevi and Ors. (2006) 4 SCC 1***, wherein the Apex Court noticed in para 53 of the judgment 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 (supra), R.N. Nanjundappa (supra), and B.N. Nagarajan (supra), and referred to in paragraph 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 courts or of tribunals. The question of regularization 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 regularize as a onetime 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 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 regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be

no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

14. Learned counsel for the respondent further submits that there is no infirmity in the order passed by the Tribunal and submitted that the same is within the parameters of Law as laid down by this Court as well as by the Hon’ble Supreme Court in a catena of decisions.
15. We have heard learned counsel for the parties and have also perused the detailed record which was filed before the Tribunal, copies of which were produced before this Court.
16. Before examining the rival contentions, it would be relevant to mention para 7 and 9 of the order passed in the review application dated 03.11.2015, which reads as under:

“7. The engagement or continuation of a daily wage or contract employee is dependent on the availability of work. When once the applicant’s claim for regularization was duly considered, by following the directions in WP(C) No. 330-32/2006 of the Hon’ble High Court of Delhi in its Order dated 21.09.2007 and was rejected finding the applicant as less meritorious, the question of granting a direction to continue the applicant does not arise. Similarly, when the respondents were directed to consider the case of the applicant for regularization in terms of Circular dated 06.06.2002, after granting the age relaxation, by the Hon’ble High Court, and when the respondents complied with the said order and rejected the claim of the applicant on merits, the applicant is not entitled for granting any further direction to the respondents to consider his case for regularization by applying the decision of the Hon’ble Apex Court in Umadevi (supra). Even otherwise, the applicant, a daily wage employee, admittedly does not fall under the exceptions

mentioned in para 53 of the said decision.

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Further, if any, supplementary contentions which do not in any way change the final decision are not even specifically referred thereto, the same cannot be an error apparent on the face of the record and cannot be a ground for reviewing the final orders in that case.

9. The present case has a chequered history and the impugned action was the result of complying with the orders of this Tribunal passed in an earlier OA, filed by the applicant, as modified by the Hon'ble High Court in a Writ Petition filed by the respondents against the said orders. The claim of the applicant was rejected on finding that the applicant was less meritorious than other similarly situated persons.

17. After hearing learned Counsel for the parties and on careful consideration of the rival submissions, we may note that as per the advertisement published, interview for filling up 8 posts of Peon were conducted from 23.03.2009 to 27.03.2009. The petitioner herein obtained 56 marks and secured 11th rank as against total vacancies of 8. Resultantly, the Selection Committee found the petitioner less meritorious with reference to the number of available vacancies and hence, the petitioner could not be selected.
18. In view of the above settled position of law and in the facts and circumstances of the case in hand we are of this considered view that the learned Counsel for the petitioner has been unable to point out as to how the order of the Tribunal suffers from such illegality or perversity which shall entitle the petitioner to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. The review which was subsequently filed by the petitioner

did not mention the ground which was now raised before us. Hence, we conclude that the petitioner cannot raise any other ground at this belated stage.

19. For the reasons stated hereinabove, we are not inclined to interfere with the order of the Tribunal impugned before us and accordingly, the present writ petition is dismissed. No order as to costs.

SANGITA DHINGRA SEHGAL, J

G.S.SISTANI, J

JANUARY 11, 2016
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