

(WP 360 of 2015)

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION No. 360 OF 2015

Sandeep V. Puralkar	Petitioner
Vs.	
Union of India and Ors.	Respondents

Mr. Arshad Shaikh a/w. Mr. Sanjay Udeshi a/w. Mr. Netaji Gawde i/b.
Sanjay Udeshi and Co. for the Petitioner

Mr. Advait Sethna a/w. Mr. Vinod Joshi for the Respondents

**CORAM : R.M. BORDE &
A.S. GADKARI, JJ.**

DATE : FEBRUARY 01, 2017

P.C. :

1. Heard.
2. Rule. Rule is made returnable forthwith by consent of parties.
3. The instant petition is taken up for final disposal. The Petitioner is objecting to the order passed by the Central Administrative Tribunal in Original Application No. 859 of 2011 and decided on 4.12.2013. The Petitioner was appointed on the post of Hamal w.e.f. 8.4.2002 and was continued on the same post till 17.6.2010. Before making appointment

(WP 360 of 2015)

of the Petitioner, he was interviewed by the duly constituted Selection Committee and a letter of appointment, appointing the Petitioner on ad-hoc basis for a period of six months was issued. The Petitioner was continued in employment by the employer on the basis of various orders issued from time to time. It is the contention of the Petitioner that on 22.2.2005 while he was in employment, he submitted a representation to the employer to appoint him as Hamal on regular basis. The Petitioner was recommended as tendering such an application and an undertaking was secured from him on 20.4.2005 to the effect that he will not claim regularization to the post and he will not seek any legal remedy. The Petitioner contends that after being shifted to the post of Safaiwala in the office of Respondent No.2, the post of Hamal occupied by the Petitioner on ad-hoc basis, fell vacant. The said vacancy was not filled up by the Respondents by appointing any regular person. In the meantime, Respondents decided to outsource the job and issued a contract to M/s. CNCS Facility Solution. In these premises, the Petitioner approached the Central Administrative Government by tendering O.A. No. 687 of 2005 seeking regularization of employment. The Central Administrative Tribunal decided the Original Application presented by the Petitioner by an order dated 19.6.2006. The Tribunal has observed in the order

(WP 360 of 2015)

that the Petitioner has been inducted in the employment by observing procedure for recruitment of employee. The Petitioner was required to undergo the oral examination conducted by the committee constituted for selection of candidates. The list of the eligible candidates was requisitioned from the Employment Exchange and the Petitioner was one of the candidates referred by the Employment Exchange. Considering the fact that the Petitioner was selected by a duly constituted committee and that, he shall have the first right on the vacancy of Hamal as and when the Respondents decide to fill up such a post the Tribunal proceeded to issue directions in that regard. It is contended by the Petitioner that by the Memorandum dated 22.7.2005 issued by Respondent No.1, the Petitioner was posted in the office of Respondent No.2, which is under the control of Respondent No.1 as Hamal. Though the name of the Petitioner was on the pay-roll of Respondent No.1, the Petitioner was required to perform the duties of Safaiwala purely as Casual Worker. The Petitioner, in the year 2010, tendered a representation to the Respondents to regularize services and extend him the benefits of permanency in the post of Hamal or Safaiwala and not to employ him as contract worker. The representations tendered by the Petitioner were not considered and, as such, he was again compelled to

(WP 360 of 2015)

approach the CAT with an application bearing O.A. No. 859 of 2011. The challenge before the Tribunal was in respect of the Memorandum dated 17.6.2010 written by the Principal Officer-cum- Joint DG (Tech.), Mercantile Marine Department, Mumbai, whereby the appointment of the Petitioner as Safaiwala was terminated from 17.6.2010. The Petitioner contended before the Tribunal that he has served the Respondents for more than 11 years. Although the Petitioner was initially appointed to the post of Hamal w.e.f. 8.4.2002, however, his posting was later on changed as Safaiwala. The induction of the Petitioner in employment as Hamal was in observance of prescribed procedure and on the basis of a reference by the office of Employment Exchange. The Petitioner was interviewed by the duly constituted selection committee and was appointed on an ad-hoc basis. The appointment of the Petitioner was obviously against the regular vacancy. It was, therefore, not permissible for the Respondents to terminate the appointment of the Petitioner.

2. While opposing the Original Application, the respondents contended that there arises no question of appointing the Petitioner as Hamal since the said post has already been abolished. It is contended that after implementation of the 6th Pay Commission

(WP 360 of 2015)

recommendations, Group 'D' posts have been upgraded to Group 'C'. It is contended that minimum qualification prescribed for appointment to re-designated posts of Multi Tasking Staff is passing of either 10th Std. Examination or acquisition of ITI or equivalent qualification and the mode of appointment is by way of direct recruitment. It is thus contended that since the Group 'D' posts are abolished, the Petitioner cannot claim regularization of services either as Hamal or as Safaiwala.

3. The Tribunal while disposing of the earlier O.A. No. 687 of 2005 filed by the Petitioner/ Applicant vide its order dated 19.6.2006 has observed in the order that since the Petitioner was selected by a duly constituted committee, though for a short duration post, he will have the first right on the vacancy of Hamal as and when the Respondents decide to fill in such vacancy. The Tribunal while dealing with O.A. No.859 of 2011, the second round of litigation, took into consideration the earlier directions issued by the Tribunal. However, considering the contentions of the Respondents that the decision had been taken by Union Govt. of abolition of Group 'D' posts and the work of house-keeping jobs such as cleaning and sweeping are already awarded to private contractors, it was directed to the Respondents to engage

(WP 360 of 2015)

Petitioner through outsourcing agency for the House-keeping job within four weeks from the date of receipt of a copy of the order. It has also been directed that the Respondents shall consider to allow the Petitioner to compete with others in the selection process for appointment to any suitable post, if he so applies and if he is otherwise eligible, waiving the restriction of age.

4. The Petitioner contends that the Tribunal ought not to have issued the direction for his induction as a labour through the contractor or through outsourcing agency. The Respondents do not have, in fact, any control over the process of recruitment by the contractor. Since the induction of the Petitioner in employment is in observance of prescribed procedure prevailing at the relevant time and since Petitioner, from time to time, is continued in employment for more than 11 years, he is entitled to claim regularization. Even though the Central Government has taken a decision to abolish the Group 'D' posts, at the same time it must be noted that the Central Government has taken a decision to upgraded the Group 'D' posts to Group 'C'. The employees from Group 'D' are required to be upgraded to Group 'C' and as such it would be impermissible to draw inference that the equivalent posts which earlier formed a part of the Group 'D'

(WP 360 of 2015)

ceases to exist. Considering the spirit of the order passed by the Tribunal in Original Application No. 687 of 2005, the Petitioner ought to have accommodated in an equivalent post.

5. The learned counsel for the Respondents contend that since the Group 'D' posts have been abolished, the claim of the Petitioner for regularization cannot be considered. As has been stated above, it is not a correct proposition that there are no equivalent posts which form part of Group 'D' before implementation of 6th Pay Commission recommendation or the posts falling within the category of Group 'D' have been upgraded and classified as Group 'C'. The defense raised by the respondents for defeating the claim of the Petitioner does not appear to be sound. It also must be taken note of that upon query raised by the Petitioner by tendering an application under the Right to Information Act, he was informed that at relevant time there were five vacant posts available in a Group 'C' which were required to be filled in through Staff Selection Commission during the year 2012 to 2014. The contention of the Respondents that the posts are not available for accommodating the Petitioner, does not appear to be correct.

6. The learned counsel appearing on behalf of the Union of India,

(WP 360 of 2015)

invited our attention to certain observations made by the Tribunal relying upon the judgment of **Secretary, State of Karnataka & Others Vs. Uma Devi & Others (AIR 2006 SC 1806)** contends that since the Petitioner has not been appointed in observance of the procedure prescribed in that behalf and since he holding the post on ad-hoc basis, he cannot claim relief of regularization. The contention raised by the Respondents does not deserve to be accepted for the reasons that induction of the Petitioner in employment cannot be termed as backdoor entry. The name of the Petitioner has been referred by the Employment Exchange and he has required to undergo the selection process prescribed by the employer before he was appointed as Hamal. The Petitioner was interviewed by the duly constituted Selection Committee and was issued a letter of appointment, appointing him on ad-hoc basis. The appointment of the Petitioner is against the available regular vacancy. The ratio laid down in the case of **Secretary, State of Karnataka & Others Vs. Uma Devi & Others (Supra.)** does not attract in the present case.

7. It also must be reiterated that the Respondent-Employer has not complied with the directions issued by the Tribunal in the Original Application No. 687 of 2005. The Petitioner ought to have been

(WP 360 of 2015)

accommodated in the available vacancy of Hamal or any other equivalent post. The decision of Tribunal in O.A. No. 687 of 2005 was not challenged by Respondents and it has attained finality. The Respondents are expected to take into account spirit behind the order passed by the Tribunal and they cannot be permitted to avoid its implementation by raising technical reasons. In our considered view, the Respondents need to be directed to accommodate the Petitioner in an equivalent post and extend him the benefits of regularization and it is directed accordingly. The Respondents shall comply with the directions issued as above, as expeditiously as possible, preferably, within a period of four months from today. Rule is, accordingly, made absolute in above terms. There shall be no orders as to costs.

[A.S. GADKARI, J.]

[R.M. BORDE, J.]