

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2017

CORAM

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR. JUSTICE V. PARTHIBAN

Writ Petition No.33807 of 2015

Union of India
represented by
The Chief Post Master General
Tamil Nadu Circle,
Chennai - 600 002. ... Petitioner

Versus

1. R.Rajendran
2. The Central Administrative Tribunal,
represented by its Registrar,
Madras Bench,
Chennai - 600 104. ... Respondents

Writ petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records of 2nd respondent and quash the order dated 16.09.2014 made in O.A.No.521 of 2012 as the same is unsustainable.

For Petitioner : Mr.V.P.Sengottuvel SCGSC
For Respondent-1 : Mr.Ramaswamy Rajarajan
R2 Tribunal

ORDER

(Order of the Court was delivered by V.PARTHIBAN,J.)

The Writ Petition is filed by Union of India against the order passed by the Central Administrative Tribunal, Madras Bench dated 16.09.2014 in O.A.No.521 of 2012 allowing the Original Application filed by the employee, the first respondent herein.

2. The first respondent / employee approached the learned Tribunal seeking for the following reliefs:-

"i) to quash the impugned order No.STC/10-Wireman/RR/2011 dated 24.02.2012 passed by the respondent; and

ii) to direct the respondent to allow the applicant to work as Technician and to give him all consequential benefits w.e.f. 28.1.98 applicable to the cadre of Technician and to consider him for further promotions."

3. While working as Wireman, the first respondent / employee was posted to officiate as technician on adhoc basis with effect from 27.01.1998 in the existing regular vacancy. He was continued to officiate in the post of technician uninterruptedly from 28.01.1998 till 14.12.2011. The employee was also paid pay and allowances and regular increments as applicable to the post of technician during the entire period of his officiation.

4. While so, the employee was issued with show cause notice dated 15.12.2011 stating that his initial appointment as technician dated 27.01.1998 was not valid and the same was contrary to recruitment rules. In response to the show cause notice, the first respondent / employee submitted his representation on 17.12.2011 stating that he was posted against a regular vacancy and he having completed two years of service in the cadre of technician in 2000, he got the eligibility qualification for regularisation in the cadre of technician. However, the petitioner herein did not accept the representation of the employee and the appointment of the first respondent / employee as technician came to be cancelled vide order dated 24.02.2012 and the employee was reverted to his earlier post of Wireman with effect from 16.03.1994 in the lower pay scale. Aggrieved by the impugned rejection order, the employee approached the learned Tribunal seeking the aforesaid reliefs.

5. In the proceedings before the learned Tribunal, the main contention put forth on behalf of the Union of India was that the appointment of the applicant therein was termed only as temporary / adhoc and such appointment did not have the sanction of recruitment rules and therefore, the applicant herein was aware that his officiated posting would be terminated at any time; the Union of India, therefore, rightly cancelled the appointment and only because the applicant / employee continued in the said post for some years, there was no vested right for the employee to claim regularisation, dehors the recruitment rules; therefore, the cancellation was rightly done and no interference was called for.

6. The learned Tribunal after taking note of the submissions found that the first respondent / employee had completed 13 years of service as technician without any break and had got 12 increments in the pay scale provided for technician cadre. The learned Tribunal further found that a very long period of officiation and extracting work from the employee and denying the employee the right of regularisation in the officiating rank was wholly arbitrary and violative of Article 16 of the Constitution of India. The learned Tribunal also relied on the decision of the Hon'ble Supreme Court of India and other decisions passed by the Central Administrative Tribunal, as found mentioned in paragraph-9 of the judgment. The learned Tribunal finally held that the person appointed to officiate for higher post for long years in the same capacity is to be considered for regularisation and the consequent benefits to be extended to him in the said post. Moreover, the Tribunal also held that the post in question is a dying cadre and no recruitment had been made till date and the vacancy, in which the first respondent / employee was accommodated, was still vacant with no recruitment has made yet. In the circumstances of the case, the learned Tribunal allowed the Original Application by setting aside the impugned order dated 24.02.2012 and directed the Union of India to continue the applicant therein in the post of technician with all consequential benefits applicable to the cadre of technician. The direction was to be complied with within a period of four weeks from the date of receipt of a copy of the order.

7. As against the order passed by the learned Tribunal, the present Writ Petition is filed by Union of India. Sri.V.P.Sengottuvel, learned counsel appearing for the petitioner contended that once an employee is found to be appointed against the recruitment rules, how so far long he might have officiated in the higher post cannot give him any vested right for regularisation. However, the fact that the post of technician occupied by the first respondent / employee herein has not been filled up on regular basis, as yet is not disputed. It is also not in dispute that the first respondent / employee was paid annual increments, pay and allowances for 13 long years when he officiated as technician. That being the case, We do not find anything wrong with the order passed by the learned Tribunal. On the other hand, the first respondent / employee having officiated in the subject post for 13 years has vested rights to seek regularisation and by no stretch of legal standards, his appointment to the post of technician can be termed to be temporary / adhoc.

8. The learned counsel appearing for the petitioner also cited two decisions of the Hon'ble Supreme Court reported in 1993 Supp (3) Supreme Court Cases 252 (State of Haryana ..vs..

S.M.Sharma and others) and (1996) 10 Supreme Court Cases 567 (Sreedam Chandra Ghosh ..vs.. State of Assam and others). The said decisions may not be helpful for the petitioner, since the ratio laid down in the decision cannot be applied to the factual matrix of the present case.

9. In view of what is stated above, We do not find any infirmity in the order passed by the learned Tribunal and therefore, the Writ Petition fails and accordingly, dismissed. The petitioner / Union of India is directed to implement the order passed by the learned Tribunal dated 16.09.2014 within a period of four weeks from the date of receipt of a copy of this order. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

mra

To

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

2. The Chief Post Master General
Union of India,
Tamil Nadu Circle Chennai-600 002

+1 cc to M/s.V.P.Sengottuvel Advocate sr 2386/17

+1 cc to M/s.S.Ramaswamy Rajarajan Advocate sr 2355/17

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