

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Review Application (Writ) No. 161 of 2012

1. S. Baskaran
2. R. Kannan @ Dharmoaran
3. S. Govindasamy
4. M. Nagarajan
5. N. Balasubramanian
6. V. Ravichandran
7. P. Murugaiyan
8. P. Arumugam
9. S. Panneerselvam
10. N. Arivazhagan
11. T. Doraisamy
12. V. Balasubramanian
13. G. Arichandran
14. T. Selvaraj
15. S. Selvam
16. K. Rajmohanrao
17. S. Pandian
18. K. Thangavelu
19. R. Gnanasekaran
20. V. Royar
21. M.G. Rajendran
22. K. Srinivasan
23. M. Krishnamurthy
24. C. Panneerselvam
25. S. Neelakantan
26. K. Natarajan
27. A. Mathialagan
28. N. Mathialagan
29. M. Arumugam
30. N. Anbalagan
31. G. Peter Paul
32. S. Selvaraj
33. K. Rajendra Prasad



1. Union of India
rep. By its Ministry of Communication and
Information Technology
Department of Telecommunication
Sansad Marg
New Delhi – 110 001

2. Chairman-cum-Managing Director
Bharat Sanchar Nigam Limited
Bara Kamba Road
New Delhi – 110 001

3. Chief General Manager
Telecommunications
Tamil Nadu Circle
Chennai – 600 002

4. General Manager
Bharat Sanchar Nigam Limited
Thanjavur Secondary Switching Area
Balaji Nagar
Thanjavur – 613 007

... Respondents

Review Application filed under Order 47 Rule 1 read with Section 114 of Civil Procedure Code to review the Order dated 15.11.2011 passed in W.P. No. 28852 of 2010.

For Review Applicants : Mr. P. Ganesan
for M/s. C.S. Associates

For Respondents : Mr. S. Arunkumar
Central Government Standing Counsel for R1

Mr. T. Ravi Kumar for RR2 to 4

ORDER

(Order of the Court was made by **R. Subbiah, J**)

This Review Application is filed by the writ petitioners in WP No. 28852 of 2010, seeking to review the order dated 15.11.2011 passed by this Court.

2. The Review Applicants, as writ petitioners, have filed the above WP No. 28852 of 2010 praying to quash the order dated 09.11.2010 passed by the Central Administrative Tribunal, Madras Bench, Chennai in Transfer Application No. 60 of 2010 and consequently direct the respondents to regularise their service as Regular Mazdoor as per the recommendation submitted by the Committee, as constituted by the fourth respondent in his proceedings dated 04.06.2004 and to confer all consequential benefits to them.

3. In the affidavit filed in support of the writ petition filed by the Review Applicants, it was contended that the writ petitioners were engaged as casual labourers on various dates from the year 1977 to 1985 in the erstwhile Telecommunication Department. According to the petitioners, after the project, in which they were engaged, has come to an end, they were treated as surplus and retrenched. Thereafter, the Telecommunication Department has imposed a ban on 30.03.1985 for engaging any further casual labourers. However, after repeated representations made to the respondents, the third respondent, by a letter dated 18.08.1992 instructed to engage casual labourers who were engaged before 1985 and retrenched from their daily wage employment. On the basis of the instruction given by the third respondent, a committee was constituted and the committee directed all the individuals to produce evidence to show their earlier engagement as casual labour prior to 30.03.1985. Accordingly, the committee scrutinised the claim of the individuals and released three list on 08.09.1992, 19.09.1992 and 21.10.1992 in which the names of the petitioners were also included and they were reinstated as daily wage employees on 19.09.1992. It is the contention of the

petitioners that even though they were engaged on casual basis for a considerable length of time, their service has not been regularised. According to the petitioners, when a proposal was sought for from the Department as to the number of daily wage employees engaged in the Telecommunication Circles, it was reported that there was no such employees engaged in Tamil Nadu Circle, even though almost 1985 casual labourers were re-engaged during the year 1992. In such circumstances, the petitioners, during the year 2003, through their Association, have furnished a list to the third respondent indicating the number of casual employees working in Tamil Nadu Circle. Based on the representation, another committee was constituted for Tamil Nadu Telecommunication Circle on 02.08.2004 and the committee submitted its report recommending that the service of 77 daily wage employees be regularised. According to the petitioners, the third respondent has deliberately left the names of the petitioners even though they were working from the year 1992 continuously without any break. In such circumstances, claiming that the petitioners were working continuously without any break from 1992 but their service was not regularised by the Department, they have filed WP No. 2453 of 2008 before this Court praying for a Writ of Mandamus in which a direction was issued to the fourth respondent to pass appropriate orders on the claim made by the petitioners. Pursuant to such direction, the fourth respondent passed an order dated 31.03.2008 rejecting the claim of the petitioners. Therefore, challenging the order dated 31.03.2008 of the fourth respondent, the petitioners have filed WP No. 4494 of 2008 before this Court. During the pendency of WP No. 4494 of 2008, the petitioners came to know that the Department has taken a policy decision whereby the jurisdiction to deal with the disputes raised by the petitioners

against the Department of Telecommunication was vested with the Central Administrative Tribunal. Accordingly, the Writ Petition No. 4494 of 2008 filed by the petitioners stood transferred to the file of Central Administrative Tribunal, Chennai and re-numbered as T.A. No. 60 of 2010. The Tribunal, without considering any of the grounds raised by the petitioners, has dismissed the Transfer Application on 09.11.2010. Aggrieved by the same, the petitioners have filed the above W.P. No. 28852 of 2010 before this Court.

4. When WP No. 28852 of 2010 was taken up for hearing, it was mainly contended on behalf of the petitioners that the claim of the petitioners is based on the order dated 29.09.2000 passed by the Department of Telecom Services by which various casual employees working in the department were given the benefit of regularisation of their service, however, the same benefit has not been extended in favour of the petitioners. The Tribunal erred in construing that the petitioners are not entitled to the scheme namely grant of temporary status and regularisation introduced by the Department. On the other hand, the petitioners claim is based on the order dated 29.09.2000 by which similarly placed persons were given the benefit of regularisation in their favour. It was also contended that when admittedly the petitioners were working on daily wage basis since 1992, the Tribunal is not justified in rejecting their claim for regularisation.

5. In the writ petition, a counter affidavit has been filed by the first respondent as well as the fourth respondent contending inter alia that a scheme for regularisation of casual labourers called "Casual Labourers (Grant of Temporary

Status and Regularisation) Scheme was framed by the Department of Telecom vide Circular dated 07.11.1989 and the scheme stipulates certain conditions such as rendering 240 days of service in a year (206 days in offices following five days work pattern) and should have been employed as on 07.11.1989 and re-engaged before 30.03.1985. Subsequently, the scheme was extended by imposing the conditions that those temporary employees should have been engaged between 31.03.1985 to 22.06.1988 and should have been engaged as on 17.12.1993 and rendered 240 days in a year (206 days in offices following five day week pattern). Once again, the scheme was extended with a condition that those who are in temporary service should have been engaged as on 01.08.1998 and rendered 240 days of service (206 days in offices following five day week) in a year. According to the fourth respondent, the petitioners have not rendered 240 days of service in any year and there were break in service of one year between their first engagement and the second engagement. Subsequently, the fourth respondent has constituted a committee headed by the Deputy General Manager (Administration) of BSNL, Thanjavur to verify the records of the casual employees and to furnish a report. The Committee, after scrutinising the original records, found that the petitioners did not fulfil the basic condition of minimum engagement in a year for 240 days and therefore, their cases were not considered for regularisation. As there was a break in period of more than one year in the case of the petitioners, which cannot be condoned, the claim of the petitioners for regularisation cannot be considered.

material records placed, has dismissed the writ petition filed by the petitioners on 15.11.2011. In Para Nos. 7 and 8 of the order, it was stated as follows:-

“7. On going through the entire materials placed on record, we see no reason to entertain the writ petition. The Tribunal, after going through the matter and accepting the contentions of the respondents that the petitioners have not rendered 240 days of service in any of the year during their engagement, dismissed the application filed by the petitioners. The petitioners are not able to file any documentary evidence to prove that in view of the orders passed by the Department dated 21.10.1992, they were taken into service and they are continuing in service and they are eligible for regularisation. Even as per the records and the statement filed by the respondents, they are rendering few days of service. Moreover this litigation pertains to the year 2008 and the petitioners were working from the year 1992 and there is a huge gap of time between 1992 and 2008.

9. In the absence of any evidence of continuance of work in the department as per the departmental proceedings, we are of the considered opinion that this is not a fit case to consider and pass appropriate orders. The writ petition fails and it is, accordingly, dismissed. However, there will be no order as to costs.”

7. It is this order dated 15.11.2011 passed in WP No. 28852 of 2010, which is sought to be reviewed by the Review Applicants.

8. The learned counsel appearing for the Review Applicants would vehemently contend that the requirement of 240 days insisted by the Department is not applicable to the review applicants as a condition precedent for regularising their service. The claim of the Review Applicants is based on the proceedings dated 18.08.1992 of the Chief General Manager, Telecommunications, Ministry of Communications, as per which all the persons who have worked as Casual Labour before 30.03.1985 should be taken back initially in temporary status and thereafter their service shall be regularised. As far as the Review Applicants is concerned,

they were initially engaged as temporary worker on 08.09.1992, 19.09.1992 and 21.10.1992, however, even before completion of one month, their temporary status was recalled on 21.11.1992 and they were engaged as casual labour. If the Review Applicants has not been de-listed from the temporary status, on completion of 240 days, they would have been regularised in service which has not been properly considered by the Central Administrative Tribunal as well as the Division Bench of this Court while passing the order dated 15.11.2011. According to the counsel for the Review Applicants, the Division Bench of this Court did not consider the fact that for initial appointment in the temporary status, the requirement of completion of 240 days cannot be insisted upon. It is further stated that even now, the Review Applicants are continuing in service as Casual Labour on contract basis, however, their service has not been regularised.

9. On the above contention, we have heard the learned counsel appearing for the respective respondents and perused the materials placed on record.

10. Keeping the submissions of the counsel for both sides, we have perused the materials placed on record. The main contention urged by the counsel for the review applicants is that the Tribunal as well as the respondents erred in concluding that rendering 240 days in any given calendar year is a condition precedent for regularising the service of the casual labour. According to the counsel for the review applicants, the review applicants are entitled for regularisation of their service on the basis of the proceedings dated 18.08.1992 of

the Chief General Manager, Telecommunications, Ministry of Communication, by which all the casual labour who have worked before 30.03.1985 are entitled for regularisation. It is the further contention of the learned counsel for the review applicants that the Division Bench of this Court, at the time of dismissing the writ petition on 15.11.2011, failed to take note of the above aspects and therefore he prayed for reviewing the order dated 15.11.2011.

11. We are not inclined to accept the above submission of the counsel for the review applicants. While passing the order dated 15.11.2011, the Division Bench of this Court has taken into account the scheme framed by the Department to regularise the casual labour or temporary workers subject to certain conditions to be fulfilled. Admittedly, as the review applicants did not fulfil the conditions indicated in the scheme for regularisation, they were not given the benefit of regularisation. While so, it cannot be said that the order dated 15.11.2011 has been passed by the Division Bench of this Court, without considering the submissions raised on behalf of the writ petitioners/review applicants herein. Even in the grounds of Review Application, it was stated that "if the Review Applicants has not been de-listed from the temporary status, on completion of 240 days, they would have been regularised in service which has not been properly considered by the Central Administrative Tribunal as well as the Division Bench of this Court while passing the order dated 15.11.2011." This would only indicate that the Review Applicants did not fulfil the conditions which are precedent for regularising their service as indicated by the Department in the scheme framed for regularisation.

already been considered by the Division Bench of this Court at the time of passing the order dated 15.11.2011, while so, we refrain from entertaining this Review application.

12. It is well settled proposition of law that an order can be reviewed only if it is shown that there is an error apparent on the face of the record or materials, which are irrelevant, have been taken into consideration to arrive at a conclusion. If the above settled principles are applied to the facts of this case, we find that there is no error apparent on the face of the record warranting us to review the order dated 15.11.2011 passed by the Division Bench of this Court in WP No. 28852 of 2010.

13. As regards the grounds raised by the Review Applicants in support of the Review Application, we find that the very same grounds have been canvassed and agitated before the Division Bench of this Court and they were negated by this Court while passing the order dated 15.11.2011. Therefore, in our opinion, the present Review Application has been filed to re-argue the case, which is legally impermissible. Therefore, we are of the considered opinion that the Review Applicants have not made out any ground for reviewing the order dated 15.11.2011 passed by the Division Bench of this Court in WP No. 28852 of 2010 and the Review Application deserves only to be dismissed. Accordingly, the Review Application is dismissed. No costs.

(R.P.S.J.) (P.V.J.)
04-09-2017

Index : Yes / No

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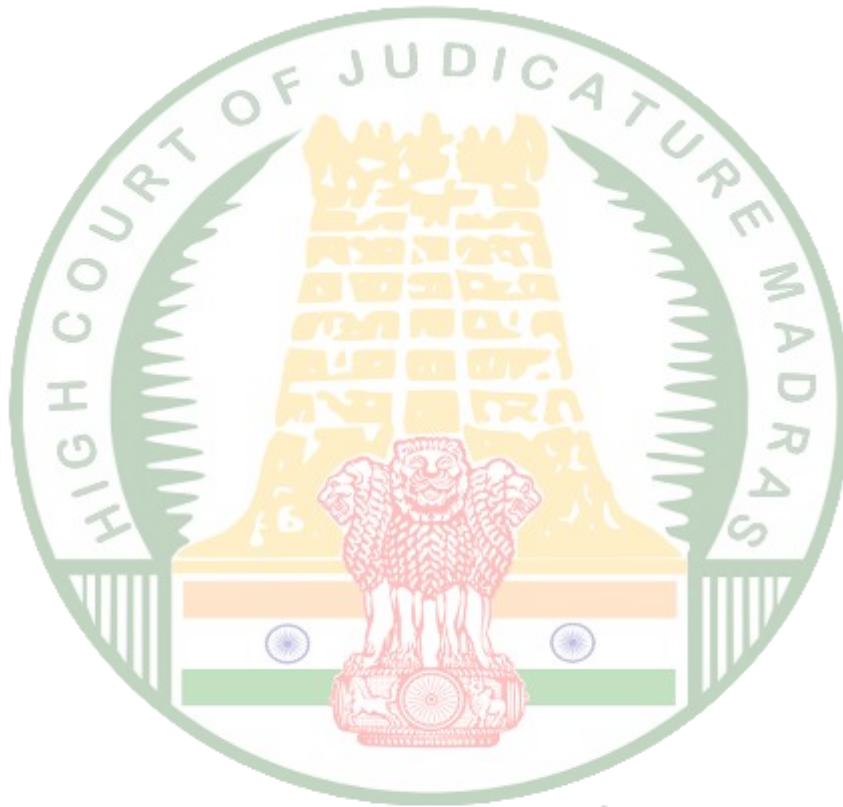
1. Union of India
rep. By its Ministry of Communication and
Information Technology
Department of Telecommunication
Sansad Marg
New Delhi – 110 001
2. Chairman-cum-Managing Director
Bharat Sanchar Nigam Limited
Bara Kamba Road
New Delhi – 110 001
3. Chief General Manager
Telecommunications
Tamil Nadu Circle
Chennai – 600 002
4. General Manager
Bharat Sanchar Nigam Limited
Thanjavur Secondary Switching Area
Balaji Nagar
Thanjavur – 613 007



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