

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT**

**AND**

**HON'BLE DR. JUSTICE SHAMEEM AKTHER**

**W.P. No.23628 of 2017**

**ORDER : (ORAL)**

(per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present petition the petitioner has challenged the order dated 1.2.2017 passed in O.A.No.2390 of 2013 whereby while dismissing the O.A. filed by the petitioner, liberty was granted to challenge the speaking order vide Memo.No.SE/ISLMCC/Tuni/EB/EC.3/O.A.No.2390/2013/505M, dated 4.7.2014, issued by the 1<sup>st</sup> respondent.

2. The petitioner filed O.A. before the Tribunal seeking declaration that he is entitled for absorption into last grade service in the existing vacancies in terms of G.O.Ms.No.212, dated 22.4.1994 read with Circular Memo.No.16921/125/A2/PC.III/97 dated 10.9.1997 with effect from the date on which he fulfils the eligibility criteria including completion of five years of service as on 25.11.1993 with all consequential benefits, while holding the action of the respondents in not absorbing/regularising his services in the last grade scale in terms of G.O.Ms.No.212 dated 22.4.1994 without any justification under the guise of internal correspondence, as illegal, arbitrary, unjust and subversive of Articles 14, 16 and 21 of the Constitution of India.

3. It is pertinent to mention that at the stage of admission, by way of interim relief dated 10.4.2013, pending disposal of the O.A., learned Tribunal directed the respondents to consider the proposals sent by the Superintending Engineer vide proceedings dated 27.9.2005 and pass appropriate orders within a period of four weeks from the date of receipt of a copy of the order.

4. Resisting the relief, respondents filed counter-affidavit contending that as per para 4 of G.O.Ms.No.9 Finance & Planning (FW.PRC.VI) Department dated 8.1.1981, all full-time contingent posts, which have been created under the orders of competent authority are in existence for a period of five years or more as on 1.4.1981 and which are required to be continued on a permanent basis, be converted into regular Government posts in the Last Grade Service in the pay scale of Rs.290-425 with effect from 1.4.1981. And, the said G.O. has no application to the petitioner since he was appointed as Full-time Contingent Watchman with effect from 17.10.1981. In order to absorb against regular last grade service in terms of G.O.Ms.No.212, there must be a clear vacancy, whereas, the petitioner was appointed as Attender by transfer with effect from 9.7.2007 and his services were also regularised in the said cadre.

5. Pursuant to the letter of second respondent dated 3.1.2014, addressed to the Government, the Government issued instructions vide Memo No.9985/Ser.VI/2013-4 dated 16.4.2014 to furnish necessary proposals to the Government, if the petitioner is eligible for

regularisation and if not eligible, issue speaking orders rejecting the request and to file detailed counter affidavit in the O.A. stating that the petitioner, who is appointed as Attender, is not entitled for regularisation with retrospective effect, speaking order vide Memo. No.SE/ISLMCC/Tuni/EB/EC.3/O.A.No.2390/2013/505M, dated 4.7.2014 issued by the respondent.

6. It is pertinent to note that after issuing proceedings dated 4.7.2014, neither the petitioner challenged the same nor amended the O.A. pending before the Tribunal. Accordingly, while dismissing the O.A., the learned Tribunal has granted liberty to the petitioner to challenge the speaking order dated 4.7.2014, issued by the 1<sup>st</sup> respondent.

7. In view of the above, we find no illegality or perversity in the order passed by the learned Tribunal.

8. The Writ petition is accordingly dismissed. No order as to costs.

9. Consequently, miscellaneous petitions pending, if any, shall stand closed.

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JUSTICE SURESH KUMAR KAIT

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Dr. JUSTICE SHAMEEM AKTHER

18<sup>th</sup> July, 2017  
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