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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 4293/2001

MAHENDER SINGH & ORS.

..... Petitioner

Through: Mr.Girish Kandpal, Adv. with
Mr.Ghanshyam Joshi, Adv.,
Mr.Chirag Joshi, Advs.

versus

UOI & ORS.

..... Respondent

Through: Mr.Suresh C.Sati, Central Govt.
Pleader for R1 and R2

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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01.08.2017

CM No. 27342/2017 (for direction) with W.P.(C) 4293/2001

1. This is an application filed by the petitioner under Section 151 CPC for grant of ad-interim direction for continuation of his service.
2. Since the issue in the writ petition is very short, with the consent of the learned counsel for the parties, they have been heard.
3. It is the case of the petitioner that he was appointed as a Staff Car Driver on July 23, 1992 in the respondent No. 1-Organization. On September 10, 1993, Government of India issued a scheme for temporary

status and in terms of the said scheme, he was granted temporary status. It is noted that on July 12, 2001, certain candidates sponsored by Employment Exchange were called for Skill Test for appointment against the sanctioned posts of Staff Car Drivers. Mr. Joshi would submit that the skill test could not have been conducted by the respondent No.1. He states, the petitioner having been given the temporary status, had a prior right to be regularised on the post of Staff Car Driver. It is his case that he did not appear in the skill test held on July 12, 2001 under the bona fide belief that since he is already working as a Driver, there was no need for him to appear again in the said test. On the plea of prior right for regularisation, he would rely upon the judgment of this Court in the case of ***W.P.(C) 7246/2009, Government of NCT of Delhi Through the Director of Education Vs. Anil Kumar and Ors.*** That apart, he states as the petitioner has worked for 25 years on the post of Driver, a direction be issued for consideration of the petitioner's name for appointment as Driver.

4. On the other hand, learned counsel for the respondents would submit that on July 12, 2001, the respondents with an intention to fill the posts of Car Driver on daily wage basis, as by that time, no approval had come from the respondent No. 2 for filling up the posts on regular basis the respondent

No.2 had held the skill test on July 12, 2001. That apart, it is his submission that under the Recruitment Rules, the post of Car Driver could be filled only by way of transfer on deputation. He has drawn my attention to page 99 of the petition in that regard. In other words, it is his case that the petitioner's services as a Car Driver could not have been / cannot be regularised as that would be in violation of the Rules.

5. Having heard the learned counsel for the parties and noting the prayers made in the writ petition, it is clear that the petitioner, in effect is challenging (i) the Skill Test conducted by the respondent No. 1, of the candidates, who were sponsored by Employment Exchange for making appointment as Staff Car Drivers and (ii) for regularization of his services. Suffice to state, that the driving test conducted on July 12, 2001 by the respondent No. 1, was for engagement of car drivers on daily wage basis, which was also the petitioner's nature of engagement. Even otherwise, his case is that, he could not appear in the same under a bonafide belief that he need not appear as he is already working as a Driver has caused no prejudice to him. Rather, I find, he continued as Car driver on the strength of interim order passed by this Court.

6. There cannot be any direct recruitment on the post of Car Driver in

view of the rule position, which I reproduce as under. Hence, no regularisation can be granted. The petitioner shall not be entitled to any relief as prayed for in this petition:

“(2) The posts of Staff Car Driver, Senior Peon and Peon shall be filled by the method of transfer on deputation from amongst officials of the corresponding grades in the Central Government for an initial period of two years from the date of commencement of these rules and thereafter, they shall be filled from the cadre of the Department of Women and Child Development failing which from other Ministries/Department’s of the Central Government”.

7. Insofar as the judgment relied upon by Mr. Joshi in the case of ***Government of NCT of Delhi Through the Director of Education Vs. Anil Kumar and Ors. (supra)***, the same would not be of any help to the petitioner. No doubt, a person having been granted temporary status, would have a prior right for getting regularized but the regularization cannot be contrary to the Rules in force.

8. In view of the above, I find no merit in the petition. The same is accordingly dismissed. So also CM. No. 27342/2017.

V. KAMESWAR RAO, J

AUGUST 01, 2017/akb