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

+ W.P.(C) 3180/2018, CM No.12617/2018 & CM No.12618/2018
LALAN RAI Petitioner

Through: Mr. J.P.Shukla and Ms. Shipra Shukla,
Advocates.

versus

UNION OF INDIA & ANR Respondents

Through: Mr. Rajesh Kumar and Mr. Pradeep Jha,
Advocates.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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04.04.2018

1. The present petition has been filed by the petitioner, who is aggrieved by the judgment dated 31.10.2017, passed by the Central Administrative Tribunal dismissing the Original Application filed by him praying *inter alia* for issuing directions to the respondent No.2/Staff Selection Commission to regularise his services in Group-D with effect from the date his juniors were regularised, alongwith all the consequential benefits. By the impugned judgment, the Tribunal has dismissed the petitioner's O.A. holding that he did not fulfil the twin conditions laid down in the DoPT's Scheme dated 10.09.1993, that became operative from 01.09.1993 and therefore, he could not claim regularisation from the year 1991, as pleaded.

2. It is relevant to note at the outset that this is the fifth round of litigation that the petitioner has initiated based on the same cause of action.

The petitioner was engaged as a casual labourer in the SSC in the year 1989-90 and was disengaged in April, 1993 with directions to report to the Department of Education as a Waterman. Aggrieved by the said decision, the petitioner and some other casual labourers had filed O.A. No.1145/1993, which was decided on 09.02.1998, with directions issued to the respondents to re-engage them in preference to juniors and outsiders. During the pendency of the said O.A., the petitioner was re-engaged by the respondents in the year 1994 and he continued to work thereafter.

3. A second O.A. was filed by the petitioner alongwith some others, registered as O.A. No.2532/1999. The relief prayed for in the said O.A. was for issuing directions to the respondent/Staff Selection Commission to grant them a temporary status and regularise their services with all consequential benefits. Vide order dated 18.05.2001, the said OA was dismissed by the Tribunal on the ground of non-joinder of necessary parties. Pertinently, the petitioner elected not to challenge the aforesaid order.

4. In the year 2002, a third petition was filed by the petitioner alongwith some others, registered as O.A. No.405/2002, wherein they had again sought directions to the respondents to grant them temporary status notwithstanding the break in their service, in terms of the Scheme dated 10.09.1993, w.e.f. 01.09.1993, the date from which their juniors were granted temporary status. The thrust of the arguments addressed on behalf of the petitioner before the Tribunal was that the break in the petitioner's service, from the period of his disengagement to his re-engagement in January, 1994 ought to be ignored and he should be deemed to have continued in the service of the respondents.

5. Counsel for the respondents had countered the said argument by referring to the judgment dated 29.04.2002, passed by the Supreme Court in UOI and Ors. vs. Mohan Pal, reported as **(2002) 4 SCC 573**, wherein it was declared that temporary status cannot be granted to those casual labourers who were not in service on the date of commencement of the Scheme, i.e., as on 01.09.1993. Guided by the aforesaid decision, the Tribunal dismissed the O.A. filed by the petitioner and some others vide order dated 15.11.2002, by observing as below:-

“9. It is clear from the above that the temporary status can now be granted only to such of the casual labourers, who were in employment on the date of commencement of the Scheme and they should have rendered a continuous service of at least one year, i.e., 240 days in a year or 206 days (in case of offices having 5 days a week). It is an admitted position that the applicants were not in employment on the date of commencement of the Scheme. Obviously, they cannot now be granted temporary status under the provisions of this Scheme. The fact that Ashok Kumar or many others had been granted temporary status though they did not fulfil the necessary conditions stipulated therein, cannot become a ground for claiming the same benefit by other casual labourers.”

6. The petitioner did not take any steps to challenge the order dated 15.11.2002 for a period of 13 years till he and some others approached the High Court by filing W.P.(C) 10152/2015, wherein a challenge was laid to the order dated 18.05.2001, passed in O.A. No.2532/1999 and the order dated 15.11.2002 passed in O.A. No.405/1999. Vide order dated 19.02.2016, the said petition was dismissed by the High Court on the ground of delay and laches. At that time, the statement of the counsel for the petitioner was recorded to the effect that there were some subsequent developments and he

would have to examine the position in law and file a fresh application before the Tribunal, if so advised.

7. Thereafter, the petitioner proceeded to file a fourth petition, registered as O.A. No.2814/2016 before the Tribunal, once again based on the same cause of action, which came to be withdrawn on 08.09.2016, with liberty granted to him to file a fresh O.A., incorporating the orders passed by the respondents, regularising those who were junior to him. This was followed by the petitioner filing a fifth petition (O.A. No.3404/2016) that has been dismissed by the impugned order dated 31.10.2017.

8. The petitioner had argued before the Tribunal that a temporary status ought to be conferred on casual labourers, who were in employment on the date of issuance of O.M. dated 10.09.1993 by the DOPT and he was eligible for being granted a temporary status and regularised in the year 1991, on completion of 240 days' service in that year. However, he had had been deprived of the said benefit due to the pick and choose policy adopted by the respondents. Per contra, the respondents had opposed the O.A. filed by the petitioner on the ground that it was barred by *res judicata*, having regard to the decision rendered by the Tribunal on the same grievance, earlier thereto in O.A. No.2532/1999 and O.A. No.405/2002. It was contended that the petitioner cannot be permitted to successively reagitate the same issue over and over again, which is impermissible in law.

9. On merits, it was stated on behalf of the respondents that the 1993 Scheme of the DOPT had laid two eligibility conditions for grant of temporary status to casual labourers: firstly, that such a status would be conferred on those casual labourers who were in employment on the date of

issuance of the O.M. and secondly, that only those casual labourers would be considered eligible, who had rendered continuous service of at least one year, i.e., 240 days or 206 days in case of offices observing 5 days in a week. It was urged before the Tribunal that though the petitioner had completed 206 days' service in the year 1991, but he was not in position as on 10.09.1993 and therefore, did not fulfil one of the twin mandatory conditions laid down in the Scheme. Reliance was also placed by learned counsel for the respondents on the decision of the Supreme Court in the case of Mohan Pal (supra), wherein it was held that the Scheme of 1993 is not an ongoing Scheme and temporary status can be conferred on casual labourers under the Scheme only on fulfilling the conditions incorporated in Clause 4 of the said Scheme.

10. Concurring with the submissions made by learned counsel for the respondents, the Tribunal dismissed the O.A. filed by the petitioner by returning a finding that as he was not in employment on the date of commencement of the Scheme, he did not fulfil the requisite conditions laid down in the Scheme dated 10.09.1993 for grant of temporary status.

11. What is evident from the pleas taken by the petitioner and recorded in the impugned judgment is that he did not bring out any subsequent developments before the Tribunal for re-examining the position in law. That being so, the pleas taken in O.A. No.3404/2016 were squarely hit by the principles of *res judicata*, in the light of the earlier decision on the same issue taken by the Tribunal in O.A. No.405/2002, which had attained finality on dismissal of W.P.(C) 10152/2015. Under the garb of the liberty granted to him by the High Court vide order dated 19.02.2016, the petitioner could

not be permitted to reagitate the same issue and file a fresh O.A. based on the same cause of action, when no subsequent developments were brought out therein. That being the position, we are of the opinion that it was not necessary for the Tribunal to express a view on the merits of the case. The respondents' plea that the O.A. was barred by *res judicata* was valid and sufficient to dismiss the O.A. filed by the petitioner, purely on the ground of maintainability. We may also note that the petitioner had also filed a review application before the Tribunal for seeking review of the order dated 31.10.2017, which was dismissed vide order dated 11.12.2017.

12. The plea taken by the petitioner that the respondents have discriminated against him by picking and choosing and appointing those who were juniors to him, was duly noted by the Tribunal in its earlier order dated 15.11.2002 and in that context, the explanation offered by the counsel for the respondents was also recorded to the effect that till the date the Supreme Court decided the case of Mohan Pal (supra), directions had been issued by the Tribunal in several cases directing grant of the benefit of the Scheme to casual labourers by holding that the said Scheme was an ongoing one and as soon as casual labourers completed 240 days in any period of 12 months, they would become entitled to the benefit of the Scheme. But the said view was rejected by the Supreme Court in the captioned case in the year 2002 and thereafter, there was no occasion to grant temporary status to any of the casual labourers, who were not in service on the date of commencement of the Scheme.

13. We can do no better than to reproduce below the observations made by the Supreme Court in the case of Mohan Pal (supra), as below:-

“..... However, we make it clear that the Scheme of 1.9.1993 is not an on going Scheme and the temporary status can be conferred on the casual labourers under that Scheme only on fulfilling the conditions incorporated in Clause 4 of the Scheme, namely, they should have been casual labourers in employment as on the date of the commencement of the Scheme and they should have rendered continuous service of at least one year, i.e., at least 240 days in a year or 206 days (in case of offices having 5 days in a week). We also make it clear that those who have already been given temporary status on the assumption that it is an on going Scheme shall not be stripped of the temporary status pursuant to our decision.”

14. Reliance placed by learned counsel for the petitioner on the judgment dated 03.07.2013 of the Division Bench of this Court in **W.P.(C) 16760/2004** entitled O.P. Tiwari vs. UOI and Anr. cannot be of any avail as the said decision was rendered in the peculiar facts and circumstances of the said case and is clearly distinguishable.

In view of the aforesaid facts and circumstances, the present petition is dismissed in *limine* as meritless alongwith the pending applications.

HIMA KOHLI, J.

PRATIBHA RANI, J.

APRIL 04, 2018

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