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

+ **W.P.(C) 10980/2018 & C.M. Nos.42753/2018 (for stay), 42754/2018
(for exemption)**

UNION OF INDIA & ORS

..... Petitioners

Through: Mr.Satyendra Kumar, Adv.

versus

BASANT KUMAR

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% 12.10.2018

1. The petitioner/Director General, CGHS has filed the present petition being aggrieved by an order dated 19.12.2017, passed by the Central Administrative Tribunal, Principal Bench, New Delhi, allowing OA No.4578/2015 filed by the respondent, who was serving as a casual labour/Waterman with the petitioners, directing them to process his case for regularization from the date his juniors had been regularized.

2. The case has a chequered history. Prior to filing OA No.4578/2015, in the year 1999, the respondent had filed OA No.2124/1999 being aggrieved by his disengagement on the part of the petitioners. The said Original Application was disposed of by the Tribunal vide order dated 18.02.2000 with directions to the petitioners

that as and when they engage casual labourers either as Watermen or in any other job of that nature, if the respondent herein was otherwise found to be suitable and eligible, his case should be considered in preference to the juniors and outsiders, without insisting upon further sponsorship by the Employment Exchange.

3. Pursuant to the aforesaid order, the respondent was duly engaged by the petitioners whenever work was available. During this period, the respondent made representations to the petitioners seeking his regularization on the ground that he had initially being engaged in the year 1992 as a Waterman and subsequently engaged over several years, till he had been disengaged on 30.09.1999, whereafter he had been re-engaged pursuant to the Tribunal's order in OA No.2124/1999.

4. In the year 2005, upon being again disengaged by the petitioners, the respondent filed a second Original Application before the Tribunal registered as OA No.2163/2005, with a grievance that the petitioners had again disengaged him. Vide interim order dated 30.09.2005, the petitioners were directed to maintain status quo. Finally, vide judgment dated 18.04.2006, the Tribunal observed as follows:-

“6. I have heard the learned counsel for parties and perused the pleadings carefully. It is an admitted fact that besides the year 1992, 1993, 1999 the applicant was engaged only in the year 2000 and 2005. He continues to be engaged/retained as casual labourer in terms of interim order dated 30.09.2005. Since the summer season is about to set in very soon, the present OA can be disposed of with direction to respondents to engage him as Waterman or casual labourer,

as the need be & subject to availability of vacancy if the applicant's conduct and service had been found satisfactory during the earlier engagement. As far as his regularization is concerned, since such is not the prayer made, I refrain from making any observation. Accordingly, OA stands disposed of with directions to respondents to consider and engage him as waterman/casual worker in preference to outsiders and juniors, if any. No. Costs."

5. It is relevant to note that the respondent was thereafter working continuously in the South Zone Office of the petitioners from June, 2005 to November, 2011 when he was yet again disengaged on 28.11.2011. Upon not being re-engaged, the respondent submitted a representation to the Headquarters for further extension of his engagement. Vide letter dated 14.03.2012, the Additional Director, CGHS, Headquarters raised certain queries relating to the respondent from the Additional Director, CGHS, South Zone but the Department did not re-engage him. This resulted in the respondent approaching the Tribunal for a third time by filing OA No.2837/2012, which came to be decided vide order dated 24.02.2015, with the following directions:-

"6. Having considered the arguments and pleadings on record by both parties, we deem it necessary to direct the respondents to examine the case of the applicant, if the case of the applicant is found to be covered by the judgment of the Tribunal under which the services of the eleven casual labours were regularized, they shall grant the same benefit to the applicant, as given to the eleven employees covered by the impugned office order dated 29.06.2012. Respondents shall accordingly examine the applicant's claim and take decision thereon. They shall pass a reasoned and speaking order within a period of three months from the date of receipt of a

copy of this order and serve a copy of the order on the applicant.

7. OA is allowed to the extent indicated above. No costs.”

6. In compliance of the aforesaid orders passed by the Tribunal directing them to pass a reasoned and speaking order in respect of the respondent, the petitioners passed an order dated 29.06.2015, rejecting his case for regularization on the ground that he had not been sponsored by the Employment Exchange when he was engaged and that the work of a Waterman which he was carrying out, was even otherwise seasonal in nature. Lastly, it was stated that the post of Group ‘D’ had already been abolished by the Sixth Central Pay Commission and there being no requirement of Watermen in the CGHS, Delhi, the respondent could not be regularized. It was this order dated 29.06.2015 that compelled the respondent to approach the Tribunal for a fourth time, by filing OA No.4578/2015 which has been allowed by the Tribunal by the impugned order dated 19.12.2017. Aggrieved by the said order, the petitioners have filed the present petition.

7. Mr.Satyendra Kumar, learned counsel for the petitioners submits that the impugned order dated 19.12.2017, is perverse, inasmuch as the Tribunal failed to appreciate that the OA was barred by res judicata as the same issue between the same parties had already been heard and decided by the Tribunal in OA No.2837/2012; that the respondent had mislead the Tribunal by furnishing wrong and misleading information relating to his engagement by the petitioners

from time to time and that the Tribunal had exceeded its jurisdiction by directing the petitioners to regularize the services of the respondent which runs contrary to several decisions of the Supreme Court including the one in the case of '*Secretary State of Karnataka & Ors. vs. Uma Devi & Ors.*, reported as *JT 2006 (4) SC 420*.

8. Coming to the first plea taken by learned counsel for the petitioners about OA No.4578/2015 being barred by res judicata, we may note that the Tribunal had disposed of the earlier OA No.2837/2012 filed by the respondent, by simply directing the petitioners to examine his claim for regularization and pass a reasoned and speaking order thereon within three months under intimation to him. The question of the doctrine of res judicata applying in the light of the aforesaid order does not arise as it is evident that while passing the order dated 24.02.2015, the Tribunal had not returned any findings on merits for the petitioners to take a plea of res judicata in the respondent's subsequent OA. Though the respondent had filed three Original Applications prior to filing OA No.4578/2015, it is only his latest OA which has been decided by the Tribunal on merits.

9. As far the submission made by learned counsel for the petitioners that the respondent had tried to mislead the Tribunal on the factual position, we do not find any force in the said submission. On the contrary, we may note that the petitioners do not deny the assertion made by the respondent to the effect that they had regularized 11 other casual workers who had joined the department much later than him, while ignoring his claim when he had been serving the petitioners from the year 1992 onwards. In this regard, it

is relevant to refer to the observations made by the Tribunal in paras 12 and 13 of the impugned order which are reproduced herein below for ready reference:-

“12. On going through the facts of the case, I find considerable force in the arguments advanced by the learned counsel for the applicant that the respondents have regularized 11 other casual workers, ignoring the claim of the applicant for similar benefit. It was essential for the respondents to examine the claim of the applicant for regularization since he had joined the department much before them. Even without a formal seniority list, it is not disputed that the applicant is senior to others – who joined the department much after he did. The respondents admit in the impugned order that some of the casual labourers were also working as ex-watermen along with the applicant. They are now, weakly trying to differentiate between the applicant’s engagement as a waterman and the others, who were given the work of a casual labour, later, although initially, they too functioned as watermen.

*13. From the facts of the case, it appears that discriminatory treatment has been meted out to the applicant, who worked as a waterman/casual labour much before the engagement of 11 casual labours, who stand regularized by the respondents now. It is not disputed that persons, who joined later than the applicant and were junior to him have been regularized as casual labours vide orders dated 29.06.2015. In my view, ratio of the decision passed in **OA-1581/2014** (Anil Kumar Vs. UOI & Ors.) dated 30.03.2017 would apply to the present case also. The respondents were given similar directions by this Tribunal vide order dated 14.12.1999 in OA2120/1999 that:-*

“The case of the applicant may be considered in preference to the juniors and outsiders in the post of casual labourer as and when there is vacancy, in case any junior to him is still engaged as casual labourer,

the applicant's claim should be given preference."

Subsequently, vide order dated 11.11.2004 in OA-446/2004, the Tribunal observed that:-

".... the present OA stands disposed of with a direction to the respondents that in the event juniors are continuing, the applicant shall be meted out the same treatment. Interim order is to continue."

Finally, again, the Tribunal in OA-1261/2012 on 23.05.2013 observed that:-

".....since the respondents have regularized certain casual workers, it would be open to them to examine the claim of the applicant also."

Even the challenge to this order in the Hon'ble High Court of Delhi in WP(C) No. 6577/2013 was dismissed on 21.10.2013, directing that:-

"4. We are unable to agree with the contention of the learned counsel for the petitioner. In fact after noting the fact that there are no pleadings and averments with regard to the regularization of persons junior to the petitioner the Tribunal has still protected the interest of the petitioner inasmuch as it had directed the respondents to examine the claim of the petitioner keeping in view that they have regularized certain casual labourers. In other words, meaningfully read the Tribunal was conscious of the fact that if persons junior to the petitioner have been regularized, then the claim of the petitioner must also be considered."

Despite all the orders being in his favour, the applicant has been made to face many roadblocks on account of the cussed attitude of the respondents – forcing him to seek judicial

remedy each time by resorting to avoidable litigation.”

10. The submission made by learned counsel for the petitioners that the service of the respondent cannot be compared with the service of the 11 casual labourers for the reason that their names were sponsored by the Employment Exchange, also does not hold any water, as we find that vide order dated 18.02.2000, passed by the Tribunal in OA No.2124/1999, it was made clear that as and when they engage casual labourers either as Waterman or in any other job of that nature, for which the respondent was otherwise suitable and eligible, his case would be considered, in preference to juniors and outsiders, without insisting upon his sponsorship by the Employment Exchange. It is not as if the petitioners being aggrieved by the aforesaid findings or directions, had taken any steps to challenge the same by filing a writ petition. Having accepted the said findings returned by the Tribunal in OA No.2124/1999, the petitioners cannot insist that the respondent cannot compare himself with the 11 other casual labourers who have been regularized by them on 29.06.2012, even though they had started working as casual labourers with the petitioner/department much after the respondent had joined the department. Even otherwise, it is an undisputed position that regularization of 11 persons junior to the respondent had been done much after the abolishment of Group ‘D’ posts by the VIth Central Pay Commission as also after the decision of the Supreme Court in the case of **Uma Devi (supra)**. Thus we find no justification to deny the same relief to the respondent herein.

11. In view of the aforesaid facts and circumstances of the case, we

are of the opinion that the present petition does not deserve to be entertained as we do not find any infirmity in the impugned order. Accordingly, the present petition is dismissed *in limine*, along with the pending applications.

HIMA KOHLI, J

REKHA PALLI, J

OCTOBER 12, 2018

gm

