

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

W.A.No.3313 of 2019
and CMP No.21292 of 2109

1. The Regional Executive Director,
Southern Region,
Airports Authority of India, Meenakbakkam,
Chennai - 600 027.

2. The Deputy General Manager (P&A),
Airports Authority of India,
Southern Region, Meenakbakkam,
Chennai - 600 027,

... Appellants/Respondents

Vs.

B.Arumugam

... Respondent/Petitioner

Writ Appeal filed under Clause 15 of the Letters Patent
against the Order dated 13.02.2019 made in WP.No.27601 of 2008.

Prayer in WP.No.27601 of 2008: Petition under Article 226 of
the Constitution of India, praying for the issue of a Writ of
Mandamus, directing the respondents to absorb and regularise the
service of the petitioner as attender/storeman or in any other
suitable post with all consequential benefits like continuity of
service, fixation of pay and allowances, seniority etc.,

For Appellants : Mr.M.T.Arunan
Standing Counsel

J U D G E M E N T

(Order of the Court was delivered by S.MANIKUMAR, J)

Instant writ appeal has been filed against the order made in
WP No.27601 of 2008 dated 13.02.2019, by which the writ Court,
while disposing of the writ petition directed the
respondents/appellants to undertake the exercise of
regularisation of the services of the writ petitioner within a
period of eight weeks from the date of receipt of a copy of the
order made in the writ petition.

2. Short facts leading to the filing of the writ appeal are as follows:

(i) Writ petitioner/respondent was appointed as a casual labour in the year 1997 in the appellants' establishment. Since then, his appointment has been continued on all the days without any break till the filing of the writ petition. When he was engaged for cleaning / arranging of stores / godown and assisting for issuing, packing and despatching of communication equipments to different airports in India, he has been continuously discharging his duties efficiently and diligently without any complaints whatsoever. However, when various benefits have been enjoyed by the regular employees, that were denied to the writ petitioner.

(ii) Writ petitioner has given a representation requesting for regularisation of his services. In the meanwhile, on 17.11.2017, writ petitioner was issued with a communication calling him to attend an interview for the post of Junior Attender (Office). As directed by the appellants, the writ petitioner also attended the interview. He came to be overlooked and 39 candidates came to be appointed pursuant to the interview held on 3.12.2007. After sometime, when the writ petitioner was continuously working, he was again directed to appear for another interview for the post of Attender. Again when the petitioner appeared in the said interview, he was informed that he was not successful.

(iii) Hence, contending that he has already completed 25 years of continuous service in the appellant establishment and acquired experience, writ petitioner / respondent filed WP No.27601 of 2008, for a writ of mandamus, directing the respondents to absorb and regularise his service as attender / storeman or in any other suitable post with all consequential benefits like continuity of service, fixation of pay and allowances, seniority, etc.

(iv) Before the writ Court appellants herein filed a detailed counter affidavit, objecting to the prayer for regularisation. Appellants did not dispute the submission of the writ petitioner that he has been working continuously as casual labour from 1997, but contended that there is no payment made to the writ petitioner on day to day basis, as he has been engaged only on requirement basis for petty works like packing, unpacking and loading/unloading on need basis for 3 to 4 days in a week for a fixed quantum of work.

(v) Before the writ Court appellants contended that when the quantum of work is only for about 3 to 4 hours per day, petitioner has been paid a consolidated sum of Rs.400/- for his

casual work based on mutual agreement and therefore, appellants were unable to regularize the services of the petitioner and thus, prayed for dismissal of the writ petition.

(vi) After hearing the learned counsel for parties, writ Court vide order dated 13.02.2009, disposed of WP No.27601 of 2008, as hereunder.

"4. But this Court is unable to find any justification on the part of the respondents for not regularising the services of the petitioner. When he has entered the services of the respondent establishment in the year 1997 and allowed to continue in service, even after completion of 21 long years, he cannot be kept as a casual labour, because even as on date, he has been engaged to do the packing, unpacking, loading and unloading works. The very continuous engagement of the petitioner by the respondents itself shows that a need has arisen for continuing the petitioner in service. Moreover, when the petitioner is able to establish that he has been working for the last 21 long years, this Court finds no impediment for the respondents to regularize the services of the petitioner. Accordingly, the writ petition stands disposed of with a direction to the respondents to undertake the exercise of regularisation of the services of the petitioner within a period of eight weeks from the date of receipt of a copy of this order. Consequently, M.P.Nos.1 & 2 of 2008 are closed. No costs.

3. Aggrieved by the abovesaid order, respondents/appellants have filed the instant writ appeal on the following grounds.

(a) writ Court erred in allowing the writ petition on total non-application of mind by directing the appellants to undertake the exercise of regularisation of the services of the respondent within a period of eight weeks.

(b) writ Court should have dismissed the writ petition, when the respondent is not entitled to get regularized in the services of the appellants.

(c) writ Court erred in allowing the writ petition, merely on the ground that the writ petitioner has been engaged for about 21 years and hence there is no impediment for the appellants to regularise the services of the writ petitioner.

(d) writ Court had overlooked to notice that the writ petitioner has been working only as a casual labour from 1997 and that there is no payment made to him on day to day basis, as he had been engaged only on requirement basis for petty works like packing, unpacking and loading / unloading on need basis for 3 to 4 days in a week for a fixed quantum of work.

(e) writ Court failed to take into account the authoritative judgment of the Constitution Bench of the Hon'ble Supreme Court of India in the subject of regularization and permanent absorption, rendered in The State of Karnataka Vs. Umadevi, reported in (2006) 4 SCC 1.

(f) writ Court failed to note that the appellants have no authority to issue any orders granting regularization, permanent absorption or appointment in violation of the Constitutional scheme and in violation of the recruitment rules in force.

(g) writ Court should have seen that unless the appointment is made in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee and as such the writ petitioner has no right to seek absorption and regularization of services.

(h) writ Court failed to see that the Hon'ble Apex Court in a recent judgment in Civil Appeal No.8649 of 2018 has held that "If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it was engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. A temporary employee could not claim to be made permanent on the expiry of his term of appointment. It was also clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection, as envisaged by the relevant rules."

4. On the above grounds, Mr.M.T.Arunan, learned standing counsel for the appellants made submissions.

5. Heard the learned counsel for the appellants and perused the materials available on record.

6. Grounds of challenge in this appeal is nothing but a repetition of the counter affidavit, which the writ Court has adverted to and recorded a finding that there was a need for continuous engagement as a Casual Labour for packing, unpacking and loading/unloading, for many years continuously.

Services of the respondent in the appellant, Airport Authority of India, from the year 1997, till he filed the writ petition has not been disputed. Being qualified twice, he has been called for interview. Unfortunately, he could not get through. Considering the nature of work, contention of the appellant that packing, unpacking and loading/unloading on need basis for 3 to 4 days in an Airport, is unacceptable.

7. Though Uma Devi's case [quoted supra], is relied on by the learned counsel for the appellants, the Hon'ble Supreme Court at paragraph No.53 of the said judgment, granted relief to such of those persons working on casual, daily rated etc., basis for long number of years, only denied payment of wages from the date of initial appointment. Moreover, in Uma Devi's case [quoted supra] the Hon'ble Supreme Court did not say, not to regularise them. Reliance on the Hon'ble Supreme Court judgment in Civil Appeal No.8649 of 2018, cannot be countenanced, as the matter does not involve contractual appointment. Writ Court has properly adverted to the rival submissions and issued the directions, which does not call for any interference. While confirming the order made in WP No.27601 of 2008 dated 13.02.2019, writ appeal is dismissed. No Costs. Consequently the connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

ars Sub Assistant Registrar

To

1. The Regional Executive Director,
Southern Region,
Airports Authority of India, Meenakbakkam,
Chennai - 600 027.

2. The Deputy General Manager (P&A),
Airports Authority of India,
Southern Region, Meenakbakkam,
Chennai - 600 027.

+1 cc to Mr.M.T.Arunan, Advocate, **S.R.No.82460(14/11/2019)**

W.A.No.3313 of 2019
and CMP No.21292 of 2109

PP(CO)
SSM(04/11/2019)
SSM(14/11/2019).