

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.08.2019

CORAM

The Honourable Mr.JUSTICE K.K.SASIDHARAN

and

The Honourable Ms.JUSTICE P.T.ASHA

W.P.No.30269 of 2018
and W.M.P.No.35322 of 2018

1. A.Vellapandi
2. S.Santhana Krishnan
3. S.Pandi
4. M.Selvakumar

.....Petitioners

Vs.

- 1.The Joint Secretary(Admin), Government of India,
Ministry of Finance,
Department of Revenue CBEC,
New Delhi.
2. The Chairman,
Central Board of Exercise & Customs,
North Block, Department of Revenue,
Ministry of Finance,
Government of India,
New Delhi.
3. The Chief Commissioner of Central Exercise,
Race Course Road,
Coimbatore.
4. The Commissioner of Central Exercise,
V.P.Rathinasamy Nadar Road,
Bibikulam, Madurai

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issuance of writ of Mandamus, to direct the respondents to regularize the service of the petitioners based on the order of this Court in W.P.No.3635 of 2011, together with back wages.

For Petitioners : Mr.V.Raghavachari
For Respondents : Mr.K.Umesh Rao
Junior Central Government
standing Counsel for - CBEC

O R D E R

(Order of the Court was delivered by P.T.ASHA, J)

The question involved in the above writ petition is whether the petitioners are entitled to the benefit of the order in W.P.No.3635 of 2011, dated 12.08.2011 by regularizing their services with all attendant and back wage benefits.

2. The facts in brief which culminated into filing the above writ petition are as follows:-

The writ petitioners, four in number, were recruited as casual labourers through the Department of Employment and Training of the State Government on 23.07.1999 by the Commissioner of Central Exercise and Training. They were inducted into service on 31.08.1999, after due process of verification and the training also got completed.

3. The petitioners would submit that despite being due and eligible for regularization, the Department, instead of regularizing their service had proceeded to terminate the services in the year 2009 on the ground that they were not regularized. The petitioners, there upon have filed O.A.No.852 of 2009 on the file of the Madras Bench of the Central Administrative Tribunal along with others. The writ petitioners were arrayed as Petitioners Nos. 22, 25 -27 in the original application. The request was turned down by the Tribunal insofar as it related to the petitioners herein & 3 others on the ground that it was only those persons who had completed 10 years of service are entitled to regularization.

4. Challenging the said order, the writ petitioners have filed W.P.No.3635 of 2011 as Petitioners 1, 4, 5 & 6 seeking to quash the order passed by the Tribunal. A Division Bench of this Court disposed of the writ petition with a direction to frame a similar scheme like that of the Department of Personnel and Training based on Official Memorandum dated 10.09.1993 and provide an opportunity of regular entry to the writ petitioners, subject to eligibility, possessing qualification and if required by

relaxing the age bar and considering their case of regularization, keeping in mind Article 41 and part IV of the Directives of the Constitution of India. This order was passed in a batch of writ petitions which were filed challenging the order passed in O.A.No.852 of 2009. This writ petition was heard along with W.P.No.9870 and 8711 of 2011.

5. The order passed by the Division Bench was taken on appeal by way of Special Leave Petitions by the Government to the Supreme Court.

6. The Supreme Court dismissed the Special Leave Petitions on the ground of delay. The Government had once again filed Review Petitions(c) Nos.3000-3004 of 2014, and by order dated 28.01.2015. The Review petitions were also dismissed both on the ground of delay, and also on merits.

7. Since the respondents were not complying with the order passed in W.P.No.3635 of 2011, the petitioners issued a contempt notice dated 09.02.2015. The respondents had sent a reply dated 27.05.2015 stating that the Commissioner of Madurai had requested the Board to give necessary directions regarding the completion of fulfilment of ten years of service. After the contempt notice was issued the respondents had regularized the service of 20 Casual labourers but not the petitioners.

8. The petitioners and others had moved Contempt Petition No.76 of 2014 on the file of the Central Administrative Tribunal, Madras Bench and by order dated 09.07.2015, the Tribunal had recorded the submission of the respondents that they would complete the regularization process in respect of the applicants 1 to 12 and 14 to 21 within a period of six months. In view of the above, the Tribunal had closed the contempt petition.

9. However the writ petitioners were not considered at all and aggrieved by the same, they have come forward with this writ petition for the above prayer.

10. Heard Mr.V.Raghavachari, learned counsel for the petitioners who produced the earlier order dated 12.08.2011 passed by the Division Bench in W.P.No.3635 of 2011. The Division Bench in its Judgment in W.P.No.3635 of 2011 Batch as held as follows:-

'Also, it is stated that as per Official Memorandum No.51016/2/90-Estt.(C) dated 10.09.1993 of the Department of Personnel and Training, temporary status can be awarded to those casual laborers who have put in 240 days of continuous service and as per the recent Supreme Court judgment in 'Haryana State Electricity Board - Contract labour' case, the casual laborers who have put in 240 days continuous service can be made permanent (copy published in the daily 'The Hindu' is enclosed herewith) and that they can be considered for appointment as Temporary Status Casual Labourers and in this regard, the matter may be taken up suitably for DOP & T for issue of necessary directions. It is also learnt in many other Commissionerates also similar situation may be prevailing and hence, it would be possible to make a strong recommendation to DOPT for issuing a circular as well as to that of 10.9.1993 so that the eligible Casual Labourers can be conferred with Temporary Status.'

11. Pursuant to this order, the Government of India has passed Establishment order No.04 of 2015 dated 05.05.2015 implementing the directions passed by the Division Bench with reference to 20 casual labourers who had moved the Court and who are parties to the common order in W.P.No.9870, 8711 and 3635 of 2011. The petitioners are also covered by this directions passed by the Division Bench, however some of them fall short of the 10 years service.

12. Taking into account the fact that the earlier Division Bench deemed it fit to pass the similar order with reference to the petitioners herein, we are of the view that the respondents should consider the case of the writ petitioners in the light of the order passed by the Division Bench dated 12.08.2011 in W.P.No.9870, 8711 and 3635 of 2011 and frame schemes as detailed in the order in W.P.No.16733 of 2009, extracted above. The said exercise shall be completed within a period of three months from the date of receipt of copy of this order.

13. This writ petition is allowed in part with the above directions. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

msrm

To

1. The Joint Secretary(Admin), Government of India,
Ministry of Finance,
Department of Revenue CBEC,
New Delhi.
2. The Chairman,
Central Board of Exercise & Customs,
North Block, Department of Revenue,
Ministry of Finance,
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3. The Chief Commissioner of Central Exercise,
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4. The Commissioner of Central Exercise,
V.P.Rathinasamy Nadar Road,
Bibikulam, Madurai

+1cc to Mr.V.Raghavachari , Advocate SR.No. 74445
+1cc to Mr.Umesh Rao , Advocate SR.No. 75749

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A.SK(14/10/2019)

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