

\$~9

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

+ **W.P.(C) 4277/2012**

JAWALA PRASAD Petitioner

Through: Mr.M.K.Verma, Advocate.

versus

D.D.A. Respondent

Through: Mr.Arun Birbal, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
% 14.11.2019

1. The Petitioner has challenged an order dated 23rd March, 2012 passed by the Central Administrative Tribunal ('CAT'), Principal Bench, dismissing his application O.A.No.2541/2011 and declining the Petitioner's plea for regularisation of his services with the Respondent.

2. This is the second round of litigation. Earlier, by an order dated 26th November, 2010 in O.A.No.3591/2009, directions were issued to the Respondent to consider the Petitioner's case for regularisation.

3. The facts in brief are that the Petitioner was initially appointed as a casual labourer in the Respondent as a Machine Man on 10th November, 1981. However, his services were terminated on 24th August, 1990 on the

ground that he had absented himself from duty from 18th June, 1990.

4. Challenging his termination, the Petitioner approached this Court with a writ petition which stood dismissed on 24th March, 1992. While dismissing the Special Leave Petition filed against this order, this Supreme Court observed that the dismissal would not come in the way of Petitioner resorting to any remedy available under Industrial Dispute Act, 1996.

5. In 1996, the industrial dispute exercised and an ex parte order on 6th September, 2004 was passed by the Labour Court directing the Respondent to reinstate the Petitioner with 50% back wages. The challenge to the award by the Respondent in this Court filed by a writ petition, which was dismissed on 27th August, 2009. Meanwhile, the Petitioner was reinstated as Daily wager Machine Man Grade-III by a letter dated 11th January, 2007.

6. The question now was of regularisation of Petitioner's service and whether The question is whether the Petitioner could get the benefit of the judgment of the Supreme Court in *Secretary, State of Karnataka. v. Uma Devi (2006) 4 SCC 1*, further explained by the Supreme Court in *State of Karnataka v. M.L.Kesari AIR (2010) 9 SCC 247*.

7. In the impugned order, the Tribunal has first examined whether the Petitioner possessed the requisite minimum qualification for appointment as Machine Man in the DDA on the date of appointment, while the minimum qualification was that the Petitioner should be 'middle pass'. According to the Petitioner, 'middle pass' means passing the 7th standard. He claims that

on the date of his appointment i.e. on 10th November, 1981 he has already passed the 7th class.

8. The Court's attention has been drawn to an affidavit dated 21st March, 2012 filed by the Petitioner before the Tribunal enclosing a copy of the said school certificate showing that he passed the 9th Class in 1989. When asked whether there was any averment in the petition that the Petitioner had in fact passed 7th class or 8th class as of 10th November, 1981, Petitioner referred to para IV of the petition which reads as under:

“IV. That the Petitioner had necessary qualification – he was Middle pass – and had been in continuous service of DDA for more than four years after his appointment in 1981. The Petitioner therefore made representation in 1985 to DDA for appointing him on regular basis as there was continuous requirement of Machine man in DDA's establishment. It is further submitted that four of Petitioner's similarly placed colleagues, namely, Ramesh Chand Joshi, Hiramani, Dharampal and Chand Malhotra also made representation for regularisation of their service to DDA in 1985 along with the Petitioner.”

9. The above averments are vague. There is no positive averment by the Petitioner that as on 10th November 1981, he had in fact passed the 8th class or for that matter even 7th class. He has not enclosed any school certificate to that effect. There is no averment in the present petition that the Tribunal failed to consider any such certificate.

10. In the circumstances, this Court is unable to come to a view different from one reached by the CAT that Petitioner lacked the minimum qualification for appointment as Machine Man on 10th November, 1981 in

the DDA.

11. No interference is called for with the impugned order.

12. The petition is dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 14, 2019

mr