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

Date of Decision: 05.04.2019

+ W.P.(C) No.10479/2017 & C.M. No.42904/2017 (for stay)

UNION OF INDIA AND ORS Petitioners
Through Mr.Amit Mahajan, Adv.

versus

HRIDAY RAM Respondent
Through Mr.U. Srivastava, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J (ORAL)

1. Mr.Mahajan, learned counsel for the petitioner states that he has taken instructions. The order passed by the Tribunal has been implemented subject to the present writ petition. He has, therefore, pressed the petition.

2. We have heard the submissions of learned counsel. The petitioner-Union of India assails the order dated 14.12.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.100/1722/2015. The Tribunal allowed the said Original Application and directed the petitioner herein to regularize the services of the respondent w.e.f. 17.06.2011, i.e., when the post of

Canteen Helper became available, after relaxing the eligibility conditions prescribed in the Recruitment rules.

3. The respondent was engaged as a casual labourer by the petitioner-Canteen Management Committee during the period 1974-76. His services were thereafter disengaged without any reason. Ultimately, his services were re-engaged as a casual labourer w.e.f. 06.02.1986. Since then, he has been continuously working without a break. He sought regularization and for that purpose, he preferred OA No.1537/98. Vide order dated 02.02.1999 passed by the Tribunal, the petitioner was directed to consider the respondent's case for regularization w.e.f. 06.02.1986, by treating him as a deemed Government servant as per OM dated 11.10.1991. However, his services were not regularized. The respondent then preferred OA No.2981/2002. The Tribunal once again directed the petitioner to finalize his case for regularization of his services vide order dated 18.11.2002. Once again, the respondent's services were not regularized. Consequently, he again preferred OA No.2772/2003, wherein he challenged an order dated 07.04.2003 passed by the petitioner. That order rejected the respondent's representation wherein he sought regularization. The said order dated 07.04.2003 passed by the petitioner was set aside, and the Tribunal again vide order dated 02.08.2004 directed that the respondent's claim for regularization of his services be considered.

4. The petitioner challenged the said order dated 02.08.2004 in WP(C) No.7400/2005. This Court disposed of the writ petition on 02.02.2006, holding that so far as the respondent is concerned, he was

the tenth person to be appointed as a Canteen helper, whereas there were only nine sanctioned posts in the petitioner's Canteen. Therefore, he could not be regularized at that stage. Eventually, this Court directed that the petitioner shall continue to retain the respondent in the service of the Press by making payment of his salary and other allowances from the sale proceeds of the Canteen. It was further directed that *"the petitioner shall also consider the case of the respondent sympathetically in view of the long service rendered by him in the aforesaid canteen. This case of the respondent shall be considered for regularization against an appropriate vacancy in accordance with the provisions of rules by exercising the power of relaxation which is made available to the competent authority under the rules. While doing so the petitioner shall also consider the ratio/implication of the decision of the Supreme Court Gujarat Agricultural University Vs. Rathod Labhu Bechar & Ors. (2001) 3 SCC 574. In terms of the aforesaid observations and directions the writ petition is disposed of leaving the parties to bear their own costs"*.

5. Despite the aforesaid order, the services of the respondent were not regularized even though a sanctioned vacancy became available on 17.06.2011. Consequently, the respondent preferred the aforesaid Original Application from which the present writ petition arises.

6. The submission of the learned counsel for the petitioner is that the petitioner was not obliged to grant relaxation of the rules in relation to the respondent's educational qualification. The petitioner was only required to consider the case of the respondent for

regularisation which, it did but it did not consider it necessary to regularize his services by granting relaxation with regard to his qualifications.

7. In our view, any power which is vested in an authority has to be exercised reasonably and in a *bona fide* manner. The petitioners do not deny the fact that the respondent has been continuously serving it since 06.02.1986. Pertinently, he was initially engaged even earlier between 1974-1976. The petitioners have not found the services of the respondent to be deficient over the years as a Helper in the Canteen of the Press. The fact that he did not meet the educational qualification of X Standard Pass, has never come in the way of the respondent in discharging his duties efficiently. It is in this light that this Court had earlier directed the petitioners to consider the respondent's case for regularization as and when a sanctioned vacancy becomes available by relaxation of the rules, which order has attained finality.

8. Since the Tribunal has granted relief to the respondent who has been knocking into the doors of justice since 1998, in exercise of our discretionary jurisdiction under Article 226 of the Constitution of India, we are not inclined to interfere with the impugned order particularly when the petitioners have already, in compliance with directions of the Tribunal, regularized the services of the respondent.

9. The petition is, accordingly, dismissed along with the pending application. We, however, make it clear that this order has been passed in the peculiar facts of this case, and the same shall not

constitute a precedent for any other case.

(VIPIN SANGHI)
JUDGE

(REKHA PALLI)
JUDGE

APRIL 05, 2019/aa