

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.10.2020

DELIVERED ON : 03.11.2020

CORAM:

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE MRS.JUSTICE R.HEMALATHA

W.P.No.14711 of 2020

B.Shankar

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Petitioner

Vs.

- 1.Union of India,
Rep. By the Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai, Chennai-600 002.
- 2.Senior Accounts Officer,
O/o. The Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai, Chennai-600 002.
- 3.The Assistant Director (TECH)
O/o. The Chief Postmaster General,
Tamil Nadu Circle, Anna Salai,
Chennai-600 002.
- 4.The Manager,
Regional Workshop Postal Machines (RWPM),
Mail Motor Services,
Chennai-600 006.
- 5.The Central Administrative Tribunal,
Madras Bench, Chennai-600 104.
Rep. By its Registrar

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Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the 5th respondent pertaining to its order which is made in OA/310/00120/2017 dated 27.02.2020 and the order of the 3rd respondent made in Memo No.Tech/SM/Court case / Dlgs dated 03.07.2020, quash the same and consequently direct the respondents 1 to 4 to absorb the petitioner as MTS and pass such further orders.

For Petitioner : Mr.R.Malaichamy

For Respondents: Mr.Venkataswamy Babu
for R1 to R4

O R D E R

M.SATHYANARAYANAN, J.

The Writ Petitioner is the Original Applicant in O.A/310/00120/2017 on the file of the fifth respondent namely, Central Administrative Tribunal, Madras Bench. The Writ Petitioner / Original Applicant made a challenge to the proceedings of the first respondent dated 11.08.2016 in and by which, his claim for absorption came to be rejected and that his disengagement from 07.09.2015 was also in order, by filing the said Original Application.

2. The Original Application, after contest, came to be disposed of, vide impugned order dated 27.02.2020. The fifth respondent / Tribunal, in the impugned order, held that the Writ Petitioner / Original Applicant cannot derive any benefit of past service for regularization and however, he is entitled to be considered for adhoc appointment as and when necessity arises for engagement as part time adhoc labour, subject to two conditions. The Original Applicant, aggrieved by the said disposal by the fifth respondent/Tribunal vide impugned order, has filed this Writ Petition.

3. Facts leading to the present round of litigation have been narrated in detail and in extenso in the impugned order passed by the fifth respondent/Tribunal, which is the subject matter of challenge in this Writ Petition and for the sake of brevity, entire facts are not restated and only the relevant facts are culled out for disposal of this Writ Petition.

3.1. It is the claim of the Writ Petitioner/Original Applicant that he was initially appointed as a Part Time Contingent (PTC) (Helper) Sweeper-cum-Water Carrier by the Director of Postal Services, Madras Region in the year 1996 and he performed his duty with great care and devotion in the office of the fourth respondent. The Writ Petitioner/Original Applicant was ordered to work as a Mazdoor in the services of the fourth respondent from 01.11.2001 to 01.08.2015 for 8 hours a day, as instructed by the Postmaster General (MM), Chennai and he worked in that capacity till 31.07.2015 and however, to his shock and surprise, from 01.08.2015, his services were disengaged without issuing any order in writing by the fourth respondent.

3.2. It is also the claim of the Writ Petitioner/Original Applicant that while his services were engaged, he was paid Time Scale of Pay and he worked against permanent vacant post from the year 1996 and the same is evident by the information furnished by the authority dated 10.04.2006. In terms of the

instructions issued by the Directorate of Postal Services, the Writ Petitioner/Original Applicant was entitled for absorption against Group-D/MTS vacant post and in this regard, he has submitted several representations to the respondents to absorb him in the said post, which is now re-designated as Multi Tasking Staff (MTS), but he was not favoured with any response, despite availability of vacancies.

3.3. It is also the claim of the Writ Petitioner / Original Applicant that in terms of the instructions of the Postal Department dated 17.05.1989, the Writ Petitioner/Original Applicant comes under Casual Labourer category and as such, entitled for absorption in the MTS cadre, as he was appointed as Mazdoor in the year 1996 and however, in the representation, it was wrongly stated as 1991 instead of 1996. The Writ Petitioner/Original Applicant, in the light of the claim that he has rendered service from the year 1996 till 31.07.2015 for the period more than 22 years, is entitled for absorption and since the representation submitted in this regard, have not been favoured with any response, filed O.A.No.177/2016 and it was given disposal by directing the authorities concerned to consider the representation of the Writ Petitioner/Original Applicant by passing a speaking order and accordingly, the concerned official respondents had considered the representation and rejected the same, vide order dated 11.08.2016.

3.4. Challenging the same, the Writ Petitioner/Original Applicant has filed O.A.No.120 /2017 by contending that in terms of the verdict of the Hon'ble Supreme Court of India in State of Karnataka and Others v. Uma Devi and Others [(2006) 4 SCC 1], he is entitled for absorption with all attendant benefits. The Original Application was entertained and the respondents had filed a common reply statement and took the following stand:

(i) In terms of the order passed by the fifth respondent/Tribunal in O.A.No.177/2016, opportunity of personal hearing was afforded to the Writ Petitioner/Original Applicant wherein he has admitted that he does not have any records to prove his engagement from 08.11.1991 and if that is so, he would not have completed 18 years of age in the year 1991 and as such, his engagement as Mazdoor at the age of 13 in the year 1991 cannot be possible.

(ii) In terms of available records, the Writ Petitioner/Original Applicant was engaged as Contractual Labourer in the vacancies of Helper / Sweeper posts in the Postal Department, Chennai from 12.01.2001 only and though he claimed that he was engaged as Part Time Contingent Helper from 1996, he has failed to prove the same, despite reasonable opportunities afforded to him.

(iii) In terms of the instructions circulated in

https://hcservices.ecourts.gov.in/hcservices/ DG, Posts Letter No.45-95/87-SPB-1 dated 12.04.1991,

temporary status would be conferred on the Casual Labourers in the employment as on 29.11.1989, subject to fulfillment of certain conditions and in the light of the fact that he was not employed through Employment Exchange and that he was not in the employment as Casual Labourer as on 29.11.1989, even the said claim cannot be considered.

(iv) The Writ Petitioner/Original Applicant was not at all appointed as Part Time Contingent in any sanctioned post, but his services were engaged on daily wages and as such, he has no right to be made permanent.

(v) The post of Helper is a Multi Tasking Staff (MTS) Post and there is a separate recruitment rules for recruitment and in the light of the Ban Order issued by the Ministry of Finance in OM No.49014/16/89-Estt(C) dated 26.02.1990, nobody came to be appointed as Casual Labourer and as such, the claim of the Writ Petitioner/Original Applicant that he comes under the purview of Casual Labourer cannot be sustained.

In sum and substance, it is the stand of the official respondents that the Writ Petitioner/Original Applicant was engaged without following any recruitment rules and he was not engaged in any vacant or sanctioned post and that he was not engaged prior to 01.09.1993 and as such, he is not entitled to any benefit.

4. The fifth respondent/Tribunal, on an exhaustive analysis of the factual aspects and well settled legal position as to regularization, found that none of the conditions stipulated by the Hon'ble Supreme Court in various decisions, have been complied with and in the light of the fact that the Writ Petitioner/Original Applicant cannot said to have been appointed to any posts in terms of the relevant rules, the question of absorption does not arise and accordingly, disposed of the Original Application with certain directions and however, rejected his claim for absorption and regularization. Challenging the legality of the said impugned order, the present writ petition is filed.

5. Mr.R.Malaichamy, learned counsel appearing for the petitioner, apart from reiterating his submissions made before the fifth respondent/Tribunal has placed heavy reliance upon the Note dated 11.01.2001 of the fourth respondent as well as the Information on Casual Labour as on 10.04.2006 given by the fourth respondent and would submit that in the light of the said materials, the services of the Writ Petitioner/Original Applicant came to be engaged for 8 hours in a day and he is working against sanctioned post and it is also a permanent post and as such, he is entitled for regularization and absorption and in the light of the said specific ground having taken, his claim was rejected for want of available records and since it is

the bounden duty of the department to produce the records to substantiate their claim, they have failed to do so and this Court may draw adverse inference and grant him appropriate relief.

6. Per contra, Mr.Venkataswamy Babu, learned Standing Counsel, who accepted notice on behalf of the respondents 1 to 4, has invited the attention of this Court to the common reply statement filed by the respondents before the Tribunal as well as the impugned order and would submit that the Tribunal has exhaustively considered the factual aspects as well as the well settled legal position and rightly reached the conclusion to deny the relief of regularization and permanent absorption and in the light of the findings with reasons recorded by the Tribunal, the scope of interference by this Court in exercise of it's jurisdiction under Article 226 of the Constitution of India is very limited and prays for dismissal of this Writ Petition.

7. This Court has carefully considered the rival submissions and also perused the materials placed before it.

8. The only material placed reliance by the Writ Petitioner/Original Applicant is the Note dated 11.01.2001 signed by PMG(MM) and counter signed by RWPM as well as the Information on Casual Labour as on 10.04.2006 given by the fourth respondent under Annexure-I. It is to be noted at this juncture that there is lack of authenticity as to the genuineness or otherwise of the said communication, since it has not been obtained by invoking the provisions of the Right to Information Act.

9. Be that as it may, the Writ Petitioner/Original Applicant filed O.A.No.117/2016 on the file of the fifth respondent/Tribunal praying for appropriate direction directing the respondents therein to reinstate him into service as Casual Laboure (Mazdoor) and thereafter to absorb him in accordance with the instructions issued by the Department of Posts dated 30.06.2014 with all attendant benefits and to pass such further orders. The fifth respondent/Tribunal has given disposal to the said Original Application, vide order dated 02.03.2016, by directing the official respondents concerned to consider and dispose of the representation of the Writ Petitioner/Original Applicant by a speaking order within a stipulated time.

10. The Writ Petitioner/Original Applicant, after the said disposal, has submitted a representation dated 25.04.2016. The Chief Post Master General, Tamil Nadu Circle, has submitted a factual note dated 29.04.2016 stating among other things that the Writ Petitioner/Original Applicant was not engaged against any post of Helper / Group 'D' and was engaged only as a Sweeper or Cleaner and his service is no more required and no record is available in their office to show the service particulars of the Writ Petitioner/Original Applicant prior to 11.01.2001 and therefore, he was required to submit his service details prior

to 11.01.2001 and also to prove with records that he was engaged from 08.11.1991 and accordingly, he was granted a month time. The Writ Petitioner/Original Applicant sent his reply dated 05.05.2016 stating that the entire records is available with the Manager, Regional Workshop Postal Machines (RWPM) and System Manager, Circle Office.

11. The first respondent, in the impugned order dated 11.08.2016, has taken note of the fact that the Senior Manager, Mail Motor Service, Chennai, in his letter dated 30.05.2016, has informed that their office has no records regarding the engagement of the Writ Petitioner/Original Applicant, as it is more than 25 years old and the System Manager has also reported that there are no records available with him to show that he was engaged from 1991 and taking note of the same, an opportunity of personal hearing was afforded to him. The first respondent, taking note of the factual submissions during the personal hearing and other materials, found that the Writ Petitioner/Original Applicant was not engaged against any vacant or sanctioned post and in terms of the Directions of the Hon'ble Supreme Court of India in Uma Devi's case [cited supra], a temporary, contractual, casual or daily wage employee does not have a legal right to be made permanent unless he has been appointed in terms of the relevant rules in adherence to Articles 14 and 16 of the Constitution of India and that apart, there is no justification to fill up the post of MTS in RWPM now, as the work of this Unit has drastically come down and the original sanctioned strength of 36 posts in 1989 has been reduced to only 6 persons at present and accordingly, rejected the said request.

12. As already pointed out, the fifth respondent/Tribunal has taken note of the factual aspects as well as the various decisions rendered by the Hon'ble Supreme Court of India as to regularization and absorption and reached the conclusion that his claim for regularization / absorption deserves no consideration and however, directed the first respondent to consider the claim as to his entitlement for adhoc appointment as and when necessity arises for part time adhoc labour. The office of the first respondent accordingly complied with the said direction by passing a speaking order dated 03.07.2020 stating among other things that the Writ Petitioner/Original Applicant was not deprived of any engagement as part time adhoc labour and however rejected his claim for regularization of his past services as one being devoid of merits.

13. The facts projected by the Writ Petitioner / Original Applicant in this Writ Petition would disclose among other things that there are no records as to his engagement from the year 1996 and when he was given opportunity to produce records relating to his service particulars, he has sent his response dated 05.05.2016 to the first respondent as the availability of his service records with the office of the Manager, Regional Workshop Postal Machines (RWPM) and System Manager, Circle

Office. Accordingly, the first respondent had interacted with the said officials and they have submitted that there are no records available with them to show that the Writ Petitioner / Original Applicant was engaged from 1991.

14. The first respondent has also provided opportunity of personal hearing to the Writ Petitioner / Original Applicant on 15.05.2016 so as to enable him to substantiate/prove his case for absorption and having found that he was not engaged against any vacant or sanctioned post, observed that he has no legal right to be made permanent unless he has been appointed in terms of the relevant rules and accordingly, rejected the said request.

15. The Hon'ble Supreme Court of India in State of Karnataka v. Uma Devi (3) [(2006) 4 SCC 1], has formulated three essentials for regularization under the exceptions carved out in Para 53 viz., (1) The employees should have worked for ten years or more, (2) that they have so worked in a duly sanctioned post without the benefit or protection of the interim order of any court or tribunal and (3) they should have possessed the minimum qualification stipulated for the appointment and subject to these three requirements being satisfied, even if the appointment process did not involve open competitive selection, the appointment would be treated irregular and not illegal and thereby qualify for regularization.

16. In Secretary to Government, School Education Department, Chennai v. R.Govindaswamy and Others [(2014) 4 SCC 769], the Hon'ble Supreme Court of India after referring to Uma Devi's case, has held that "respondent employees were not entitled to regularization even when they had put in long service because they were not working against sanctioned posts and sympathy and sentiment cannot be valid grounds for regularization of service in the absence of any legal right".

17. In State of Jammu and Kashmir & Ors. v. District Bar Association, Bandipora [2016 (12) Scale 534], the Hon'ble Supreme Court has tested the Scheme of regularization formulated by the Jammu and Kashmir High Court and in para 19 observed that "Regularization is not a source of recruitment nor is it intended to confer permanency upon appointments which have been made without following the due process envisaged by Articles 14 and 16 of the Constitution".

18. In Union of India and Ors. v. All India Trade Union Congress & Ors. [2019 (5) SCC 130], positive direction was issued by directing the Union of India to frame a Scheme to regularize the services of the employees/workers and it was put to challenge in the above cited decision and in Para 17 it was held that "the High Court, in exercise of its extraordinary power under Article 226 of the Constitution, can do is to direct the Government to consider for framing an appropriate Scheme having regard to the facts and circumstances of the case which

this Court did in the case of Union of India v. Vartak Labour Union (2) [(2014) 4 SCC 200], but not beyond it and it is only in an exceptional case where the Court considers it proper to issue appropriate mandatory directions it may do so but not otherwise”.

19. A Full Bench of Patna High Court in Ram Krishna Jha and 18 Others v. State of Bihar [2020 (3) LLN 251 (FB)(Pat.)], has considered the issue relating to entitlement for regularization and after referring to various judgments, especially, Uma Devi case (cited supra), Upendra Singh v. State of Bihar [2018 (3) SCC 680] and State of Bihar and Others v. Kirti Narayan Prasad [2019 (13) SCC 250], on factual aspects held that in the absence of recruitment rules being followed and no procedure / selection process, the status will be as that of illegal entrant through back door and upheld the termination.

20. In the considered opinion of the Court, the Writ Petitioner / Original Applicant has been afforded sufficient and reasonable opportunities by the first respondent to produce records as to the sustainment of his claim and in the light of his request to summon the records, vide his representation dated 05.05.2016, the first respondent was in touch with the Senior Manager, Mail Motor Service, Chennai as well as the System Manager, who has reported that there are no records available as to the engagement of the Writ Petitioner / Original Applicant from the year 1991 and the only record produced was the above cited note dated 11.01.2001. As already pointed out, in the absence of the said information obtained through Right to Information Act, the authenticity of the same is also under question.

21. Be that as it may, a factual finding has also been recorded that the Writ Petitioner/Original Applicant has not been engaged against any vacant or sanctioned post and by applying the ratio laid down by the Hon'ble Apex Court in Uma Devi's case (cited supra), the Tribunal has rightly reached the conclusion that his claim for regularization / permanent absorption deserves no consideration and however, taking into sympathetic consideration of the plea made by the Writ Petitioner / Original Applicant, directed the first respondent to carry out the said exercise as to the entitlement for adhoc appointment as and when necessity arises for engagement of part time adhoc labour and accordingly, the first respondent has done the said exercise, vide impugned order dated 03.07.2020 and also observed that the Writ Petitioner/Original Applicant is not deprived of any engagement as part time adhoc labour, but at the same time, once again rejected the request for regularization.

22. The fifth respondent / Tribunal, on an exhaustive analysis and consideration of the factual aspects as well as the well settled legal position, has rightly reached the conclusion to reject the prayer of the Writ Petitioner / Original Applicant as to his absorption / regularization.

23. The scope of judicial review under Article 226 of the Constitution of India with regard to the findings reached by the Tribunal is very limited and in the absence of any error apparent on the face of the record or infirmity in the findings recorded, this Court is not inclined to interfere with the same.

24. In the result, this Writ Petition is dismissed, confirming the order of the fifth respondent, namely Central Administrative Tribunal, Madras Bench dated 27.02.2020 made in OA/310/00120/2017 and the order of the third respondent made in Memo No.Tech/SM/Court case / Dlgs dated 03.07.2020. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

Jvm

- 1.The Chief Postmaster General,
Union of India,
Tamil Nadu Circle, Anna Salai, Chennai-600 002.
- 2.Senior Accounts Officer,
O/o. The Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai, Chennai-600 002.
- 3.The Assistant Director (TECH)
O/o. The Chief Postmaster General,
Tamil Nadu Circle, Anna Salai,
Chennai-600 002.
- 4.The Manager,
Regional Workshop Postal Machines (RWPM),
Mail Motor Services,
Chennai-600 006.
- 5.The Registrar,
The Central Administrative Tribunal,
Madras Bench, Chennai-600 104.

+1cc to Mr.R.Malaichamy, Advocate SR.35351

W.P.No.14711 of 2020

LN(CO)
CB(07/12/2020)