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

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Decided on: 17.02.2020

+ **W.P.(C) 225/2007**

MANGT. OF DELHI JAL BOARD ETC. ... Petitioner

Through: Ms. Sakshi Popli, Adv.

versus

ITS WORKMAN (SRI TEJPAL SINGH) Respondent

Through: Mr. Rajiv Agarwal, Adv. with
Ms. Meghna De, Adv.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This petition raises only one issue: Whether the respondent is to be regularized as Fitter 1st Class or Fitter 2nd Class w.e.f 01.04.1992. The impugned order dated 16.01.2006 had directed that he should be regularized as Fitter 1st Class from the aforesaid date, leaving open the issue of seniority apropos his counterparts. For so directing, it had reasoned as under:-

“20. The facts on record indicate that the workman is working continuously with the management as Fitter (1st Class) for the last 22 years. The contention of the Learned AR for the management that the workman does not fulfill the eligibility criteria is not convincing particularly particularly when the workman is in the continuous service of the management for the

last 22 years as Fitter (st Class). After working for 9-10 years or 22 years, the workman cannot be given the status of Fitter (IInd Class) In the presence of experience gained during the said period, it cannot be said that the workman does not fulfill the eligibility criteria. Moreover, the management has not come with the plea that the eligibility criteria is not fulfilled buy the workman whether it is education and/or experience and/or technical education. Mere plea of the management is of no help to them, as such, the workman is entitled to be regularized as Fitter (1st Class) w.e.f. 01.04.1992.”

2. Quite clearly the respondent had been working as Fitter 1st Class for the last 22 years, the management had no difficulty about his competence and quality of service in that position. The learned counsel for the respondent submits that the said order is correct and leaves no room for interference especially in view of the dicta of the Supreme Court in *Narendra Kumar Tiwari and Ors. vs. The state of Jharkahnd and Ors*, Civil Apeal Nos. 7423-7429/2018 (arising out of SLP (Civil) Nos. 19832-19838/2017) decided on 01.08.2018, (2018) 8 SCC 238, which had held, *inter alia*, as under:-

7. The concept of a one-time measure was further explained in Kesari in paragraphs 9, 10 and 11 of the Report which read as follows: 2 (2010) 9 SCC 247

“9. The term “one-time measure” has to be understood in its proper perspective. This would normally mean that after the decision in Umadevi (3), each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad hoc employees who have been working for more than ten years without the intervention of courts and tribunals and subject them to a process verification as to whether they are working against vacant posts and possess the requisite

qualification for the post and if so, regularise their services.

10. At the end of six months from the date of decision in Umadevi (3), cases of several daily-wage/ad hoc/casual employees were still pending before courts. Consequently, several departments and instrumentalities did not commence the one-time regularisation process. On the other hand, some government departments or instrumentalities undertook the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered in terms of para 53 of the decision in Umadevi (3), will not lose their right to be considered for regularisation, merely because the one-time exercise was completed without considering their cases, or because the six-month period mentioned in para 53 of Umadevi (3) has expired. The one-time exercise should consider all daily-wage/ad hoc/casual employees who had put in 10 years of continuous service as on 10-4-2006 without availing the protection of any interim orders of courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of Umadevi (3), but did not consider the cases of some employees who were entitled to the benefit of para 53 of Umadevi (3), the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one-time exercise will be concluded only when all the employees who are entitled to be considered in terms of para 53 of Umadevi (3), are so considered.

11. The object behind the said direction in para 53 of Umadevi (3) is twofold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in

Umadevi (3) was rendered, are considered for regularisation in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad hoc/casual basis for long periods and then periodically regularise them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10-4-2006 [the date of decision in Umadevi (3)] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation. The fact that the employer has not undertaken such exercise of regularisation within six months of the decision in Umadevi (3) or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularisation in terms of the above directions in Umadevi (3) as a one-time measure.”

8. The purpose and intent of the decision in Umadevi (3) was therefore two-fold, namely, to prevent irregular or illegal appointments in the future and secondly, to confer a benefit on those who had been irregularly appointed in the past. The fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in Umadevi (3) is a clear indication that it believes that it was all right to continue with irregular appointments, and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed. This is nothing but a form of exploitation of the employees by not giving them the benefits of regularisation and by placing the sword of Damocles over their head. This is precisely what Umadevi (3) and Kesari sought to avoid.

9. If a strict and literal interpretation, forgetting the spirit of the decision of the Constitution Bench in Umadevi (3), is to be taken into consideration then no irregularly appointed employee of the State of Jharkhand could ever be regularised since that State came into existence only on 15th November, 2000 and the cut-off date was fixed as 10 th April, 2006. In other words, in this manner the pernicious practice of indefinitely continuing irregularly appointed employees would be perpetuated contrary to the intent of the Constitution Bench.

10. The High Court as well as the State of Jharkhand ought to have considered the entire issue in a contextual perspective and not only from the point of view of the interest of the State, financial or otherwise – the interest of the employees is also required to be kept in mind. What has eventually been achieved by the State of Jharkhand is to short circuit the process of regular appointments and instead make appointments on an irregular basis. This is hardly good governance.

11. Under the circumstances, we are of the view that the Regularisation Rules must be given a pragmatic interpretation and the appellants, if they have completed 10 years of service on the date of promulgation of the Regularisation Rules, ought to be given the benefit of the service rendered by them. If they have completed 10 years of service they should be regularised unless there is some valid objection to their regularisation like misconduct etc.”

3. The petitioner has worked consistently for 22 years in the post of Fitter 1st Class, therefore, in terms of the afore-cited precedent, he would rightly be entitled to regularization in the said post.

4. The learned counsel for the petitioner submits that during the pendency of the Industrial Reference the respondent-workman already accepted post of Fitter 2nd Class. However, the learned counsel for the respondent submits that the same was done, so as to accept whatever came

to him first as an immediate relief after a long legal battle. The first relief, accepted logically was the opportunity to get regularized. His claim for Fitter (1st Class) had yet to be adjudicated and the same cannot be held against him. In any case, even after the regularization as Fitter (2nd Class) he continued to render service as Fitter (1st Class), which is not disputed by the petitioner.

5. This Court in *Lalit Kumar Vimal and Ors. vs. Secretary (Health) and Ors*, W.P.(C) 5396-98/2005, 18037/2006 and 1629/2010 and LPA 1653-58/2005, decided on 29.11.2010, has held as under:-

“37. In a somewhat similar situation, pertaining to Pump Operators under the Delhi State Mineral Development Corporation who had worked for long on daily wage but lacked the prescribed educational qualifications, the experience gained while on work as daily rated workers was held entitling them to be regularized as per the decision reported as MANU/SC/0064/1989: AIR 1990 SC 371 Bhagwati Prasad vs. Delhi State Mineral Development Corporation.”

6. In the peculiar facts and circumstances of the case, the services rendered by the respondent i.e. his competence to and actual rendering of services to the requisite standard was never in dispute, irrespective of his educational qualification. The lack of his meeting the eligibility criteria did not affect his service. His having worked for 22 years in the said position surely warrants regularization and would not be defeated merely because of the absence of requisite educational qualification/or eligibility criteria, because he had acquired due competence in the position of Fitter 1st class for over two decades and had discharged his duties efficiently.

7. Therefore, in the peculiar facts and circumstances of the case, the impugned order does not call for any interference.

8. The petition is dismissed in terms of above.

9. Compliance in terms of the award shall be made by the petitioner, within six weeks from the date of receipt of copy of this order.

NAJMI WAZIRI, J

FEBRUARY 17, 2020

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