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

Order delivered on: 28.11.2022

+ **W.P.(C) 6442/2019, CM APPL. 27350/2019**

UNION OF INDIA AND ORS. Petitioners

Through: Appearance not given.

versus

BISHAN SINGH Respondent

Through: Mr. M.D. Jangra, Advocate with
Respondent-in-person.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

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ORDER

ANOOP KUMAR MENDIRATTA, J. (ORAL)

1. Writ Petition has been preferred on behalf of the petitioners under Article 226 of the Constitution of India challenging the order dated 05.10.2018 passed by Central Administrative Tribunal (CAT), Principal Bench, New Delhi in O.A. No.2401/2015, whereby the O.A. preferred on behalf of the respondent was allowed and the petitioner was directed to process the claim of the applicant for regularization of his services in accordance with DoPT OM's dated 26.04.1984 and 07.06.1988 within a period of three months from the date of receipt of certified copy of the order.
2. The respondent in O.A. No.2401/2015 prayed for the following reliefs as reflected in the impugned order:

*“(i) Declare the action of respondents in terminating the services of applicant without giving any notice as illegal and direct the respondents to regularize the services of applicant as Peon/MTS with all consequential benefits; and
(ii) To direct the respondents to reinstate the applicant in service and consider his claim for regularization as done in other similar cases.”*

3. Respondent claims that he was appointed as a peon in Central Bureau of Investigation (CBI) in the year 2003 and was accordingly issued entry pass w.e.f. 20.05.2003 to 21.07.2003 along with identity card. Further, he continued to work in CBI Office since 2003 to 2014 and when he requested the concerned authorities to regularize his services in 2014, he was abruptly directed to not to come to the office from January, 2015.

4. In reply, filed before the Tribunal, it was submitted on behalf of petitioner that the respondent was never engaged on casual or ad-hoc or permanent basis but merely engaged for getting some petty work done by the Branch officials for which an entry pass was issued to him. Further, respondent was paid daily wages for the days he worked and no record of his attendance is available. It was further claimed that respondent was not paid from the budget of the CBI and the officials of the concerned Branch/Section were contributing for the wages towards the services rendered by him to the staff.

The applicability of the DoPT OMs, relied upon by the respondent, was vehemently challenged. It was submitted that the service of the respondent was never terminated as he was never engaged by the petitioner.

5. Having considered the stand put forth by the respective parties, the Tribunal noticed that the Identity Cards had been issued to the respondent for

full one year under the signature of Deputy Supdt. of Police, CBI, like any other official in the office of CBI. Further, in view of documents verified by the respondent, the contention put forth by the petitioner that respondent was engaged on daily wages by some officials of CBI to render service to them, in their personal capacity, was not accepted. The Tribunal accordingly concluded that the respondent had worked in the office of CBI from 20.05.2003 to 20.12.2013 and the request of the respondent for regularization of his service, in terms of DoPT OM's dated 26.04.1984 and 07.06.1988, requires to be considered.

Reliance was also placed upon judgments dated 11.11.2014 passed in W.P.(C) 7808/2012 & CM No. 1965/2012 and judgment dated 09.02.2015 passed in W.P.(C) 1214/2015 passed by the High Court of Delhi.

6. The order passed by the Tribunal has been assailed by the learned counsel for Petitioner and is stated to be contrary to the provisions of law. It is urged that the Tribunal failed to appreciate that the respondent was never appointed with CBI at any point of time on permanent or casual or ad-hoc basis for any post in the Department and neither any appointment letter was issued to him for any post. Respondent is further stated to have been privately engaged by the Duty Officer of Special Crime Branch-II for getting some petty work of the Branch done as and when required and only for the aforesaid purpose, the entry pass was issued. Respondent is claimed to have been paid daily wages for the days worked by him, after getting contribution from all the officials of the Branch/Section and the pass was issued only to facilitate the entry from time to time.

7. Per contra, learned counsel for the respondent, apart from reiterating the contentions raised before the Tribunal, submits that the factum of

appointment of respondent stands proved from the documents placed on record along with O.A. viz. Identity Cards, which were issued from time to time and reflects the designation as Peon, Waterman, etc. The services of several other juniors of the respondent are stated to have been considered for regularization but his case is stated to have been wrongly declined in violation of the DoPT OM's dated 26.04.1984 and 07.06.1988.

8. Having considered the rival contentions, it is imperative to notice that no appointment letter against any sanctioned post was issued to the respondent at any point of time. There is nothing on record to support that the petitioner had been issued any appointment letter or order for working against any casual or ad-hoc vacancy over a period of 11 years. The fact that the respondent was engaged by the Duty Officer of Special Crime Branch-II for getting the petty work done of the Branch Officials, does not confer any right to respondent, since he was never legally appointed nor paid by the CBI. Merely, because the respondent had been issued entry pass or Identity Card, for the purpose of facilitating the entry into the complex/office of CBI, does not, in any manner, confer any legal right to claim the regularization, in the absence of any appointment being made in accordance with rules.

9. It may also be observed that the categorical stand of the petitioners is that as per recommendations of the Central Sixth Pay Commission, new regularization rules have been notified, whereby all Group 'D' posts have been upgraded to Group 'C' posts and have been placed under the category of Multi-Tasking Staff (MTS) and recruitment of the same is done through Staff Selection Commission (SSC).

10. In view above, there does not appear to be any edifice for claiming regularization against any existing post or vacancy as a matter of right from

the Government. A mere perusal of the impugned order reflects that the Tribunal failed to consider the stand taken by the petitioner in the correct perspective, as no letter/order for appointment was ever issued by the Competent Authority and neither the same was placed on record by the respondent.

The regularization could have been considered only in the eventuality, where the part-time workers have been appointed irregularly against a sanctioned post. In the absence of the same, the Tribunal was unjustified to direct the consideration for regularization. The Tribunal failed to properly appreciate the import of the ratio of decision in the case of '*State of Karnataka vs. Uma Devi*' (2006) 4 SCC 1.

For the foregoing reasons, we do not find any tangible grounds to agree with the observations and reasoning arrived at by the Tribunal.

The order passed by the Tribunal, for processing the claim of the respondent for regularization of his services is accordingly set aside.

Petition is accordingly allowed.

No order as to costs.

ANOOP KUMAR MENDIRATTA, J.

V. KAMESWAR RAO, J.

NOVEMBER 28, 2022/R