IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11265 OF 2022

Vilas Pawar s/o. Raghunath Pawar
and Ors. .. Petitioners
V/s.
The Chairman CBDT North Block
Ministry of Finance and Ors. .. Respondents

ALONGWITH
WRIT PETITION NO. 16119 OF 2022

Somnath Narayan Kamble and Ors. .. Petitioners
V/s.
The Chairman CBDT North Block
Ministry of Finance and Ors. .. Respondents

…

Mr. Rajeev N. Kumar, Advocate for the Petitioners in WP-11265-2022.

Mr. R.R. Shetty a/w. Mr. Rui Rodrigues and Mr. Ashutosh Mishra, Advocate for Respondents no.1 to 4 in both the petitions.

Mr. Sujeet Joshi, Advocate for the Petitioner in WP-16119-2022.

CORAM : NITIN JAMDAR, &
SANDEEP V. MARNE, JJ.

Dated : 1 August 2023.

P.C. :

1. These two petitions are taken up together and disposed of by this common order as they arise from the common order dated 1 July 2022 passed by the Central Administrative Tribunal.

2. The Petitioners, applicants before the Tribunal, were appointed on daily wages in the office of Principal Chief Commissioner of Income Tax. Petitioners in Writ Petition No. 11265/2022 filed Original Application No. 701/2017 and Petitioners in Writ Petition No. 16119/2022 filed Original Application No. 145/2019. According to them, they were in services of the Respondents as daily wage workers for substantial period of time, for almost two decades. They approached the Tribunal seeking relief of regularisation of their services and to restrain the Respondents from outsourcing the work to independent Contractors and also sought payment of wages and arrears of $1/30^{th}$ of the pay in the relevant pay-scale. In short, seeking parity with the regular employees. They based their claim for payment of 1/30th of pay on the basis of Office Memorandum (O.M.) issued by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) on 7 June 1988.

3. During the course of hearing before the Tribunal, the

Petitioners gave up their prayer for regularisation and sought the benefit of the O.M. dated 7 June 1988. Reply Affidavits were filed by the Respondent-Government wherein stand was taken that the Petitioners were not daily wage workers but they were working on contract and that therefore the O.M. dated 7 June 1988 was not applicable to them. The Tribunal accepted this contention of the Respondents and dismissed the Original Applications. Therefore, the Petitioners are before us.

4. We have heard Mr. Kumar, learned counsel for the Petitioners in Writ Petition No. 11265 of 2022, Mr. Shetty for Respondents no.1 to 4 in both the petitions and Mr. Joshi, learned counsel for the Petitioner in Writ Petition No. 16119 of 2022.

5. Two contentions are raised by the learned counsel for the Petitioners before us. Firstly, that the conversion of Petitioners status as daily wage workers to that of one on contract was bad in law and is contrary to the Office Memorandum issued by the Government of India, Ministry of Finance, Department of Revenue on 4/10 December 2008 bearing DO.F. No.A 12034/2004-Ad.1A. Secondly, it is contended that even those who work on contract basis, have to be given the benefit of the O.M. dated 7 June 1988 in respect of payment at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day, as stipulated in

Clause-(iv) of the O.M. Mr. Shetty, learned Counsel for the Respondent submitted that contract work entered was with an independent contractor and with full knowledge of the Petitioners. Mr. Shetty further submitted that there is documentary evidence on record to demonstrate that the Petitioners were aware that they were no longer working as daily wages workers but however working under a Contractor. The learned Counsel accordingly supported the impugned order.

6. As regards the Petitioners' contention of erroneous conversion of status from that of daily wage workers to those working on contract, we find the discussion in the impugned order entirely sketchy. The Tribunal has only stated that, Petitioners have consciously accepted contractual positions, the terms of which expressly put them on notice about the nature of their employment and further that, such employment did not entitle them to regular wages but contractual wages and therefore they cannot seek any relief now. Therefore, the substantial grievance of the Petitioners is dealt in one line reasoning invoking the principles of acquiescence and estoppel. It is the contention of the Petitioners that, they were never put to notice about conversion of their status and there might be internal departmental correspondence with the Contractor, but there is no specific communication to the Petitioners putting them to notice about the conversion of their status. The Tribunal therefore

ought to have dealt with this issue as to whether there was a specific communication or whether the Petitioners had implied knowledge of conversion of their status or that in law for conversion of status, specific communication need not be issued. There is no discussion in the impugned order on this aspect. We are referring to these facets not to conclude the issue but stress the fact that the impugned order should have contained discussion on these lines before drawing a conclusion invoking principles of acquiescence and estoppel against the Petitioners.

7. The second issue that is sought to be raised by the Petitioners is that even if Petitioners were to be treated as working on contract basis, Clause-(iv) of the O.M. dated 7 June 1988 will still apply to them. In support of the proposition, they rely upon the decisions in (i)**Union of India Vs. Jeevan Singh and Ors.**[1] (ii) **Union of India vs. Mahendra Singh**[2]; and (iii) **Shri. Surinder Singh and Others vs. Union of India**[3]. Mr. Shetty, the learned Counsel for the Respondent-department submitted that this submission is not correct as Petitioners will have to show the employer-employee relationship with the Respondent-department. This is also an area in the impugned order where we find the discussion is missing.

8. In view of this position since on these crucial aspects,

1 Special Leave to Appeal(C)of 2016 (CC No.12884/2016).
2 Special Leave to Appeal(C) (CC Nos.2587/2016.
3 AIR 1986 SC 584.

there is no reasoning, the impugned order has become unreasoned and is therefore required to be set aside for consideration of the matter afresh.

9. The Writ Petitions are disposed by quashing and setting aside the impugned order passed by the Central Administrative Tribunal in Original Application. No.701/2017 and in Original Application No.145/2019 dated 1 July 2019. The Original Applications No. 701/2017 and 145/2019 filed by the Petitioners are restored to the file of the Central Administrative Tribunal. The Tribunal will consider the applications, as per law, afresh in light of what is stated above.

10. As regards the request of the Respondents for additional Affidavit is concerned, it is for the Tribunal to consider the request upon hearing both the sides.

11. The learned Counsel for the Petitioners pray that the Tribunal should decide the matter in a time bound period. We permit the Petitioners to make a request to the Tribunal for early hearing of the remanded proceedings. We have no doubt that the Tribunal will keep in mind that the remand was necessary because of lack of reasoning in the impugned order and because of which the Petitioners are prejudiced and accordingly will grant priority of hearing and if feasible dispose of the application within a

period of four months.

12. We make it clear that our observations in this order are only to highlight the reasons for remand and we have not concluded the issue on merits.

13. The Writ Petitions are accordingly disposed of as above.

NEETA SHAILESH SAWANT

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SANDEEP V. MARNE, J. **NITIN JAMDAR, J.**