



W.P.No.17038 of 2022 & W.M.P. Nos.16337 & 16338 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2023

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P.No.17038 of 2022
&
W.M.P. Nos.16337 & 16338 of 2022

D. Issac

...Petitioner

Vs.

1. Union of India
Rep. by Flag Officer
Commander-in-chief Head Quarters,
Eastern Naval Command, Naval Base,
Visakhapatnam

2. The Naval Officer-in-charge (TN&P)
Navy Office, Port Complex,
Rajaji Salai, Chennai 600 009

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of certiorarified Mandamus or any other
appropriate writ, Order or direction in the nature of a writ, calling for the



W.P.No.17038 of 2022 & W.M.P. Nos.16337 & 16338 of 2022

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records in respect of the impugned order dated 17.12.2013 passed by the Hon'ble Central Administrative Tribunal, Chennai Bench in O.A.No.1107 of 2012 and quash the same and consequently direct the 1st respondent to grant temporary status of the services of the petitioner herein in terms of OM No.51016/2/90-Estt (C) dated 10.09.1993 issued by Ministry of Personnel, Government of India, within a period to be stipulated by this Hon'ble Court.

For Petitioner : Mr. N. Vijayakumar
For Respondents : Mr. L. Infant Dinesh

ORDER

(R.HEMALATHA, J.)

The present Writ Petition is filed by the petitioner challenging the orders dated 17.12.2013 passed by the Central Administrative Tribunal, Chennai Bench, in O.A. No.1107 of 2012.

2. The brief facts of the case :

- i. The petitioner joined the Navy Office, INS Adyar, Port Complex, Rajaji Salai, Chennai, as a casual labourer on daily wage basis.



W.P.No.17038 of 2022 & W.M.P. Nos.16337 & 16338 of 2022

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- ii. The Government of India by O.M. dated 10.09.1993 had notified a scheme for grant of temporary status to be conferred on all casual labourers who are in employment on the date of issue of the said Official Memorandum and who have rendered continuous service of atleast one year in the said employment.
- iii. Thereafter, clarification No.1 and clarification No.5 contained in Office Memorandum No.49014/2/93/Estt.(C) dated 12.07.94 (Annexure A-1) were issued. As per Clarification No.1, casual employees who were not engaged through the employment exchange cannot be bestowed with temporary status. As per Clarification No.5, the employees working for 5 days in a week are not entitled to the facility of paid weekly off.
- iv. According to the petitioner, he had worked for 214 days during the relevant period. Since his case was not considered, he filed O.A. No.332/2004 before the Central Administrative Tribunal, Madras Bench, seeking for a direction to regularise his service from the date of his initial appointment.



W.P.No.17038 of 2022 & W.M.P. Nos.16337 & 16338 of 2022

WEB COPY

v. The Central Administrative Tribunal, Madras Bench, vide its orders dated 31.03.2005, had held thus:

"6.The learned counsel for the applicants have relied upon the decision of this Tribunal in O.A. No.354/95 dated 13.10.2001 and submitted that the present applications to be allowed. We have perused the order of this Tribunal and we are of the opinion that the order is applicable and is covered to the facts and circumstances of the present OA. Accordingly following the said order of this Tribunal we propose to dispose of these applications also.

7. In the result the OAs are allowed. We direct the respondents to consider the case of the applicants for regularisation of their services in accordance with law within a period of three months from the date of receipt of a copy of this order. No costs."

vi. Challenging the above orders passed by the Central Administrative Tribunal, Madras Bench, the respondents filed W.P.Nos.25081, 30604 and 33510 of 2005 before this Court.



W.P.No.17038 of 2022 & W.M.P. Nos.16337 & 16338 of 2022

WEB COPY

vii. The Division Bench of this Court, vide its orders dated 14.11.2006, dismissed the petitions filed by the respondents by observing thus:

"Without going into merits of the case, by following its earlier order, dated 13.10.2001 in O.A. No.354 of 1995 the Tribunal allowed the Original Applications since the issue involved in the said Original Applications has been squarely covered by the above said order. Therefore, when once the Tribunal has passed the orders by following its earlier order it is for the petitioners to challenge the same by way of appeal, but without doing so, they allowed the same as final. In such circumstances we are of the view that unless the said earlier order is set aside or modified by any Superior Court, the present impugned orders cannot be interfered with in these Writ Petitions.

viii. The Special Leave Petitions (Civil) Nos.23755-23757/2007 preferred by the respondents before the Hon'ble Supreme Court were also dismissed.

ix. Thereafter, as per the directions of the Tribunal in O.A.No.332/2004, the respondents passed a speaking order dated 09.03.2011 after due deliberations with various authorities



W.P.No.17038 of 2022 & W.M.P. Nos.16337 & 16338 of 2022

WEB COPY including Government of India, by observing thus:

"temporary status would be conferred on all casual labourers who are in employment on the date of issue of the DoP&TO.M No.51016/2/90-Estt (C) dated 10 September 1993 who have rendered a continuous service or at least 240 days (206 days in case of office observing 5 days a week) you (Shri D.Issac and 3 others) have been engaged for less than 206 days in a calendar year thereby not fulfilling the said condition to become eligible for considering for conferment of temporary status".

- x. Challenging the orders of the 2nd respondent dated 09.03.2011, the present writ petitioner filed O.A. No.1107/2012 before the Central Administrative Tribunal, Madras Bench, which was dismissed on 17.12.2013.
- xi. Challenging the same, the present writ petition is filed.

3. Heard Mr. N. Vijayakumar, learned counsel appearing for the petitioner and Mr. L. Infant Dinesh, learned counsel appearing for the respondents.

4. Mr. N. Vijayakumar, learned counsel appearing for the



W.P.No.17038 of 2022 & W.M.P. Nos.16337 & 16338 of 2022

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petitioner contended that the present petitioner had completed 214 days during the relevant period, but his case was not considered by the respondents and the Central Administrative Tribunal, has not also applied its mind while dealing with the case of the petitioner. His specific contention is that the Central Administrative Tribunal, Madras Bench, though in its orders dated 31.03.2005, in O.A. No.332/2004, had specifically directed the present respondents to consider the case of the petitioner for regularisation of his service, the respondents did not properly calculate the number of days of work done by the petitioner and ultimately rejected his plea of regularisation in service. He therefore, prayed for allowing the present Writ Petition.

5. Per contra, Mr. L. Infant Dinesh, learned counsel appearing for the respondents contended that the present petitioner was hired from open market on daily wage basis (Nerrick rates) as mazdoor/labourer and not as a casual labourer, for loading and unloading of Government Stores as and when required to meet the operational requirements of the establishment. According to him, the service of the petitioner was not against any regular vacancy and that based on the order of the Central



W.P.No.17038 of 2022 & W.M.P. Nos.16337 & 16338 of 2022

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Administrative Tribunal, Madras Bench, the 2nd respondent had passed a speaking order dated 09.03.2011 and therefore, the Central Administrative Tribunal was right in dismissing the application filed by the petitioner in O.A. No.1107/2012.

6. A careful analysis of the entire case on record shows that the present petitioner was engaged as mazdoor for loading and unloading in the 2nd respondent organisation based on the requirement and it is also clear that he has not fulfilled the condition of continuous service as required under the scheme for regularisation in the Official Memorandum dated 10.09.1993. Clarifications were also issued on 12.07.1994. Moreover, the respondents had passed orders in O.M.No.51016/2/90-Estt (C) dated 10.09.1993 after examining the claim of the petitioner for regularisation and rejected the same as the petitioner had not fulfilled the criteria laid down in OM No.51016/2/90-Estt (C) dated 10.09.1993, which contained the scheme for grant of temporary status. It is also seen that the order dated 09.03.2011 is purely based on the Government policy dated 10.09.1993. As per the said Government policy the criteria on grant of Temporary status is reproduced hereunder:



W.P.No.17038 of 2022 & W.M.P. Nos.16337 & 16338 of 2022

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"Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this OM and who have rendered a continuous service of atleast 1 year which means that they must have been engaged for a period of atleast 240 days (206 days in case of office observing 05 days)"

As none of the applicants were found eligible for grant of Temporary status and regularisation of service as Government policy in vogue, they refused to receive the copy of speaking order issued by the respondents in compliance to the Hon'ble CAT order."

Moreover, in the instant case, it is admitted by the petitioner that there was break in his service. He was also engaged only on daily wage basis to meet the operational requirements of the establishment. The Tribunal has passed a well considered order by relying on the decision of the Hon'ble Supreme Court in the decision in *State of Karnataka & others vs. Umadevi and others* reported in (2006) 4 SCC 1, wherein it has been held thus:

" ...There is no Fundamental Right in those who have been employed in daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As had been



W.P.No.17038 of 2022 & W.M.P. Nos.16337 & 16338 of 2022

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held by this Court, they cannot be said to be holders of a post,since, a regular appointment could be made only by making appointments consistent with the requirements of Article 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of relevant recruitment rules...."

7. In such circumstances, we do not find any merits in the case of the petitioner and accordingly, the Writ Petition is dismissed. No costs. Consequently connected miscellaneous petitions are closed. The order dated 17.12.2013 passed by the Central Administrative Tribunal, Madras Bench, in O.A.No.1107 of 2012, is upheld.

(V.M.V.,J.) (R.H.,J.)
10.02.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga



W.P.No.17038 of 2022 & W.M.P. Nos.16337 & 16338 of 2022

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W.P.No.17038 of 2022 & W.M.P. Nos.16337 & 16338 of 2022

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W.P.No.17038 of 2022
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