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W.P.No.20243 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 28.07.2023

DELIVERED ON: 30.08.2023

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.P.No.20243 of 2021
and WMP.No.21501 of 2021

- 1.Union of India,
Rep. by the General Manager,
Canteen Stores Department,
Ministry of Defence, "Adelphi",
No.119, M.K.Road, Mumbai-400 020.
- 2.The Joint General Manager,
Canteen Stores Department,
Adelphi, 119, Maharshi Karvey Road,
Mumbai-400 020.
- 3.The Area Manager,
Canteen Stores Department,
Chennai Area Depot,
Ministry of Defence,
Fort St.George, Chennai-600 009. .. Petitioners

Vs.

- 1.M.Dhansingh
- 2.A.Hussain Sheriff
- 3.J.Richard



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4.M.Sampath
5.L.Biswas
6.V.Murugan
7.C.Antony Samy
8.R.Panjanathan
9.K.Gunasekaran
10.S.Selvam
11.T.Yeliah

12.The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai-600 104.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records from the file of the 12th respondent Tribunal made in OA.No.1872 of 2016 dated 27.2.2020 and quash the same insofar as the observations that the applicants in the OA are also similarly placed as that of the applicants in O.A.No.193 of 2011 and the directions to the petitioners department to consider the claim of the applicants for regularization of their services in the cadre of Mazdoor / Watchman from the date of their entry into service as casual labour with all attendant and monetary benefits.

For Petitioner : Mr.C.Kulanthaivel

For Respondents : Mr.K.M.Ramesh, Senior Counsel
for Mr.V.Subramani for R1 to R11

Tribunal - R12



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ORDER

D.KRISHNAKUMAR, J.

The official respondents in O.A.No.310/01872/2016 is the petitioners herein and aggrieved by the allowing of the aforesaid original application filed by the respondents seeking regularization of their services in the cadre of Mazdoor/ Watchman from the date of their entry into services as casual labour with all attendant and monetary benefits, vide order dated 27.02.2020, has filed the present writ petition.

2. Facts, in brief, are as follows:

2.1. The respondents 1 to 11 joined the service of canteen stores department as casual Mazdoor/ Watchman from (19.08.1982 – 28.03.1990) and they have been working continuously without any break and the services of the respondents were confirmed on different dates nearly after 3 to 8 years. According to the petitioners, the respondents are persons who were initially appointed on Daily rated casual basis in Group -D posts of Mazdoor / Watchman without going through regular selection process and clearly as backdoor entries as envisaged by the



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Hon'ble Apex Court in the case of *State of Karnataka v. Uma Devi and Others [(2006) 4 SCC 1 = AIR 2006 SC 1806]*.

2.2. A policy decision was taken by the Government of India, vide Circular No.3/A-II/1214/244 dated 10.01.1990 to hold departmental examination as a One Time Measure and appoint the respondents on regular basis subject to their clearing their examination. Undertaking letters were given by the respondents to appear in the examination, on condition that if they get passed, they will get appointed on regular basis without claiming any benefit for counting of the services rendered by them from 15.03.1989.

2.3. Since the claim of the respondents seeking regularization from the date of their initial engagement as daily rated employee was not considered, they invoked the jurisdiction of the Central Administrative Tribunal by filing O.A.No.1872 of 2016 seeking to consider their claim for regularization of their service from the date of their entry into service as Casual Labour with all monetary benefits.



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2.4. The Tribunal, taking into consideration the submission made by the parties and by relying upon the order passed in the case of similarly placed person like that of the applicants / respondents herein in O.A.No.193 of 2011, which has been upheld by the Hon'ble High Court of Mumbai and implemented by the petitioners as well, directed the petitioners herein to consider the claim of the respondents for regularization of their services in the cadre of Mazdoor / Watchman from the date of their entry into service as Casual Labour with all attendant and monetary benefits, vide order dated 27.02.2020. Aggrieved by the said order passed by the Tribunal, the official respondents therein has filed the present writ petition.

3. The learned counsel for the petitioners submitted that the respondents were engaged on casual basis due to shortage of staff and not on regular basis and though the applicants/respondents rely upon the Judgment rendered by the Ernakulam Tribunal in O.A.No.58 of 1997 dated 21.09.1999, the said judgment was challenged by the petitioners



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herein before the High Court of Kerala, which upheld the order of the Ernakulam Tribunal and the said judgment was challenged by way of SLP before the SLP, which came to be dismissed with a direction that the said judgment shall not be treated as a precedent. It is further contended that the Tribunal has relied on the similar application filed before the Mumbai Bench Tribunal in O.A.193 of 2011, which was allowed and on appeal by the petitioners in W.P.(L)No.1202 of 2012 was dismissed by upholding the order of the Mumbai Tribunal and an appeal, the SLP was ultimately dismissed on the ground of delay without going into the merits of the case and therefore, the Tribunal erred in relying upon the said order passed by the Mumbai Tribunal and prayed for dismissal of the writ petition. The learned counsel for the petitioners placed reliance on the following decisions, in support of his contentions:

(i) Union of India and others v. M.K.Sarkar [(2010) 2 SCC 59]

(ii) U.P.Jal Nigam and another v. Jaswanth Singh and another [(2006) 11 SCC 464]

(iii) State of Uttaranchal and another v. Shiv Charan Singh Bhandari and Others [(2013) 12 SCC 179].



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4. Heard Mr.K.M.Ramesh, learned Standing Counsel for the respondents and also perused the materials on record.

5. The point for consideration in this writ petition is whether the respondents / applicants is entitled for regularization with effect from the date of their initial appointment as casual daily rated employees.

6. A perusal of the impugned order would disclose that the Tribunal has relied upon the order passed by the Mumbai Bench of Central Administrative Tribunal in O.A.No.193 of 2011, wherein relief has been granted in favour of similarly placed persons and the same has also been upheld by the High Court of Mumbai in W.P.(L)No.1202 of 2012 dated 24.07.2013. The respondents also placed heavy reliance upon the order passed by the Central Administrative Tribunal, Ernakulam Bench in O.A.No.58 of 1997 dated 21.09.1999, wherein relief was granted in favour of similarly placed persons and on appeal before the High Court at Kerala, the order of the Tribunal was upheld and on



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challenge by way of SLP before the Hon'ble Supreme Court it was dismissed with a direction that the said judgment shall not be cited as a precedent. Therefore, the respondents cannot place reliance on the order of the Central Administrative Tribunal at Ernakulam Bench.

7. Admittedly, the respondents were engaged as daily rated casual labour in the cadre of Mazdoor / Watchman on various dates between 11.12.1986 and 28.03.1990 by way of backdoor entries, without following any procedure or recruitment process and without any legal sanctity. The Government has taken a policy decision to bring them under regular line by taking into sympathetic consideration of their request to regularize them in the cadre of Mazdoor / Watchman with effect from passing the departmental examination. According to the petitioners Department decision has been taken that those who passed in the departmental examination are entitled for regularization, with an undertaking that they shall not claim any benefit of counting of service prior to the date of their regular appointment in 15.03.1989. The said decision to regularize their appointment to the post of Mazdoor /



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Watchman is a concession given by the Government as a One Time Measure.

8. It is seen that the services of the respondents were regularized from the year 1990 after they became successful in the departmental examinations as per the decision of the Government and filing of original application in the year 2016 seeking the relief of regularization from the date of initial appointment, after a delay of 27 years by relying upon the similar order passed in O.A.No.58 of 1997 passed by the Ernakulam Central Administrative Tribunal is hit by delay and laches. The initial appointment of the respondents is by way of backdoor entry without following regular recruitment process and therefore, their claim for regularization from the date of initial appointment as daily rated employee is liable to be rejected in the light of the decision of the Hon'ble Supreme Court in ***Secretary to Government, School Education Department, Chennai v. Govindaswamy and Others [(2014) 4 SCC 769]***, has held as follows:

“8. This Court in State of Rajasthan & Ors. v. Daya Lal & Ors., AIR 2011 SC 1193, has considered the scope



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of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under:

*“8(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, **back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.**” (emphasis supplied)*

9. In the case on hand, the petitioner / Government, as a policy decision, thought fit to regularize their services as a concession by issuing a Circular dated 10.01.1990 to hold departmental examination as a One Time Measure and the respondents having participated in the departmental examination in pursuant to the said Circular and having executed undertaking that they will not claim regularization from the date



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of initial entry, cannot turn around and seek regularization from the date of initial entry as the same is contrary to the undertaking executed by him. In the light of the aforesaid decision of the Hon'ble Supreme Court, the claim of the applicants / respondents is liable to be rejected. The Tribunal has failed to consider the factual aspects in proper perspective and simply relied upon the order passed by the Central Administrative Tribunal, Mumbai in O.A.No.193 of 2011, in respect of similarly placed persons and passed the impugned order, which in the considered opinion of this Court warrants interference.

10. In the light of the reasons assigned above, the Writ Petition stands allowed and the order of the Central Administrative Tribunal in O.A.No.1872/2016 dated 27.02.2020 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

[D.K.K., J.] [P.B.B., J.]
30.08.2023

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**D.KRISHNAKUMAR, J.,
&
P.B.BALAJI, J.**

Jvm

**Order in
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