



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

% *Date of Decision: August 24, 2023*

+ **W.P.(C) 3770/2015**

**THE POST MASTER MAIN POST OFFICE, PALWAL CITY
AND ORS.**

..... Petitioners

Through: **Mr. Kirtiman Singh, CGSC
with Mr. Waize Ali Noor and
Mr. Madhav Bajaj, Advocates.**

versus

BIR SINGH

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO (Oral)

1. The challenge in this writ petition is to an order dated December 05, 2014 passed by the Central Administrative Tribunal, Principal Bench ('Tribunal' for short), in O.A. 2110/2013, whereby the Tribunal has allowed the O.A. filed by the respondent herein by stating in paragraphs 11 & 12 as under:

"11. In the above facts and circumstances of the case, we are also of the considered view that the services of Applicant Chowkidar (night Watchman) could not have been treated as on "part time". It is not the case of the Respondents that while the Applicant was working on part-time basis because there was another part-time Chowkidar also who was sharing his duty for half time. Therefore, since the Applicant has been working for the last 26 years as Chowkidar from 5.00 P.M. to 8.00 P.M. everyday, he could not have been



*treated and paid as a "part-time Chowkidar". The post of Chowkidar being the lowest post in the Government offices/departments, the holders of those posts should have not been exploited in such manner. Another aspect of the case is that there is no dispute that the post of the so called 'Part Time' Chowkidar was sanctioned. The Applicant himself has produced documentary proof to the effect that the said post was sanctioned. Even otherwise, when a person was performing the duty of Chowkidar for several years, it cannot be said that there was no sanctioned post. It is for the Government to sanction the posts when required and to abolish them, when not required. We, therefore, hold that the disengagement of the Applicant citing the judgment of **Uma Devi's case (supra)** was arbitrary and illegal. We also cannot subscribe to the submission of the Respondents that since the Palwal Sub-Post Office was burnt down in the year 1990, the service rendered by the Applicant from 1988 will get obliterated altogether. The Respondents have also not tried to get any collateral evidence such as statement of the persons who have been working along with him in the said Post Office in the year 1988. In such circumstances, when the exact date of engagement of the Applicant in the year 1988 is not available, they may treat the date of his appointment from the middle of that year, i.e., 01.06.1988.*

12. In the result, the Applicant succeeds and the OA is allowed with the following directions:-

- (i) The Respondents shall reinstate the Applicant as Chowkidar in service immediately with continuity of service with effect from 01.06.1988 with full back wages and attendant benefits. They shall work out uptodate difference in pay and allowances and pay the same to the Applicant.*
- (ii) They shall also regularize his service as Chowkidar from the aforesaid date.*
- (ii) In the facts and circumstances of the case, the Respondents shall pay the cost of litigation to the tune of Rs.10,000/- (Rupees ten thousand only) to Applicant.*



(iv) The aforesaid directions shall be complied with, within a period of 2 months from the date of receipt of a copy of this order.”

2. The O.A. of the respondent before the Tribunal was a challenge to the termination effected by the petitioners herein of his engagement w.e.f. July 24, 2011.
3. It was the case of the respondent that, he was initially engaged in the year 1988 to work as a part time Chowkidar with working hours from 5.00 PM to 8.00 AM, i.e. 15 hours per day for 26 years, uninterruptedly. It was also his case that, despite the long duration of service, his services have been terminated without issuing a show cause notice to enable him to make a representation against his termination. On July 24, 2011, the petitioners herein told the respondent that the post of Chowkidar, which he was holding, has been abolished and he need not come for work from the next date.
4. It was the respondent's case that the petitioners at the time when he was terminated, assured him that he will be adjusted/transferred to some other post as he was a pre January 01, 1993 appointee, as in terms of the order/letter No. Staff/70-2/Casual Labourers/2008 dated July 18, 2011 of respondent no. 4, the services of part time workers engaged on or before September 01, 1993, were not to be dispensed with but they were to be utilised on other jobs.
5. However, when the petitioners did not re-engage the respondent, he made oral as well as written representation dated May 09, 2012, wherein he has stated that, he has been working for the last 26 years and in view of his unblemished service, he should be reinstated and treated as full time Chowkidar and grant him the pay & allowances as payable to a full time



Chowkidar.

6. The case of the petitioners before the Tribunal was that, in view of the judgment of the Supreme Court in the case of *Secretary, State of Karnataka and Others v. Uma Devi and Others, 2006 (4) SCC 1*, wherein the Supreme Court has held that the requests of those persons who got employed without following the regular procedure or through back door on daily wages, approaching courts, seeking directions to make them permanent, cannot be entertained. It was also their case that the respondent was engaged on casual / part-time basis and he was not recruited by following any procedure laid down in the Recruitment Rules, hence, he could not have challenged his termination. The petitioners have also stated that the respondent was engaged as a part-time Chowkidar in Sub-Post Office, Palwal, however, there is no record pertaining to his engagement in Sub-Post Office, Palwal to ascertain that the respondent was actually engaged before January 01, 1993 at the said Post Office, as the Post Office was set ablaze during anti-reservation agitation in the year 1990 and all the records in the Post Office were destroyed.

7. We have already reproduced the relevant paragraphs of the impugned order of the Tribunal wherein, the Tribunal has allowed the O.A. and granted the relief in favour of the respondent herein.

8. Mr. Kritiman Singh, the learned counsel for the petitioners has drawn our attention to two orders dated May 29, 2015 and October 07, 2015, to contend that, an offer was made by the petitioners to re-engage the respondent on the terms and conditions which were available to him, while he was engaged as a part-time Chowkidar.

9. Furthermore, in the order dated October 07, 2015, this Court had



recorded the submission made by the learned counsel for the respondent that the respondent does not wish to re-join his services on the existing terms and conditions. In other words, the respondent is not interested in re-joining the services of the petitioner as a part-time Chowkidar.

10. Mr. Singh submits that, the engagement of the respondent was only as a part-time Chowkidar and there was/is no sanctioned post of Chowkidar available in the petitioners' organization and hence, his services cannot be regularized as directed by the Tribunal. In other words, Mr. Singh submits that, in the absence of there being a sanctioned post of Chowkidar, no Recruitment Rules have been framed.

11. In support of his submission, he relies upon the judgment of Supreme Court in the case of *Union of India & Ors. v. Ilmo Devi & Anr., Civil Appeal Nos. 5689-5690 of 2021*, to contend that the Supreme Court in paragraph 8.7 of the judgment has clearly held that the part-time employees are not entitled to seek regularisation as they are not working against any sanctioned post and there cannot be any permanent continuance of part-time employment.

12. We may state here that, there is no appearance for the respondent even on the second call. We accordingly proceed to decide this writ petition. As the issue involved is a short one, we have heard the learned counsel for the petitioners.

13. At the outset, we may state here that, from the record, it is clear that the respondent was engaged as a part-time Chowkidar. There is an issue as to when exactly the respondent was engaged as a part-time Chowkidar. The plea of the respondent is that, he was engaged w.e.f. 1988. On the other hand, the case of the petitioners is that, as no records are available it is



difficult to ascertain, whether the respondent was actually engaged before January 01, 1993.

14. Be that as it may, the direction of the Tribunal in the impugned order is to regularise the services of the respondent as Chowkidar with continuity in service w.e.f. June 01, 1988, with full back wages and attended benefits.

15. Suffice to state, in view of the law laid down; such a direction could not have been issued by the Tribunal, as the same has the effect of regularising/granting a permanent appointment to the respondent from a back date. Nevertheless, any regular appointment has to be in accordance with the Recruitment Rules. Nothing has been placed on record to submit that a sanctioned post of Chowkidar is in existence with the petitioners' organisation and the respondent fulfils the Recruitment Rules as framed for the said post and he can be regularised.

16. During the course of hearing, we have been informed that the respondent is not even 8th pass for being regularised in Group-D post. That apart, we find that, despite offer made by the petitioners to re-engage the respondent as part-time Chowkidar on the same terms and conditions, the respondent has rejected the offer, for the reasons best known to him.

17. We agree with the reliance placed by Mr. Singh on the judgment of the Supreme Court in the case of *Ilmo Devi & Anr. (supra)*, wherein the Supreme Court in paragraphs 8.6 to 8.8, has held as under:

“8.6 In the case of Daya Lal & Ors. (supra) in paragraph 12, it is observed and held as under:

“ 12. We may at the outset refer to the following well-settled principles relating to regularisation and parity in pay, relevant in the context of these appeals:

(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.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be “litigious employment”. Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off



date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.

[See State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1], M. Raja v. CEERI Educational Society [(2006) 12 SCC 636], S.C. Chandra v. State of Jharkhand [(2007) 8 SCC 279], Kurukshetra Central Coop. Bank Ltd. v. Mehar Chand [(2007) 15 SCC 680] and Official Liquidator v. Dayanand [(2008) 10 SCC 1.]

8.7 Thus, as per the law laid down by this Court in the aforesaid decisions part-time employees are not entitled to seek regularization as they are not working against any sanctioned post and there cannot be any permanent continuance of part-time temporary employees as held. Part-time temporary employees in a Government run institution cannot claim parity in salary with regular



employees of the Government on the principle of equal pay for equal work.

8.8 Applying the law laid down by this court in the aforesaid decisions, the directions issued by the High Court in the impugned judgment and order, more particularly, directions in paragraphs 22 and 23 are unsustainable and beyond the power of the judicial review of the High Court in exercise of the power under Article 226 of the Constitution. Even otherwise, it is required to be noted that in the present case, the Union of India/Department subsequently came out with a regularization policy dated 30.06.2014, which is absolutely in consonance with the law laid down by this Court in the case of Umadevi (supra), which does not apply to the part-time workers who do not work on the sanctioned post. As per the settled preposition of law, the regularization can be only as per the regularization policy declared by the State/Government and nobody can claim the regularization as a matter of right dehors the regularization policy. Therefore, in absence of any sanctioned post and considering the fact that the respondents were serving as a contingent paid part-time Safai Karamcharies, even otherwise, they were not entitled for the benefit of regularization under the regularization policy dated 30.06.2014."

(emphasis supplied)

18. In view of the aforesaid position of law, the impugned order of the Tribunal needs to be set aside. It is ordered accordingly.

19. The Writ Petition is allowed and disposed of.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

August 24, 2023/akc