

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3820 OF 2024

Union of India

... Petitioner

V/s.

Ananda Maruti Chavan

... Respondent

Mr. Jitendra B. Mishra a/w Ashutosh Mishra, Satyaprakash
Sharma for Petitioner.

Mr. Vishal P. Shirke a/w Aditya P. Shirke for Respondent.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATED : 21st MARCH, 2024

P.C. :

1. Heard Mr. Mishra, learned counsel for the Petitioner
and Mr. Shirke, learned counsel representing the Respondent.

2. Rule. Rule made returnable forthwith. With the
consent of the learned counsel for the parties, the Petition has
been taken up for final hearing.

3. By instituting the proceedings of this Petition under
Article 226 of the Constitution of India, the Petitioner seeks to

assail the validity of the judgment and order dated 19th June, 2023, passed by Mumbai Bench of Central Administrative Tribunal (hereinafter referred to as Tribunal), whereby, the Original Application bearing No.364 of 2021, filed by the sole Respondent, has been allowed and a direction has been issued to the Petitioner to regularize his services on completion of 10 years of temporary status as casual labourer with consequential benefits, including the benefits of old pension scheme.

4. The facts which can be culled out from the pleadings available on record of this Writ Petition are that the Petitioner was engaged initially as daily wager in the department of Central Excise in the year 1994 on a remuneration of Rs.112/- per day, which was paid to him in a consolidated amount at the end of the month. The Respondent filed Original Application No.209 of 2000 before the Tribunal praying therein that in terms of the provisions contained in the scheme known as "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India 1993" (hereinafter referred to as the 1993 scheme), he be accorded temporary status as he had completed the requisite number of

days in a year in services, which entitled him grant of temporary status. The said Original Application was allowed by the Tribunal by means of judgment and order dated 7th February, 2001, against which, the Petitioner-Department filed a Writ Petition before this Court, which was dismissed by means of an order dated 25th January, 2002, whereby, the judgment of the Central Administrative Tribunal, directing the department to grant the Respondent temporary status, was affirmed. In compliance of the said judgment dated 7th February, 2001, passed by the Tribunal, affirmed by this Court by means of order dated 25th January, 2002, the Respondent was granted temporary status under the aforesaid 1993 scheme with effect from 13th July, 1995.

5. In normal circumstances, once the Respondent was accorded temporary status, his case ought to have been considered at an appropriate time for regularization of his services in terms of the provisions contained in the 1993 scheme itself. However, he was not considered for being given regular appointment though Rule 8 of the said 1993 scheme clearly provides that two out of every three vacancies in Group

'D' cadre in respective offices, where the casual labourers have been working, would be filled in as per extant Recruitment Rules and in accordance with the instructions issued by Department of Personnel and Training, from amongst casual workers with temporary status. Despite availability of a clear provision under Rule 8 of the 1993 scheme, the claim of the Respondent for giving to him regular appointment was never considered. He, accordingly, instituted Original Application No.145 of 2020 before the Tribunal, which was disposed of with the direction to the authority concerned to decide his representation made in respect of his claim for regular appointment. The said order by the Tribunal in Original Application No.145 of 2020 was passed on 12th February, 2020. However, in pursuance of the said order of the Tribunal, while considering the claim of the Petitioner for regular appointment and other consequential service related benefits, the representation made by the Respondent was rejected by means of an order dated 22nd October, 2020, whereby the claim of the Respondent for regular appointment and other consequential service benefits was rejected.

6. The Respondent instituted Original Application No.364 of 2021 challenging the order dated 22nd October, 2020, which has been allowed by the Tribunal by means of judgment and order dated 19th June, 2023. The Tribunal after discussing the facts of the case in detail, has allowed the Original Application with a direction to the department concerned to regularize services of the Respondent on completion of 10 years of temporary status as casual labourer. The Tribunal, in fact, while passing impugned judgment and order, has not agreed to the reasoning given by the authority concerned while passing the order dated 22nd October, 2020.

7. Learned counsel representing the Petitioner has however impeached the judgment and order passed by the Tribunal and has submitted that notwithstanding non-consideration of the Respondent under the 1993 scheme for regular appointment, after the judgment of Hon'ble Supreme Court in the case of ***Secretary, State of Karnataka and Ors. Vs. Umadevi (3) & Ors.***¹, any casual labourer was to be considered for being regularized only as a one time measure and for the

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said purpose, the Department of Personnel & Training has issued a circular dated 11th December, 2006 and till the Claim of the Respondent for regularization is tested on the said circular, he is not eligible and entitled to be regularized in service. It has further been argued by learned counsel for the Petitioner that in fact there are three conditions stipulated in the circular dated 11th December, 2006 which ought to be fulfilled by any daily wager for being regularized in service and these conditions are that (i) the person claiming regularization should possess the qualification required in terms of the statutory recruitment rules for the post, (ii) he should have worked for ten years or more as daily wager and (iii) such an employee should have worked against sanctioned post, but not under cover of orders of Courts or Tribunals.

8. It has been further urged on behalf of the Petitioner that the Respondent did not fulfill the requisite qualification for his appointment against a Group 'D' post and also that he was not initially engaged on daily wage basis against any sanctioned post and hence he did not fulfill the prerequisite for consideration of his claim for regular appointment. In this view,

his submission is that the Central Administrative Tribunal has passed the impugned judgment, without taking into account the provisions of the circular dated 11th December, 2006 in their true perspective and therefore, is not sustainable.

9. Learned counsel representing the Respondent has however vehemently refuted the submissions of learned counsel for the Petitioner and has submitted that the reasons for not regularizing the services of the Respondent can be found in the order dated 22nd October, 2020, where no such reason, as is being argued before this Court on behalf of the Petitioner, has been recited. Our attention has, thus, been drawn to the said order dated 22nd October, 2020, passed by the Office of the Principal Chief Commissioner of CGST & Central Excise, Mumbai Zone, wherein, the said officer only observes that only eligible casual workers could be regularized on fulfilling the conditions as envisaged in the scheme of the Department of Personnel and Training. The order dated 22nd October, 2020 further states that the Respondent was not found fit for regularization as he did not fulfill the eligibility conditions as per the DoPT's instructions for engagement of

casual labourer. It has been argued by learned counsel for the Petitioner that reasons given for denying the benefit of regularization to the Respondent in the order dated 22nd October, 2020 are absolutely vague as the said order does not spell out as to in what respect the Respondent did not possess the eligibility conditions.

10. Learned counsel for the Respondent has also stated that in terms of the provisions contained in the 1993 scheme, the Respondent was already granted temporary status. Grant of temporary status, according to learned counsel for the Respondent, itself entitled the Respondent to be considered for regular appointment in terms of Rule 8 of the said scheme, which also provided for regularization in service of even illiterate casual labourers. It is, thus, the submission of learned counsel for the Respondent that had the case of regular appointment of the Respondent been considered as per the 1993 scheme itself, his services would have been regularized much earlier.

11. Having considered the rival submissions made by the learned counsel representing the respective parties, we do

not find ourselves persuaded by the submissions made by the learned counsel for the Petitioner.

12. It is an admitted fact that though the Respondent was considered for grant of temporary status in terms of the provisions contained in the scheme of 1993 and he has been granted temporary status with effect from 13th July, 1995, however, his claim for regular appointment was never considered as mandated in Rule 8.

13. In any case, now the claim of the Respondent for regular appointment needs to be considered in the light of the judgment of Hon'ble Supreme Court in the case of **Umadevi** (supra) and the circular of Department of Personnel and Training, issued on 11th December, 2006 in compliance of the judgment of the Hon'ble Supreme Court in the case of **Umadevi** (supra). The circular dated 11th December, 2006, issued by the Department of Personnel and Training is on record at page 124 of the Writ Petition. A perusal of the said circular clearly reveals that the same is issued in pursuance of the judgment passed by the Hon'ble Supreme Court in the case of **Umadevi** (supra).

The circular provides three preconditions for laying a claim by a daily wager for regularization of his services and these preconditions are (i) he ought to have possessed the qualification in terms of the statutory recruitment rules for the post concerned, (ii) he should have been working for 10 years or more and (iii) he should have been engaged initially as daily wager against a sanctioned post.

14. So far as requirement of fulfillment of qualification in terms of institutory recruitment rules is concerned, learned counsel representing the Petitioner has drawn our attention to the format submitted by the Joint Commissioner (P&V) CGST, Mumbai West to the Additional Commissioner (PCCO), GST & Central Excise, Mumbai, vide letter dated 25th July, 2018, according to which, the Petitioner at the time of engagement was having the maximum education qualification as class 4 pass. According to learned counsel for the Petitioner, as per the requirement of the recruitment rules for appointment against Group 'D' post, the candidate concerned should have minimum 10th passed qualification to his credit and in this view, since the Respondent did not possess the minimum qualification, his

claim could not have been considered for grant of regular appointment in terms of the circular dated 11th December, 2006.

15. The said submission made by learned counsel for the Petitioner is absolutely misconceived and hence not acceptable. The Respondent was engaged as daily wager, indisputably, in the year 1994 and as admitted by the learned counsel for the Petitioner himself, in 1994 no minimum educational qualification was prescribed for appointment against a Group 'D' post. Accordingly, at the time of engagement of the Respondent as daily wager, since there was no education qualification prescribed, hence such reason being given by the Petitioner denying the Respondent the benefit of regular appointment, cannot be accepted. The submission that at the relevant point of time, no minimum qualification was prescribed for appointment against Group 'D' post is further strengthened by a perusal of Rule 8 of the 1993 regularization scheme, which not only provided for grant of temporary status to a casual labourer but also provided for a regular appointment even to the casual labourers who are illiterate.

16. The condition in terms of the circular dated 11th December, 2006 that the daily wager seeking regular appointment ought to have continued for 10 years in the said capacity is not being disputed by the learned counsel for the Petitioner, however, he disputes that he was never appointed against a sanctioned post.

17. There is nothing on record which substantiates such ground; neither does the order dated 12th October, 2020 records any such reason for denying the claim of the Respondent for regular appointment. The letter dated 25th July, 2018 which contains certain information about the Respondent in a format only states that details of appointment of the Respondent was not available in the Service-Book as the appointment was made by erstwhile Central Excise, Mumbai-V. Simply because the details of the Service-Book of the Respondent was not available with the Petitioner, cannot be a reason to presume that he was not engaged against any sanctioned post. Moreover, no such reason has been assigned by the officer concerned who passed the order dated 22nd

October, 2020, which was under challenge before the Central Administrative Tribunal. It is well settled law that the lacunae in any order which is under challenge before a Court cannot be permitted to be filled by way of making additional pleadings in the Court.

18. For the aforesaid reason, we are not satisfied with the submissions made by the learned counsel for the Petitioner.

19. Writ Petition is, thus, hereby dismissed. Rule is discharged. There will be no order as to costs.

20. Considering the fact that the Respondent has been denied his right to be considered for regularization fairly for a long period of time, we direct that the Petitioner shall implement the judgment and order passed by the Central Administrative Tribunal within two months from today. Learned counsel representing the Petitioner shall apprise the authority concerned of this order forthwith.

21. At this juncture, learned counsel for the Petitioner states that the costs imposed by the tribunal may be waived.

Having regard to the facts of the case, we hereby direct that the Petitioner shall not be liable to pay the costs in terms of the judgment and order passed by the Tribunal.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)