



WEB COPY



W.P.No.14401 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

W.P.No.14401 of 2021

and

W.M.P.No.15310 of 2021

J.Moorthi

... Petitioner

Vs.

1.Union of India,
Rep. by its Secretary,
Ministry of Defense,
New Delhi – 110 001.

2.The Commandant,
Officer Training Academy,
St. Thomas Mount,
Chennai – 600 016.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, calling for the entire records pertaining to the impugned order dated 02.03.2021 in OA/310/01937/2016 on the file of the Central Administrative Tribunal, Madras Bench and quash the same and consequently direct the respondents to



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regularize the service of the petitioner with effect from the date of initial date of appointment on 16.08.2004 with consequential benefits.

For Petitioner : Mr.S.Saravana Kumar

For Respondents : Mr.A.R.Sakthivel
Senior Panel Counsel

ORDER

[Order of the Court is made by **S.M.SUBRAMANIAM, J.**]

Under assail is the order dated 2nd March, 2021 passed in O.A.No.1937 of 2016 on the file of the Central Administrative Tribunal, Chennai Bench.

2. Admittedly, the petitioner, Mr.J.Moorthi, was appointed as a Mess Waiter on 16th August, 2004 on an ad hoc basis. A subsequent appointment order dated 25th October, 2005, enclosed along with typed set of papers, reveals that the appointment was purely on an ad hoc basis for a stipulated period.

3. Mr.S.Saravana Kumar, learned counsel for the petitioner would submit that the initial appointment of the petitioner was made through Employment Exchange. However, the conditions in the appointment order



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states that the services of the petitioner were liable to be terminated at the discretion of the authority at any time with a notice. Since the appointment was on an ad hoc basis, the period of services were also mentioned in the order of appointment. The petitioner served as a Mess Waiter for three spells: from 16th August, 2004 to 20th September, 2004, from 07th October, 2004 to 21st March, 2005, and from 30th September, 2005 to 20th March, 2006. In total, he served 371 days on an ad hoc basis.

4. The learned counsel for the petitioner would mainly contend that the similarly placed employees appointed on an ad hoc basis were regularised in a sanctioned post pursuant to the orders of the High Court. The said benefit is to be extended to the petitioner, and his services should be regularised in a sanctioned post with a time-scale of pay by relaxing relevant rule relating to his age, since the petitioner is over aged.

5. The petitioner earlier filed an original application in O.A.No.1455 of 2015, and the Tribunal passed final orders on 16th September, 2016, directing the respondents therein to consider the case of the petitioner in future vacancies by relaxing age and educational qualifications. However, the said order had not been implemented, and the petitioner filed another original



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application in O.A.No.1937 of 2016. The Tribunal dismissed the application by order dated 2nd March, 2021, which is under challenge in the present writ petition.

6. The main ground raised by the petitioner is that the similarly placed persons were regularised in the sanctioned post, and the said benefit is to be extended to the petitioner. The Tribunal directed the respondents to consider the case of the petitioner for regularisation by relaxing the age and educational qualifications.

7. Mr.A.R.Sakthivel, learned Senior Panel Counsel appearing on behalf of the respondents would oppose by stating that the petitioner was not appointed in a sanctioned post on regular basis. He was engaged as a Mess Waiter on an ad hoc basis and served a total of 371 days during 2004 to 2006. His services were ousted in the year 2006, and for the past 18 years, the petitioner has not been employed by the respondent, even on an ad hoc basis. Thus, the Tribunal has rightly considered the issues and rejected the application. Therefore, the present writ petition is to be rejected.

8. We have considered the rival submissions made between the parties.



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9. All appointments to public services must be made in accordance with the constitutional scheme of appointments. Equal opportunity in public employment is a constitutional mandate. Lakhs and Lakhs of youths in our Great Nation are longing to secure public employment through an open competitive process.

10. Ad hoc, temporary, contract, and daily wage appointments should not be regularized or permanently absorbed, as this would infringe upon the rights of the citizens, who all are aspiring to secure public employment through an open competitive process. Thus, regularisation or permanent absorption in violation of the Service Rules would result in an unconstitutionality. The Equality Clause must be strictly adhered to, while undertaking the process of employment to the Public Services.

11. The Constitution Bench of the Hon'ble Supreme Court of India in the case of *Secretary, State of Karnataka Vs. Uma Devi and Others*¹, settled the legal principles relating to regularisation and permanent absorption of the temporary employees. In Paragraph 54, the Constitution Bench reiterated that all the judgments, including those of the Hon'ble Supreme Court of India by

1. (2006) 4 SCC 1



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Two Judges Benches, have denuded to lose their status as precedents, if those judgments are running counter to the legal principles settled by the Constitution Bench in *Uma Devi's* case cited (*supra*). Therefore, the petitioner cannot secure relief of regularization or permanent absorption by citing a High Court order running counter to the legal principles settled by the Constitution Bench.

12. The Constitution Bench considered the legal position held in unequivocal terms in the case of *State of Rajasthan and others Vs. Daya Lal and Others*², wherein, it is held that that “the High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization 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 regularization 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

2. (2011) 2 SCC 429



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which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized”.

13. The Courts, while exercising their powers of judicial review, cannot grant relief of regularisation and permanent absorption in violation of the Service Rules in force. In the present case, the learned counsel for the petitioner has raised an additional ground that the petitioner is entitled to get relaxation of rule regarding his age. Relaxation of Service Rules cannot be granted in a routine manner even by the Government. Relaxation is an exception, and rules are to be followed. The power of relaxation is conferred on the Government to mitigate exceptional circumstances or to remove injustice.

14. Routine exercise of power of relaxation regarding age and educational qualifications fixed under the rules cannot be said to be valid and such exercise is to be construed as colourable exercise of power. Therefore, the Courts in exercise of power of judicial review cannot direct the Government to grant relaxation of age or educational qualifications, as such prayed for by the petitioner in the present writ petition.



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16. Therefore, the Tribunal has rightly concluded that the petitioner is not entitled for regularisation or permanent absorption in a sanctioned post. The petitioner has to secure public employment only through an open competitive process if he is otherwise eligible and qualified to participate. This would be possible in the event of a recruitment notification being issued, but not otherwise.



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17. With these observations, the impugned order dated 02.03.2021 in OA/310/01937/2016 on the file of the Central Administrative Tribunal, Chennai Bench, is hereby confirmed. Consequently, the Writ Petition stands dismissed. The Connected Miscellaneous Petition is closed. There shall no order as to costs.

[S.M.S., J.] [M.J.R., J.]
11.11.2024

Index : Yes
Speaking order / Non-speaking order
Neutral Citation : Yes

Jeni

To

1.The Secretary,
Union of India,
Ministry of Defense,
New Delhi – 110 001.

2.The Commandant,
Officer Training Academy,
St. Thomas Mount,
Chennai – 600 016.



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