IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	21.12.2023
Pronounced on	05.04.2024

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.24625 of 2022
and
W.M.P.Nos.23591 & 23592 of 2022

M.Vasanthi ...Petitioner

Vs.

1.The Secretary to Government,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi – 110 001.

2.The Chairman,
Central Board of Indirect Taxes & Customs,
North Block, New Delhi – 110 001.

3.The Principal Chief Commissioner of
GST & Central Excise,
26/1, Mahatma Gandhi Road,
Chennai – 600 034.

4.The Assistant Commissioner of Central Excise,
'C' Division, Chennai – I Commissionerate,
26/1, Mahatma Gandhi Road,
Chennai – 600 034. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, to call for the records pertaining to the impugned speaking order dated 18.08.2022 vide GCCO/II/39/50/2022-CCAESTT passed by the office of the 3rd respondent and quash the same and consequently direct the 3rd respondent to regularize the services of the petitioner from the date of initial appointment dated 04.05.2001 vide C.No.II/31/16/2001-ESTT and confer all consequential service and monetary benefits based on the initial appointment dated 04.05.2001.

For Petitioner	: Mr.R.Abdul Mubeen
For R1	: Mr.B.Rabu Manohar, Senior Central Government Counsel
For R2 to R4	: Mr.V.Sundareswaran, Senior Panel Counsel

ORDER

Heard Mr.R.Abdul Mubeen, learned counsel for the petitioner, Mr.B.Rabu Manohar, Senior Central Government Counsel for the 1st respondent and Mr.V.Sundareswaran, learned Senior Panel Counsel for the respondents 2 to 4.

2. The petitioner herein was engaged as a casual labourer in the 3rd respondent department for more than 20 years. In response to the

advertisement for appointment of contingent employees on part-time basis, the petitioner had participated in the selection process and was provisionally appointed as a casual labourer on 04.05.2001 and posted in the 4th respondent Commissionerate.

3. Incidentally, an identical claim for conferment of temporary status by the casual labourers had come up for consideration before the Central Administrative Tribunal, Madras Bench, (hereinafter referred to as 'the CAT') in O.A.Nos.1352 of 2011 and 97 of 2009. The orders passed by the Tribunal in these applications, were challenged before this Court in W.P.Nos.3225, 3256, 3301 and 12178 of 2012. These Writ Petitions were disposed of on 25.07.2012, with a direction to the authorities to consider the case of the writ petitioners therein for grant of temporary status, within a period of eight weeks, in accordance with the order passed by the Madras High Court in W.P.No.16733 of 2009, etc., dated 19.07.2011. The order of this Court was challenged by the respondents before the Hon'ble Supreme Court in Special Leave Appeal Nos.5522-5525 of 2012 (SLP Nos.13614-13617 of 2012). While these Special Leave Appeals were pending, the petitioner herein had also filed an Original Application in O.A.No.1122 of 2011, before the CAT, claiming for conferment of

temporary status, by taking into account of her engagement as casual labourer for more than 10 years. According to the petitioner, she was working for more than 206 days in a calendar year, as she would be entitled for conferment of temporary status under the Department of Personnel and Training (DoPT) Scheme, dated 10.09.1993. The said application in O.A.No.1122 of 2011 was disposed of on 10.10.2012, with the following observations:-

> *"10. I have carefully gone through the facts of the cases and considered the submissions from either sides and perused the various judgements of the Hon'ble Tribunal and also the Hon'ble High Court of Madras and Hon'ble High Court of Hyderabad. It is submitted from either sides that the similar case has been decided by the Hon'ble High Court of Madras that has been extracted in the earlier paras, the said matter is pending before the Hon'ble Supreme Court in SLP.No.5522 of 2012. At this stage, I cannot pass any decision in the matter. The matter before the Hon'ble Supreme Court has been posted on 08.11.2012. Therefore, I direct the respondents to consider the case of service of the applicants if the facts are identified in nature then only the respondents are directed to apply the*

judgement of the Hon'ble High Court in W.P.No.3225, 3256, 3301 & 12178 of 2012 dated on 25.07.2012 subject to the result of the SLP.No.5522/2012.

11. This judgement is applicable to all the connected cases."

4. After the orders were passed by the CAT, as aforesaid, the Special Leave Appeal Nos.5522-5525 of 2012 came to be dismissed by the Hon'ble Supreme Court on 19.04.2018, by upholding the orders passed by the Madras High Court in W.P.Nos.3225, 3256, 3301 and 12178 of 2012, dated 25.07.2012. Thereafter, the respondents have implemented the order of the Madras High Court, dated 19.07.2011 passed in W.P.No.16733 of 2009, etc., by introducing the Part-time Casual Labourers Regularization Scheme CBIC 2020, making the scheme applicable to the 23 writ petitioners covered under the order dated 19.07.2011. In this background, to the petitioner's claim for regularization, the present impugned order dated 18.08.2022 has been passed, by holding that the Regularization Scheme of 2020 will be applicable only to the 23 writ petitioners, as aforesaid, and since the petitioner herein, along with 14 others, were

engaged through private contractors, after the commissionerate had banned direct engagement of casual labourers from 26.11.2002, they are ineligible for the benefits of the scheme.

5. Incidentally, the Chief Commissioner of Central Excise had passed orders on 29.04.2013, stating that the order passed in W.P.Nos.3225, 3256, 3301 and 12178 of 2012 will apply equally to the case of all the casual labourers, whose facts and circumstances are similar in nature.

6. It is not in dispute that the case of the petitioner herein, is identical to that of the petitioner in W.P.No.3225 of 2012. While that being so, I am unable to agree with the reasoning adopted by the respondents in the impugned order that the Part-time Casual Labourers Regularization Scheme CBIC 2020 would be applicable only to the petitioners in W.P.No.16733 of 2009, etc. Above all, the Central Administrative Tribunal, in its order dated 10.10.2012, while directing the respondents to consider the case of the petitioner, in the light of the order of the High Court in W.P.No.3225 of 2012, had also observed that the order is applicable to all the connected cases. Thus, restricting the

regularization scheme only to the 23 writ petitioners before the Hon'ble Supreme Court, would be discriminatory and arbitrary.

7. The Hon'ble Supreme Court of India, in the case of ***State of Uttar Pradesh Vs. Arvind Kumar Srivastava*** reported in ***2015 (1) SCC 347***, has held that in service jurisprudence, when one set of employees are given a relief, the same requires to be extended to others, who are similarly placed and who require such benefits and in the absence of the same, it would amount to discrimination. The relevant portion of the judgment reads as follows:-

> *"22.1. Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did*

not approach the Court earlier, they are not to be treated differently."

8. The other reason assigned in the impugned order for holding the petitioner as ineligible is that she was outsourced through contractors, subsequent to her initial engagement. This reason also would be unacceptable, in view of the fact that the petitioner was originally appointed as a part-time contingent labourer by the Commissionerate, through an order dated 04.05.2001, which appointment was made pursuant to the advertisement released by the Commissionerate in the newspapers.

9. Above all, the petitioner herein was provisionally selected as a casual labourer by the Commissionerate themselves on 04.05.2001 and only after the Commissionerate had banned the direct engagement of casual labourers from 26.11.2002 onwards, she is alleged to have been engaged through private contractors. The ban of direct engagement from 26.11.2002 would only mean that the Commissionerate cannot engage casual labourers after 26.11.2002 and therefore, the petitioner can never be said to have been directly engaged through private contractors. Moreover, the claim that the petitioner was appointed by the Commissionerate

themselves on 04.05.2001, has not been denied by the respondents. On the other hand, it has been categorically admitted in the counter affidavit that she was provisionally appointed as a casual labourer through the order of the Commissionerate dated 04.05.2001. The subsequent administrative decision of the Commissionerate cannot be put against the petitioner, whose services were already engaged prior to 26.11.2002 and therefore, the second reason assigned in the impugned order also cannot be sustained.

10. In the light of the above observations, the impugned order dated 18.08.2022 passed by the 3rd respondent is quashed. Consequently, there shall be a direction to the 3rd respondent to pass appropriate orders, regularizing the service of the petitioner from the date of her initial appointment, i.e., from 04.05.2001, together with all consequential service and monetary benefits, within a period of four (4) weeks from the date of receipt of a copy of this order.

11. Accordingly, the Writ Petition stands allowed. Consequently, connected miscellaneous petitions are closed. No costs.

05.04.2024

Index:Yes
Neutral Citation:Yes
Speaking order
hvk

M.S.RAMESH,J.

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To

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Department of Revenue,
North Block, New Delhi – 110 001.

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Central Board of Indirect Taxes & Customs,
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PRE-DELIVERY ORDER MADE IN
W.P.No.24625 of 2022

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