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Writ Petition No.1371 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.01.2024

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Petition No.1371 of 2024 &
WMP.No.1403 of 2024**

- 1.Chairman cum Managing Director,
BSNL Corporate Office,
Bharat Sanchar Bhavan,
Harish Chandra Mathur Lane,
Janpat, New Delhi – 110 001.
- 2.The Chief General Manager,
BSNL, Chennai Telephones,
78, Purasawakkam High Road,
Chennai – 600 110.
- 3.The Deputy General Manager (HR & Admn)
BSNL, Chennai Telephones,
No.89, Millers Road,
Chennai – 600 010. ... Petitioners

Vs

- 1.The Registrar
The Central Administrative Tribunal
Chennai Bench,
Chennai
- 2.M.Arumugam



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3.A.Venkatesan

4.B.Chandrasekaran

... Respondents

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PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari, calling for the records in OA.No.209/2020, on the file of the Hon'ble Central Administrative Tribunal, Chennai Bench and quash the order passed therein dated 29.03.2023.

For Petitioner :Mr.B.Mohan

ORDER

(Order of the Court was made by Mr.K.KUMARESH BABU.,J.)

This instant Writ Petition had been filed challenging the order passed by the Administrative Tribunal setting aside the order passed by the third petitioner herein wherein the third petitioner had rejected the request of the respondents 2 to 4 seeking regularization and issued a further direction to regularise them as regular Mazdoor from the date of appointment as Temporary Status Mazdoor (in short TSM) and grant all consequential benefits including the pension.

2.Heard Mr.B.Mohan, learned counsel appearing for the pe-



tioners.

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3. The learned counsel appearing for the petitioner would submit that the respondents 2 & 3 were originally employed as casual Mazdoors. He would submit that the grant of temporary status and regularisation scheme was introduced on 07.11.1989 to confer temporary status to the casual labours employed. Based on the aforesaid Scheme, the respondents 2 to 4 were in conferred temporary status. The Department of Telecommunication decided to regularise the casual labourers including the TSMs w.e.f., 01.10.2000, in view of corporatization of the erstwhile Department of Telecommunication as BSNL, as an one time measure. It came to the knowledge of the petitioners that some of the TSMs have submitted bogus date of birth/educational certificates. During the verification, it was found that 53 TSMs including the respondents 2 to 4 had submitted bogus certificates. They were all issued with the show cause notices providing them an opportunity to submit the date of birth/educational certificates in



their possession. On verification of such certificates produced by them pursuant to the said show cause notice, it was found that the certificates produced by them during the course of enquiry were genuine. Therefore, they were allowed to continue in service.

4.He would further submit that O.A.No.1371 of 2011, were filed by the unregularized TSMs seeking for regularisation. Pending the said application, orders of termination were issued to such TSMs who had produced bogus certificates. The same came to be challenged by them in O.A.Nos.156 & 159 of 2012, wherein the Tribunal had directed the petitioners to conduct an enquiry and thereafter take action, if the certificates submitted by the TSMs are bogus. The respondents 2 to 4 were called for an enquiry and the Enquiry Committee concluded that the certificates produced by the respondents 2 to 4 were bogus. The respondents 2 to 4 had attained the age of 60 years and got superannuated between 2015 and 2018. On the date of superannuation, they were all discharged from service. But however, the respondents 2 to 4 even after their superannuation submitted representations seeking to regularise their services, which were all rejected. Challenging the same, the respondents



2 to 4 approached the Tribunal.

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5. The learned counsel appearing for the petitioners would submit that the Tribunal without considering the facts in a proper perspective had held that the respondents 2 to 4 have been permitted to continue in service till the date of superannuation and having extracted work from them inspite of having knowledge that they have produced bogus certificate, would only show that the petitioners cannot be allowed to wriggle out of the responsibility in regularising their services.

6. The learned counsel appearing for the petitioners had also heavily relied upon the judgment of a Co-ordinate Bench of this Court in W.P.No.2478 of 2021, dated 17.12.2021 and would submit that the respondents 2 to 4 herein are similarly placed persons that of the petitioner therein. He would submit that the petitioner therein was also not regularised as he had produced a bogus certificate. He would submit that the Co-ordinate Bench of this Court had dismissed the claim of the petitioner therein and therefore, the same will also squarely apply to the



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facts of the present case and the Tribunal had failed to look into the aforesaid judgment.

7. We have considered the submissions made by the learned counsel appearing for the petitioners and perused the materials placed on record.

8. It is an admitted case that the respondents 2 to 4 herein had been originally appointed as Causal Labourers and were granted TSM pursuant to the scheme that had been introduced in the year 1989. It is also an admitted fact that the services of the respondents 2 to 4 have sought to be regularised in the year 2000, when it was found that they had not produced the genuine birth certificates. Therefore show notices had also been issued to them to submit their genuine certificates. Upon receipt of such notices, the respondents 2 to 4 seem to have submitted genuine certificates which have been accepted by the Department and they had been allowed to continue in service. When they had filed an application in the year 2011 before the Tribunal seeking to consider the case for regularisation, the petitioner has terminated the services of the respondents 2



to 4. The respondents along with similarly placed persons had challenged the order of dismissal before the Central Administrative Tribunal. The Tribunal having found that no enquiry had been conducted had set aside the orders of termination and directed the authorities to give an opportunity to the respective individuals before passing any order and to give a specific finding based on the genuinity of the certificates.

9. Even though an enquiry was conducted and a report had been filed by the Committee, no action had been initiated against the respondents 2 to 4. They were continued to be allowed in service and were discharged from their services on the date of their superannuation. After their superannuation, the respondents 2 to 4 seems to have made representations seeking to regularisation their services as per the Scheme, as they would be benefited for better terminal and pensionary benefits. The said request had been rejected by relying upon the findings of the Committee as regards to the submission of a false certificate.

10. In the above sequence of events, it could be seen that the pro-



duction of false certificate by the respondents 2 to 4 had come to the knowledge of the employer as early as in the year 2002. Only after having such knowledge, a show cause notices seem to have been issued to the respective respondents 2 to 4 calling upon them to produce the certificates in their possession. Pursuant to such show cause notices, the respondents had also submitted their certificates as early as in the year 2007. Thereafter, no action had been initiated against them. When the respondents 2 to 4 along with other similarly placed TSMs had approached the Tribunal in the year 2011, seeking for regularisation, the petitioner had dismissed them from services. Such order of dismissal had also been set aside by the Tribunal in the subsequent application primarily on the ground of violation of principles of natural justice. However, liberty was given to the petitioners to proceed against the respondents and other similarly placed TSMs after affording an opportunity to them. Pursuant to the aforesaid order, enquiry had been conducted by the committee and a report had also been filed. It is the case of the petitioner that at the enquiry stage, the respondents 2 to 4 have produced the false certificates, when it was found, they had produced the



genuine certificates. Therefore, according to the petitioners, the conduct of the respondents 2 to 4 ought not to be condoned. They were only allowed to continue in service on humanitarian grounds nothing else. Further they cannot claim regularisation as a matter of right.

11. It is true that an employee cannot claim regularisation as a matter of right. In the present case, the respondents claim for regularisation is based upon a scheme that had been introduced by the petitioners. It is not the case of the petitioners that based upon the certificate produced by the respondents 2 to 4, they were found to be not qualified to be appointed as Causal Labourers. The certificates produced by them were evidencing the date of birth. If the certificates had not been found to be genuine and they would be worked for some more time. But however, the mistake committed by the respondents 2 to 4 had been identified by the petitioners/employer as early as in the year 2002 and the genuine certificates had been submitted by the respondents 2 to 4. Thereafter, they were permitted to continue in services and their services had been utilised by them till they have attained the age of



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15. In fine, this Writ Petition fails and the same is dismissed. It is made clear that the direction issued by the Tribunal shall be complied with by the petitioners within a period of eight (8) weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

(R.S.K.,J.) (K.B., J.)
23.01.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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To

The Registrar
The Central Administrative Tribunal
Chennai Bench,
Chennai



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and
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