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

% **Decision delivered on: 28.08.2024**

+ **W.P.(C) 11793/2024, CM APPL. 49023/2024 & 49026/2024**

UNION OF INDIA AND ANOTHERPetitioners
Through: Mr. Ruchir Mishra, Mr. Sanjiv Kr. Saxena, Mr. Mukesh Kr. Tiwari, Ms. Poonam Shukla and Ms. Reba Jena Mishra, Advocates

versus

SATISH KUMAR AND OTHERSRespondents
Through: Ms. Aanchal Anand, Advocate

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (O R A L)

CAV 409/2024

1. In view of the appearance on behalf of the counsel for respondents, the present caveat CAV 409/2024 stands discharged.

CM APPL. 49024/2024 & CM APPL. 49025/2024 (exemption)

2. Exemption allowed, subject to all just exceptions.
3. Applications stand disposed of.

W.P.(C) 11793/2024

4. The present petition has been filed under Articles 226 & 227 of the Constitution on behalf of the petitioners seeking the following prayers:



“a) Pass appropriate Writ, directions or order in the nature of certiorari or any other writ, direction and/ or order to quash and set aside the order dated 01.06.2023 passed by the Hon'ble CAT, Principal Bench, New Delhi in Original Application No. 3387/2017.”

5. Though the present petition has been filed on various grounds, however, counsel for the petitioners is confined to grounds A to H which are reproduced as under:

“A. Because in view of clause 4 of the scheme and judgment of Hon'ble Supreme Court in Mohan Pal case, the applicants were not covered by the scheme since they were not in employment as on the date of the scheme, therefore, the Tribunal erred in setting aside and quash Letter No. A-12034/22/2017-ME dated 15.06.2017 which was passed following legal position declared by Hon'ble Supreme Court on the scope and application of scheme of 1993.

B. Because the applicants are not covered by DoPT scheme issued vide OM No.51016/2/90-Estt(C) dated 10.09.1993 since the scheme is applicable to those casual labourers who were in employment as on the date of commencement of scheme, and this position has been clarified by Hon'ble Supreme Court in paragraph 4, 5, 6 and 11 judgment in Union of India and Another vs Mohan Pal and Others (2002) 4 SCC 573, therefore, direction by the Tribunal in paragraph 12 of the impugned order to consider the applicants under scheme of 1993, is bad and perverse and the same cannot sustain in view of judgment of Hon'ble Supreme Court in Mohan Pal case. Another direction in paragraph 12 of the impugned order to consider applicants for regularization under any other extant scheme, is vague and perverse as there is no any other extant scheme.

C. Because Ld. Tribunal has not considered clause/paragraph 4 of DoPT Scheme issued vide OM No.51016/2/90-Estt(C) dated 10.09.1993, and that, the said scheme has been examined by Hon'ble Supreme Court in Union of India and Another vs Mohan Pal and Others (2002) 4 SCC 573 holding categorically that scheme of 1993 is not an ongoing scheme and that the temporary status can be conferred on the casual labourers under that scheme only on fulfilling the conditions incorporated in clause 4 of the scheme, namely, they should have been casual labourers in employment as on the date of commencement of the scheme. Admittedly, the applicants were not in employment as casual daily wager as on 10.09.1993, therefore, findings by Ld. Tribunal in Paragraph 9 of the impugned order that it would



not be fair to deny them the opportunity for consideration for regularisation on the basis of the 1993 OM, is incorrect finding rendered per-incuriam of judgment of Hon'ble Supreme Court in Union of India and Another vs Mohan Pal and Others (2002) 4 SCC 573.

D. Because Ld. Tribunal has not considered paragraph 4 of scheme of 1993 and judgment in Union of India and Another vs Mohan Pal and Others (2002) 4 SCC 573 while coming to the findings in paragraph 11 that we are not satisfied that the scheme for regularization would be applicable only to such person as were in position on the date the scheme was notified. Therefore, findings in paragraph 11 cannot sustain being per-incuriam of judgment in Mohan Pal case which has categorically held that scheme of 1993 is applicable only to those who were in employment on the date of commencement of scheme.

E. Because the scheme of 1993 stipulates in paragraph 4 that temporary status that Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this OM and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week), is one complete condition, therefore, the findings in paragraph 10 of the impugned order that applicants fulfill the condition of 1 year continuous service for consideration for temporary status, are bad and perverse findings, the same cannot sustain in view of categorical declaration of legal position and application of scheme of 1993 in judgment of Supreme Court in Mohan Pal case.

F. Because the Tribunal has not appreciated the following declaration by Hon'ble Supreme Court in paragraph 11 of Mohan Pal case;

"...the respondents have been given "temporary" status, even though, they did not specifically fulfil the condition in clause 4 of the scheme. Some of them were engaged by the Department even after the commencement of the Scheme. But these casual labourers had also rendered service for more than one year and they were not given "temporary" status pursuant to the directions issued by the Court. We do not propose to interfere with the same at this distance of time. However, we make it clear that the Scheme of 1.9.1993 is not an ongoing scheme and the "temporary" status can be conferred on the casual labourers under that scheme only on fulfilling the conditions incorporated in clause 4 of the scheme, namely, they should have been casual labourers in employment as on the date of the commencement of the scheme and they should have rendered continuous service of at least one year i.e. at least 240 days in a year or 206 days (in case of offices having 5 days a week). We also make it clear that those who have already been given "temporary" status on the assumption that it is an ongoing scheme shall not be stripped of the "temporary" status pursuant to our decision."



In view of above declaration, it would be an illegality to consider or grant temporary status to the applicants on the ground that they fulfil condition of 1 year continuous service or on the ground that they have served for long period because though Hon'ble Supreme Court did not intervene with the cases where temporary status had been granted to those who did not fulfil the condition prescribed in clause 4, however, Hon'ble Supreme Court had made it clear that scheme of 1993 is not an ongoing scheme and it applied exclusively to those who were in employment on the date of commencement of the scheme. In view of the above directions, applicants cannot claim them to be eligible for grant of temporary status or regularization on the ground that certain identically placed casual daily wagers have been granted temporary status under the scheme of 1993.

G. Because Applicants' names were sponsored by the employment exchange when they were initially appointed in 2002, cannot be basis to consider the applicants for temporary status for regularization as per the judgment by Constitution Bench in Secretary, State of Karnataka and others Vs Umadevi and others (2006) 4 SCC 1 as the applicants had not completed 10 years to be considered for regularization in terms of paragraph 53 of the judgment in Umadevi.

H. Because in view of judgment of constitution bench in Secretary, State of Karnataka and others Vs Umadevi and others (2006) 4 SCC 1 the applicants knew nature of their appointment and they had accepted the same with open eyes, therefore, the applicants are not justified to turn around and claim regularization on the ground that they are serving as daily wagers for long periods."

6. The respondents are working as daily wagers in the Kalawati Saran Children's Hospital ("KSCH") i.e. petitioner no. 2 herein. The case of respondents before the learned Central Administrative Tribunal ("CAT") is that all the respondents had been working continuously and uninterruptedly since the year 2002. However, they had neither been considered for regularisation so far nor even accorded a temporary status which shall entitle them to some additional benefits in terms of their social security.



7. The case of the respondents for temporary status was taken up by the petitioner no.2 Kalawati Saran Children's Hospital with the Government of India through the Ministry of Health and Family Welfare i.e. petitioner no. 1 herein. However, vide the impugned communication dated 15.06.2017, the same had not been agreed to on a very limited ground that only such employees could be given temporary status as were engaged/employed on the date the OM on the subject was issued. The said OM is called Casual Labourers (Grant of Temporary Status and Regularization) Scheme dated 10.09.1991. This OM states that temporary status would be conferred on all casual labourers who were in employment on the date of the issuance of the said OM and who had rendered continuous service of atleast 12 years.

8. The further case of the respondents before the learned CAT was that the denial of temporary status to the employees was in contravention to the right to equality and was thus discriminatory. Counsel for the respondents, before the learned Tribunal, highlighted that the respondents were duly appointed/engaged by way of requisition of their names from the employment exchange and after being subjected to a regular selection process and accordingly, by no stretch of imagination could they be called back door entrants into the system. They further highlighted that the petitioners had been relying upon the judgment of the hon'ble Supreme Court in the case of *Secretary State of Karnataka and Vrs. vs. Uma Devi and Ors.* in Civil Appeal No. 3595- 3612/1999 to deny the rightful due to the respondents. However, the petitioners ignored the fact that the names of the respondents were sponsored by the employment exchange and thereafter,



they were subjected to a transparent selection process and only then were offered engagement and employment. Moreover, identically placed employees had been granted temporary status and subsequently regularised.

9. Learned counsel for the respondents argued before the learned CAT that the engagement of the respondents had been continuous and uninterrupted and therefore, they could not be denied the benefit of temporary status to be followed by regularisation.

10. To buttress the submissions, counsel for the respondents, before the learned CAT, relied upon a judgment of High Court of Tripura, Agartala in WP (C) No. 1162/2018 drawing specific attention to paragraph 15 which reads as under:

“15. Culmination of the above decisions would be that the directions in case of Umadevi (supra) cannot be seen as providing a rigid cut-off date for applying the principle of 10 years of completion of engagement without Court intervention. Any such argument would give a complete license to the State and its authorities to continue to engage persons on casual basis and to refuse to recognize any of their rights even after decades of such engagement by citing the cut-off date referred to by the Supreme Court in case of Umadevi (supra). This has been duly explained by Supreme Court in case of Kesari (supra) and Narendra Kumar Tiwari (supra). In the present case, we may recall, many of these petitioners were engaged against sanctioned posts and clear vacancies long before the decision in case of Umadevi (supra) was rendered. Even after the Constitution Bench rendered its judgment in case of Umadevi (supra) in the year 2006, without any intervention from Courts all these engagements continued till June, 2017. Thus in some cases for over a decade after the decision in case of Umadevi (supra) this casual engagements continued. Curiously if the argument of the Government was that on account of the decision in case of Umadevi (supra) such engagements cannot be regularized, it would be a contradiction in term when the State made fresh engagements on casual basis long after the judgment in case of Umadevi (supra) was rendered. Subject to fulfilling the conditions provided in case of Umadevi (supra) as explained in later



decisions in case of Kesari (supra) and Narendra Kumar Tiwari (supra), these petitioners would deserve consideration for regularization."

11. On the other hand, learned counsel for the petitioners, before the learned CAT, had relied upon of the case of ***Union of India and Another vs. Mohan Pal and Others.***, (2002) 4 SCC 573, whereby paragraph 11 reads as under:

"11. In Civil Appeals Nos. 3168, 3182, 3179, 3176-78 and 3169 of 2002 arising out of SLPs (Civil) Nos. 2224 of 2000, 13024, 1563 of 2001, 17174-76 and 2151 of 2000, the respondents have been given "temporary" a status, even though, they did not specifically fulfil the condition in clause 4 of the Scheme. Some of them were engaged by the Department even after the commencement of the Scheme. But these casual labourers had also rendered service for more than one year and they were not given "temporary" status pursuant to the directions issued by the Court. We do not propose to interfere with the same at this distance of time. However, we make it clear that the b Scheme of 1-9-1993 is not an ongoing scheme and the "temporary" status can be conferred on the casual labourers under that Scheme only on fulfilling the conditions incorporated in clause 4 of the Scheme, namely, they should have been casual labourers in employment as on the date of the commencement of the Scheme and they should have rendered continuous service of at least one year i.e. at least 240 days in a year or 206 days (in case c of offices having 5 days a week). We also make it clear that those who have already been given "temporary" status on the assumption that it is an ongoing scheme shall not be stripped of the "temporary" status pursuant to our decision."

12. The petitioners vehemently opposed the OA preferred by the respondents before the learned CAT drawing strength from the specific averments made in the counter. Counsel for the petitioners highlighted paragraphs 4.2 and 4.3 of the counter reply filed before the Tribunal which, according to them, adequately explained the case as to why the respondents could not be given the benefits they sought. For the convenience of this Court, the said paragraphs are reproduced as under:



“Para 4.2 That all the averments made by the applicants in the instant para to the extent they are matter of record are not denied but rest part of the para are denied. It is submitted that eight daily wagers have been working w.e.f 5.3.2002 in KSCH continuously for 89 days with one day compulsory break as per approval of the then Principal & Medical Supdt., LHMC & Associated Hospitals (Annex-R 10)

Para 4.3 So far as regularization of the Daily Wagers against the existing Group-D posts (erstwhile Gr-C) are concerned, it is stated that this hospital is following the rules as laid down in DoPT Manual and this is a Central Govt Hospital, under the control of Dte. General of Health Services. There is no muster roll is applicable for any type of daily wagers for regularization. However, this office has sent a proposal for regularization of these 08 Daily wagers against vacant posts in Dte. General of Health Services vide its letter dated 21.03.2017 (Annex-R 11) after constituting a committee and with the approval of the Director. And in reply of above letter, a letter from DGHS dtd. 15.6.2017 (Annex-R 12) was received mentioning that these 08 Daily Wagers cannot be regularized or granting Temporary Status as all these 08 D/Wagers have merely completed one month of services on the date of issue of Hon’ble Supreme Court Order i.e. on 29.4.2000 and they are not covered as per the DoPT instructions/ Order. The applicants are covered under the DoPT OM dated 11-12-2006 because on that the applicant had not completed 10 years of service on 1.12.2006.”

13. It was recorded by the learned CAT that while the abovesaid paragraphs had dealt with the facts of the case, there is no denial that there was no policy for according temporary status to be followed by regularisation. It was also clear from the averments made in the said paragraphs that the case of daily wagers had been considered for regularisation and accordingly, recommended to appropriate authority.

14. In view of the above, the learned CAT took note of the fact that the petitioners consciously chose to engage the respondents post 1993. Therefore, it would not be fair to deny them the opportunity for consideration for regularisation on the basis of the OM issued in 1993.

15. The view of the learned CAT was that the case of the respondents had



to be considered against the background of the fact that they had been working continuously without break for the last 22 years.

16. Accordingly, the learned CAT took note of the fact that the OM being quoted in the impugned communication stated that one of the conditions was continuous service of one year for consideration for according temporary status.

17. It is not in dispute that the respondents have been working continuously for the last 22 years. The learned CAT was of the opinion that the scheme for regularisation would be applicable only to such persons as were in position on the date the scheme was notified. Moreover, no doubt, in the absence of anything to the contrary, that the judgment of the Hon'ble Supreme Court in ***Uma Devi*** (supra) would be applicable to the respondents since their names were duly sponsored by the employment exchange thus, the respondents are not the back door entrants with the petitioners.

18. During arguments, learned counsel for the respondents have drawn the attention of this Court to the communication dated 17.08.2020 which is at page 252 (*pdf page 258*) of the present petition passed by Additional Medical Superintendant of the Petitioners/Hospital whereby it is reiterated that 08 daily wagers had already been inducted 56 days before passing of the judgment dated 29.04.2002 by the hon'ble Supreme Court in ***Union of India and Anr. vs. Mohan Pal*** (2002) 4 SCC 573. Therefore, these 08 Daily wagers are automatically covered under the said judgment. It is further stated that pursuant to the said communication, all 08 daily wagers have filed a case before the learned CAT and if we regularize them, the concerned



case shall be disposed/dismissed, moreover, the number of pending court matters will also be decreased. Apart from that, the other financial loss will not be borne in future also such as fee of the Government counsels and other court matters related expenses.

19. In view of the above, we find no error or perversity in the impugned order passed by the learned CAT. Finding no merit in the present petition, the same stands dismissed along with the pending applications.

20. The petitioners, accordingly, are directed to comply with the order of the learned CAT dated 01.06.2003 within six weeks from today.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

AUGUST 28, 2024/riya