

(2018) 12 CAT CK 0033

In the Central Administrative Tribunal

Case No : Original Application No. 060, 00139 Of 2018

Ashwani Kumar

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 04-12-2018

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Administrative Tribunals Act, 1985 — Section 19

Citation : (2018) 12 CAT CK 0033

Hon'ble Judges : Sanjeev Kaushik, J;Ajanta Dayalan, J

Bench : Division Bench

Advocate : Vivek Sethi, K.K.Thakur

Final Decision : Allowed

Judgement

1. The applicant has filed this Original Application (OA) under section 19 of the Administrative Tribunals Act, 1985, for quashing the order dated 2.6.2017 (Annexure A-25), vide which his claim for regularization of his service has been declined and seeks issuance of direction to the respondents to regularize his service as he has been working on ad-hoc basis for the last 29 years, in terms of judicial pronouncements. .

2. The bare minimum facts, which impelled filing of this O.A. are that the applicant was appointed as Stenographer Grade D on 13.4.1988 on ad-hoc basis. His services were terminated vide order dated 27.3.1989, which was challenged in O.A.No.341-PB-89 including prayer to grant regularization of services, which was disposed of on 21.7.1989, to continue him in job, till post is filled up by a regular candidate through Staff Selection Commission (SSC). The services of applicant were again terminated vide order dated 6.9.1993, which came to be challenged in O.A. No. 873-PB-1993, which was allowed on 9.2.2001, quashing the termination order with direction to take the applicant back on duty. M.A. for extension and then R.A. followed. The R.A. was dismissed on 15.10.2001. He was not allowed to join his duties, which compelled him to file a C.P.No. 91/2001,

which was disposed of on 29.10.2001 as applicant was allowed to join duty on 25.10.2001. Another O.A.No.41-PB-2003 was filed which was allowed vide order dated 9.1.2004, that applicant was to be paid salary and allowances of the post w.e.f. 9.4.2001. However, his claim of regularization was rejected in view of earlier rejections by this Tribunal. Department went in judicial review through CWP No. 11024-CAT-2004 before Hon'ble Jurisdictional High Court, which was dismissed on 5.4.2005. The applicant also filed CWP No.13928-CAT-2004 against rejection of prayer for regularization which was dismissed on 13.9.2004, as his counsel had made a mis-statement before the Court. The applicant filed a complaint against his Counsel. The applicant also filed a Review Application No. 103 of 2006 in the Hon'ble High Court but to no avail.

3. The colleagues of the applicants approached the Hon'ble High Court with CWP No.2895-CAT-2006 against rejection of their prayer for regularization by this Tribunal vide order dated 2.9.2005 which was disposed of vide order dated 30.8.2011, with direction to the respondents to frame a Scheme in accordance with verdict of Hon'ble Apex Court in the case of STATE OF KARNATAKA AND OTHERS VS. UMA DEVI & OTHERS, (2006) 4 SCC 1, with further observation that applicants fell within the exception carved in para 53 of the aforesaid decision. SLP (CC) No. 2649 of 2013 filed by the Department was dismissed by Hon'ble Apex Court. Through CM No.19301-CII of 2015, the respondents placed on record regularization policy with the following conditions:-

- (a) They must have completed 10 years or more of service.
- (b) They must fulfill the required qualification for the post to which they are being regularized.
- © Their age as on date of joining should be within the permissible limit as required for recruitment the post they are claiming for regularization.

Relaxation will be given as per Court's order dated 30.08.2011.

(d) They must qualify the skill test (Stenography Test @ English / Hindi) as per Income Tax Department Stenographer Grade II (earlier Grade-III (Group C') Recruitment Rules, 2010.

(e) They must submit the relevant documents regarding Educational Qualification, date of birth, caste certificate (if applicable).

(f) They will be on probation for a period of two years, which may be extended further, if considered necessary".

4. Pursuant to the aforesaid policy, services of similarly situated persons were regularized. In O.A. No. 060/00626/2015 decided on 24.2.2016, condition qua clause (d) relating to passing of skill test was quashed and set aside. The respondents invited information from all the offices for regularization of services of similar employees. The applicant also submitted his requisite particulars for allotment of GPF account etc. and regularization of services in view of decision of

Hon'ble High Court. It was rejected vide order dated 2.6.2017 (Annexure A-25), on the ground that the applicant was not a party to the indicated decision and his case is different. Hence, the O.A.

5. The respondents have resisted the claim of the applicant. They submit that since the applicant had continued in employment on the basis of court orders, so he is not entitled to any relief in comparison to other employees who have been regularized.

6. We have heard the learned counsel for the applicants at length and examined the material on file.

7. Learned counsel for the applicant vehemently argued that since the colleagues of the applicant in the similar circumstances have been regularized on the directions of the Hon'ble High Court and policy framed by the respondents for his category, so he cannot be denied benefit of the same as it would amount to violation of articles 14 and 16 of the Constitution of India, merely because he was not a party to the indicated lis. On the contrary, learned counsel for the respondents urged that the case of the applicant is different and cannot be compared with the employees who were in litigation before the Hon'ble High Court.

8. We have considered the submissions on both sides and have gone through the material on file minutely, with the able assistance of the learned counsel for the parties.

9. At the very outset, learned counsel for the applicant placed reliance on a decision of this Tribunal in O.A. No. 060/00746/2015 titled DHARMINDER KUMAR VS. UNION OF INDIA & ANOTHER, decided on 21.11.2016, as upheld by Hon'ble High Court in CWPNo.2183 of 2017 decided on 6.2.2017. In that case the applicant was LDC (restructured as Tax Assistant). He claimed benefit of decision given in the case of category (Stenographers Grade D) of the applicants. The objection in that case was the same as taken in this case, that he was continued under interim orders of the court and as such was not entitled for regularization. This stand was declined by this Tribunal and direction was issued to the respondents to regularize the service of the applicant (therein). The order was tested in judicial review and the Hon'ble High Court, upheld the view taken by this Tribunal on 6.2.2017. The observations made by Hon'ble High Court are quite relevant and directly apply to the facts of this case and as such are reproduced as under :-

"(5) It further appears that there were 15 Stenographers who too were appointed on ad hoc basis like the first respondent and their claim for regularization of services though was turned down by the authorities but was accepted by this Court and the authorities were directed to consider them for regularization of services. The petitioners admittedly regularized their services vide order dated 11.04.2014/20.05.2014 though with a self- styled rider that the said order "will not be treated as precedent for any further case". The first

respondent also approached the Tribunal by way of OA No.060/00746/2015 which was disposed of with a direction to re-consider his claim for regularization of his services on the analogy of Stenographers.

(6) A perusal of the order dated 20.07.2016 (P4) unfolds that the authorities rejected the claim of the first respondent on the premise that he has continued in service due to stay order granted by the Tribunal, hence in view of the observations made by the Constitution Bench in *Secretary, State of Karnataka vs. Uma Devi* (2006) 4 SCC 1, the first respondent was not entitled to regularization of services.

(7) The Tribunal has disapproved the above-stated reasoning vide impugned order dated 21.11.2016 and has held that the first respondent is unnecessarily being discriminated against as his case is not distinguishable or different than that of 15 Stenographers. Consequently, a direction has been issued to re-consider and regularize his services.

(8) Having heard learned counsel for the petitioners, we do not find any merit in this writ petition. There is an inherent fallacy in the reasoning given by the authorities that the first respondent continued in service due to the stay order granted by the Tribunal. The fact of the matter is that the Tribunal vide its order dated 28.04.1995 had granted short-term temporary relief to the first respondent, namely, that he will continue in service till the regularly selected candidate was to be appointed in his place. Neither the petitioner challenged order before any forum nor the first respondent was replaced by a regularly appointed candidate. Thus, it cannot be said that the first respondent remained in service due to stay order of the Tribunal. It is the petitioners who did not replace him and allowed him to continue in service.

(9) By now the first respondent must have spent 23 years in service of the petitioners. It would be too late, iniquitous and harsh as well, to say that the first respondent is still an ad hoc employee for he might be very soon nearing the age of retirement. The case of the first respondent squarely falls within the four corners of the exceptions carved out in *Uma Devi's* case (*supra*) wherein it was held that the services of the ad hoc appointees can be regularized. We thus do not find any fault with the orders passed by the Tribunal.

(10) The writ petition is devoid of any merit and is accordingly dismissed."

10. The facts of this case are not only identical to the one involved in aforesaid case, but are at better footing inasmuch the decision upon which aforesaid claim has been allowed is in the *Stenographer Cadre*. Those who had been allowed regularization belong to the same category like that of applicant. The respondents have tried to justify denial on the ground that applicant's work and conduct was not up to mark and as such he was rightly dismissed from service but he was reinstated in service upon directions of courts of law. Thus, his case is different. This plea, in our view, is too farfetched and cannot be accepted by a court of law. Once the termination of services of applicant was quashed and set

aside and he was allowed to continue in service, then there does not remain anything adverse against him and he comes at par with his colleagues in terms of eligibility for grant of regularization in terms of orders of the Hon'ble High Court in the Stenographers' case, as followed in the case of Dharminder Kumar (supra) by this Tribunal and upheld by Hon'ble High Court. It is, thus, held that rejection of claim of the applicant is not tenable in the eyes of law.

11. Not only that, therefore, the applicant in the instant case is also legally entitled to the similar treatment and regularization in the similar circumstances of the case under Articles 14 and 16 of the Constitution of India, in view of the law laid down by Hon'ble Apex Court in cases MAN

SINGH VS. STATE OF HARYANA AND OTHERS AIR 2008 SC 2481 and RAJENDRA YADAV VS. STATE OF M.P. AND OTHERS 2013 (2) AISLJ, 120 wherein, it was ruled that the concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the Doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. It was also held that the administrative action should be just on the test of 'fair play' and reasonableness.

12. It is trite that the Courts have held that those who do not come to court need not be at a disadvantage to those who rushed there, and if they are otherwise similarly situated they are entitled for similar treatment, if by no one else at the hands of the Court, as held in the following cases:-

(a)INDERPAL YADAV V. UNION OF INDIA, (1985) 2 SLR 248;

(b) K. I. SHEPHARD AND OTHERS V. UNION OF INDIA, AIR 1988 SC 686 and

(c) K.T. VEERAPPA AND OTHERS V. STATE OF KARNATAKA & OTHERS, (2006) 9 SCC 406].

13. In STATE OF KARNATAKA V. C. LALITA, (2006) 2 SCC 747 it was held that "service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the Court that would not mean that persons similarly situated should be treated differently.

14. In the wake of aforesaid discussion, this O.A. is allowed. Impugned order is quashed and set aside. The respondents are directed to extend the benefit of regularization to the applicant on the similar lines as given to his colleagues in CWP No. 2895-CAT-2016 (VANDANA & OTHERS VS. UOI ETC.), as also in the case of DHARMINDER KUMAR (SUPRA), within a period of 3 months from the date of receipt of a certified copy of this order. The parties are left to bear their own costs.