

(2023) 03 CAT CK 0052
In the Central Administrative Tribunal
Case No : Original Application No. 421 Of 2011

Brijesh Pandey

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 24-03-2023

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution Of India, 1950 — Article 19, 23

Citation : (2023) 03 CAT CK 0052

Hon'ble Judges : Om Prakash VII, Member (J); Mohan Pyare, Member (A)

Bench : Division Bench

Advocate : M.K. Upadhyay, Ram Pal Singh

Final Decision : Dismissed

Judgement

Om Prakash VII, Member (J)

1. The applicant has filed the present O.A. under Section 19 of the Administrative Tribunals Act, 1985 with the prayer to quash the order dated 30.8.2003 and to reinstate the applicant on the post of EDDA with all consequential benefits and regularize the services of the applicant under the provisions of the recruitment rules.

2. The facts emerges from the O.A. are that father of the applicant died on 13.3.1998 while working on the post of EDDA in the Post office Budhanpur. On the next date, i.e. on 14.3.1998, respondents have engaged the applicant. Till then applicant was continuously working upto 30.8.2003. On 12.5.1998, respondent No. 4 sent a letter to Postmaster, Head Post Office, Ghazipur for payment of remuneration for the applicant from 14.3.1998 to 31.3.1998 and from 1.4.1998 to 30.6.1998. Respondent No. 4 again sent a letter dated 22.11.2000 to Superintendent of Post Offices, Ghazipur for approval of the engagement. After the letter dated 22.11.2000, applicant had worked till 30.8.2003. Vide letter dated 30.8.2003, respondent No. 4 terminated the service

of the applicant by engaging another substitute appointee. Applicant has challenged the impugned order dated 30.8.2003 in the instant O.A. in the year 2011.

3. Per contra, learned counsel for the respondents filed counter reply stating therein that after the death of father of the applicant, he was engaged temporarily as substitute in place of his father on responsibility of EDBPM Burhanpur vide SDI(P) Saidpur letter dated 14.3.1998. A letter dated 31.10.2000 was written by SDI (P) Saidpur Sub Division, Ghazipur that no record is available about his appointment. A verified letter of widow of deceased was received by the SDI (P) Saidpur for engagement of applicant. Necessary documents were got received for compassionate appointment. Due to non-receipt of approval from competent authority and pendency of case of compassionate appointment , SDI (P) Saidpur terminated the temporary engagement of the applicant vide impugned order dated 30.8.2003.

4. Heard the learned counsel for the parties.

5. Submission of the learned counsel for the applicant is that respondents have engaged the applicant in place of his father and applicant had worked in the department on compassionate ground for more than five years but respondents without issuing any show cause notice to the applicant, terminated the services of the applicant vide impugned order dated 30.8.2003. To substantiate his claim, learned counsel for applicant has relied upon the letter dated 12.5.1998 (Annexure No.2) in which department himself has admitted that after the death of deceased, his son Sri Brijesh Pandey was engaged (on avegee ground) from 14.3.1998 but payment for the period from 14.3.1998 to 31.3.1998 and 1.4.1998 to 30.6.1998 could not be done and requested for payment. It is further submitted that respondents themselves admitted in their counter reply that case of the applicant is pending with the department for compassionate appointment. Learned counsel for the applicant has placed reliance of the judgment passed by the CAT, Cuttack Bench in O.A. No. 383 of 1996 (Shri Debendra Chandra Muduli Vs. UOI and others) decided on 7.1.2003.

6. Learned counsel for the respondents submitted that applicant was engaged temporarily as substitute in place of his father. No service record is available about his appointment. SDI (P) Saidpur had received a letter for widow of the deceased for engagement of applicant along with necessary documents for compassionate appointment. But due to non- receipt of approval from competent authority and pendency of case of compassionate appointment, SDI (P) Saidpur terminated the temporary engagement of the applicant vide impugned order dated 30.8.2003.

7. We have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record.

8. Before proceeding with the facts and circumstance of the case, settled law positions are quoted below:-

9. In the case of Shri Debendra Chandra Muduli Vs. UOI and others (supra), CAT, Cuttack Bench has held as under:-

"6. Having regard to these facts and circumstances of the matter and the requirement of justice and fairplay, we find it difficult to persuade ourselves to accept the situation on where a person having served in a post for five years without any blemish could be summarily thrown out of his job, as has been done in the case by the respondent No. 3 by his order at Annexure -2. Under the circumstances, the said order under Annexure -2 dated 10.5.1996 must be quashed and we order accordingly and allow the application. We also order that respondents should regularize the service of the applicant under the provisions of the recruitment rules after relaxing the condition of minimum educational qualification as set up in the rules on the strength of his years of experience. The applicant should however have to fulfill other eligibility conditions for regular appointment. This O.A. is accordingly disposed of, leaving the parties to bear their own costs."

10. Constitution Bench of Hon'ble Apex Court in the case of Secretary, State of Karnataka and others Vs. Umadevi (3) and Others reported in (2006) 4 SCC 1 has held that absorption, regularization, or permanent continuance of temporary, contractual, casual, daily wage or adhoc employee appointed/ recruited and continued for long in public employment dehors the constitutional scheme of public employment. The Court further held that constitutional court should not issue direction for regularization of service of such employees.

11. In Ashwani Kumar and others Vs. State of Bihar and others (1996 Supp. (10) SCR 120), this Court was considering the validity of confirmation of the irregularly employed. It was stated:

"So far as the question of confirmation of these employees whose entry was illegal and void, is concerned, it is to be noted that question of confirmation or regularization of an irregularly appointed candidate would arise if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But if the initial entry itself is unauthorized and is not against any sanctioned vacancy, question of regularizing the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularization or confirmation is given it would be an exercise in futility."

12. From the record, it is evident that after the death of his father, applicant was engaged by the department on 14.3.1998 (next date of the death of his father) and applicant still continued till 30.8.2003. Department has written letters to the competent authority for approval of compassionate appointment and for payment of salary to the applicant, which shows that applicant was engaged by the department. It is also admitted by the respondents in his counter affidavit that department has received the application of the applicant for compassionate appointment along with necessary documents but no action has been taken till

date. Department has taken the work from the applicant from 14.3.1998 till 30.8.2003 but salary has not been paid to the applicant. Applicant was engaged on 14.3.1998 without any approval of the competent authority and without issuing any appointment letter. It is also worth mentioning that services of the applicant was terminated vide order dated 30.8.2003 and applicant has challenged the same in year 2011 by filing the instant O.A. hence the O.A. is also liable to be dismissed on the ground of limitation. Therefore, the court is of the view that it will not be proper to quash the impugned order dated 30.8.2003 and direct the respondents to reinstate the applicant in service with all consequential benefits. However, it is settled law that if the petitioner has discharged his duties, not paying of salary in the facts of this case would tantamount to taking Begar from the petitioner which is forbidden under Article 23 of the Constitution of India. Hon'ble Jammu & Kashmir High Court in SWP No. 2339/2013 (Amarmmeet Singh Vs. State Th. Edu. Deptt. and ors) decided on 11.2.2014 has held as under:-

"5. A person after discharging his duties on the appointed post becomes legally eligible to receive the salary attached to the post in accordance with rules. Admittedly, petitioner has discharged his duties ever since his joining the Institution of respondent no. 5. The salary can be stopped only in terms of prescribed rules and not otherwise. The salary is the property of the petitioner and he has right to receive the same is his fundamental right in terms of Article 19 of the Constitution of India. The salary of an employee may be stopped, but for that it has to be shown that same is authorized by the rules and the rules have to be followed. In the facts of this case only reason given for nonpayment of the salary is non-furnishing of the verification report in respect of the petitioner.

6. As already stated, petitioner has discharged his duties, not paying of salary in the facts of this case would tantamount to taking Begar from the petitioner which is forbidden under Article 23 of the Constitution of India. Even the allegation leveled in police case against the petitioner are of a trifle nature and O.A. No. 233/2020 Page 5 of 7 such type of allegations cannot come in the way of the petitioner for receiving his salary. In the facts and circumstances of this case, the condition in the adjustment/posting order that the DDO shall not draw the salary of the appointee till character certificate and the antecedents are verified by the Addl. DG of Police (CID), Jammu is held to be un-just for the reason that it affects the right of the petitioner to receive the salary.

7. For the above stated reasons, this writ petition alongwith connected CMA(s) is disposed of and respondents more particularly respondents 2 and 5 are directed to forthwith release the salary of the petitioner in respect of the post of Laboratory Assistant from 1st November, 2010 till date and in future also in accordance with rules. Salary be released within four weeks from the date copy of this order is served. Registry to provide copy of this order to Mr. Ravinder Sharma, learned AAG within two days time. Disposed of along with connected

CMA(s)."

13. For the forgoing reasons and in view of the law laid down in Uma Devi (supra) case, O.A. is dismissed on the ground of limitation as well as on merits as far as quashing of impugned order dated 30.3.2008 is concerned. However, since it is the admitted fact that respondents had engaged the applicant in place of his father and applicant and taken work from the applicant and applicant had worked in the department from 14.3.1998 to 30.3.2003, respondents are directed to pay the salary to the applicant for the aforesaid period, if not already paid, along with simple interest of 6% per annum within a period of one month. It is further directed that since the application for compassionate appointment of the applicant is pending with the department (as admitted by the respondents in their counter affidavit), respondents are directed to consider the case of the applicant for appointment on compassionate ground in the next circle committee meeting held for compassionate appointment and communicate the decision to the applicant forthwith.

14. All pending MAs in this O.A. also stands disposed off.

15. No order as to costs.