(2021) 11 CAT CK 0042

In the Central Administrative Tribunal

Case No : Original Application No. 394 Of 2014

D D Solanki APPELLANT

Vs

Union Of India & Others RESPONDENT

Date of Decision : 24-11-2021

Acts Referred:

Citation : (2021) 11 CAT CK 0042

Hon'ble Judges : Jayesh V. Bhairavia, Member (J);Dr. A.K. Dubey, Member (A)

Bench : Division Bench

Advocate : M.S. Trivedi, M.M. Bhatt

Final Decision : Dismissed

Judgement

Dr. A.K.Dubey Member (A)

1. Aggrieved by the oral termination of service based on daily wage and not having been regularised in the service despite having put in 16 years as daily wager, the applicant has filed this OA seeking following reliefs:-

"(A) That this Honorable Court may be pleased to admit the present Application.

(B) The Honorable Tribunal may be pleased to pass appropriate order, directing the opponents authorities to treat the applicant as being regular appointed employee to his respective post with effect from original date of joining i.e., 03/08/1992 and further be pleased to direct the opponents authority to confirm the post of the applicant and place him in regular scale attached to the opponents authority and to pay all consequential benefits."

In the interim relief, the applicant of OA seeks reinstatement w.e.f 1.7.2013 i.e., the date on which his service was terminated orally and regularization of his service.

2. The applicant started as daily wager with respondent No.3 in 1992-93. Then he applied on 10.3.1997 (Annexure-A/3) for appointment as sweeper. This

request was forwarded by respondent No.3 to respondent No.1 with an information that the post of Farash/Sweeper had been vacant and proposal to fill it had already been sent up (Annexure-A/4). Later, vide letter dated 27.08.1997, respondent No.3 was advised to continue with farash as contingent paid staff (Annexure-A/5). Later, vide letter dated 07.08.1998, respondent No.2 was advised to confirm the applicant's service as sweeper on daily rated wages (Annexure- A/6). Accordingly, he was confirmed as "contingent paid staff" at the stipulated daily wage vide letter dated 15.09.1998 (Annexure- A/7). This letter also clarified that the applicant was not entitled to any allowance or benefits admissible to other Class IV staff. Then, vide letter dated 16.04.1999 (Annexure-A/8), the Commissioner of Income Tax (CIT) was intimated about the objection to the contingent bill for payment to the applicant and it was also conveyed there that the applicant had not been paid any thing till then.

3. Admittedly, thereafter the applicant was paid by the authority as per the confirmation as daily rated contingent staff. Then vide his representation dated 23.04.2001 (Annexure-A/9), the applicant requested for regular appointment, which was recommended by the Respondent No.3 vide his letter dated 19.06.2001 (Annexure- A/10). The respondent No.3 also recommended to respondent No.1 vide letter dated 20.01.2002 (Annexure-A/11) to consider hiking the daily wages since the rate of daily wage allowed then was too low. Yet again, a letter dated 23.01.2002 (Annexure- A/12) was sent to the respondent for regularization of the applicant as farash.

3.1 Vide DoP&T OM dated 11.12.2006, it was conveyed that in view of Hon'ble Supreme Court judgment in State of Karnataka vs. Uma Devi & Ors. (Annexure-A/13 Collectively) the department could take steps to regularize as one time measure, services of such irregularly appointed staff who were duly qualified for the posts and had worked for 10 years or more on a duly sanctioned post (but not under the cover of court's order). These instructions were reiterated in DoP&T OM dated 21.04.2008. Accordingly, respondent No.1 vide his letter dated 03.04.2009, issued letter of similar content asking for information (Annexure-A/4). In response, the respondent No.3 furnished details vide his letter dated 13.04.2009 (Annexure-A/15). Further, vide letter of respondent No.3 dated 29.06.2009 furnished the details of the applicant engaged as daily wager since 01.09.1997 (the date since when he was confirmed as daily wager), with a request to regularize his services (Annexure-A/16). The correspondence in this respect protracted but without any way out. 3.2 The applicant's claim is that he has been as confirmed daily wager for more than 20 years now and yet regularization has been eluding. A member of SC community, he has been functioning as conformed daily wager this long; even the benefit of DoP&T Circular dated 03.04.2009 was not extended to him.

4. The respondents have submitted their reply denying the averments in the original application. They have mentioned that the applicant was working as Farash/Sweeper on daily wages in the Income Tax Office in Himmatnagar. On

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7.08.1998, the Commissioner of Income Tax (CIT) Gandhinagar, advised the Deputy Commissioner of Income Tax (DCIT) to confirm the services of the applicant as a contingent paid staff w.e.f. 01.09.1997. (Annexure-A/6).

5. Vide order dated 15.09.1998, (Annexure-A/7) the applicant was confirmed as Contingent paid staff at the stipulated daily wage. It was made clear in the same order that the applicant would not be entitled to any allowance and benefits which would be admissible to other contingent paid staff and that the wages for the duty of absence, holidays, Saturday and Sunday will be deducted. He applied on 10.03.1999 for permanent absorption. Later, vide his application dated 23.04.2001, the applicant requested the CCIT for regularization of his service as Farash/Sweeper. Subsequently, vide his letter dated 03.04.2009 (Annexure-A/14) the CCIT called for details of irregularly appointed daily wagers who were duly qualified persons in terms of statutory requirement rule for the post and who had worked for 10 years or more in a duly sanctioned post.

6. In response thereto, the CCIT sent a letter dated 13.04.2009 (Annexure-A/15) recommending the applicant's name. Thereupon the CCIT vide his letter dated 13.04.2009 clarified that as per the rules for regularization of casual workers/ daily wagers who were engaged as daily wagers through the employment exchange. Accordingly, clarifications were sought. It was clarified by the Additional Commissioner of Income Tax, Himmatnagar that the applicant had not been engaged as causal worker through employment exchange.

7. Respondents in their reply have referred to OM dated 6.6.2002 (Annexure-R/1) in this regard.

8. This particular condition of having been engaged through employment exchange is clear by way of clarification at Sl. No.1 in the DoP&T OM dated 12.07.1994 (Annexure-R-1 Colly). It is on this ground that it was not possible to consider regularization of his service, respondents contend

9. The matter came up for final hearing on 15.07.2021.

10. Heard the counsel for both the parties. The counsel reiterated their contentions and stand taken in the original application and the reply thereto respectively.

11. Learned counsel for the applicant referred to various correspondences already placed on record that the proposal to regularise the service of the applicant kept moving back and forth but did not fructify for want of one or the other clarification.

However, records clearly showed that the department was always seized of the issue. Despite having rendered more than 20 years of service as casual labour even if on contingent paid daily wage basis, the applicant's service was not regularised; his service deserved to be regularized. He relied on the order of the respondents confirming him as "contingent paid worker".

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12. Per contra, the learned counsel for the respondents made two statements. First, the applicant was confirmed as contingent paid staff at the stipulated daily wage. The counsel avers that daily wage is not paid to a regular staff. Nor is the regular staff paid on daily wage basis. So the very engagement of the applicant was different from regular engagement, the counsel submitted. Secondly, learned counsel for the respondent argued that even though there was a scheme for regularization of service of those contingent/daily wage staff/temporary staff who had rendered 10 years of service, there was yet another condition to be fulfilled simultaneously that the very such appointment sought to be regularised should have been made through the employment exchange. In this case, the initial or the first engagement as Sweeper was not through the Employment Exchange and therefore, it did not fall in the category which could be considered for regularaization. The counsel for the respondents submitted that regularization can never be interpreted beyond the mandate given by the DoP&T OM in this regard.

13. The facts of the case as brought out above, are clear. At no stage the applicant was considered even as a temporary staff; he was confirmed only as contingent paid worker on daily wage and continued to serve in that capacity. These payments were only for the actual duties of work. This, per se, could not have created any indefeasible right to regularisation since his initial engagement was not through employment exchange as stipulated in the DoP&T OM referred above. Due to the fact that these basic requirements were not fulfilled, the respondents did not consider his matter for regularization. Under this factual matrix and after going through the papers and documents before us, we do not find any irregularity or discrimination in not regularising the service of the irregularly engaged daily wager applicant. OA lacks merit and is therefore dismissed.

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