

(2014) 10 DEL CK 0161
In the Delhi High Court
Case No : Writ Petition (Civil) 7246/2009

Government of NCT of Delhi

APPELLANT

Vs

Anil Kumar

RESPONDENT

Date of Decision : 27-10-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2014) 10 DEL CK 0161

Hon'ble Judges : Vipin Sanghi, J; S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Zubeda Begum, Standing Counsel and Sana Ansari, Advocate for the Appellant; M.K. Bhardwaj, Advocate for the Respondent

Judgement

S. Ravindra Bhat, J.

C.M. No. 2862/2014

For the reasons mentioned in the application, C.M. No.2862/2014 is allowed.

W.P.(C) 7246/2009

1. The Government of NCT of Delhi (GNCT) is aggrieved by a decision of the Central Administrative Tribunal (CAT) in O.A. 833/2008, dated 30th July 2008. The CAT quashed its decision and held that the GNCTD would regularize the applicants in Group-D posts.

2. The applicants were working as Groundmen with the Sports Branch of the Directorate of Education (hereafter "DoE") in schools and other institutions of the GNCTD. Pursuant to office order dated 23.03.2001, they were granted temporary status in accordance with terms and conditions spelt out in the Central Government, Department of Personnel and Training (DoPT) Office Memorandum (OM) No.51016/2/90-Estt CC / dated 10.09.1993. That order, (dated 28.03.2001) , stated that the employees would not be brought to the permanent establishment unless they were selected through regular selection process for

Group-D posts. Though conferred with temporary status, their services could be dispensed with by issuing one month's notice in writing; temporary status did not result in any liability on the part of Directorate of Education to provide regular appointment. The conferment of temporary status in terms of the said order, particularly para 8 of the Scheme formulated by the DoPT, i.e. the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, two out of every three vacancies in Group-D cadres- in offices where casual labourers had been working- would be filled up in terms of the extant Recruitment Rules and in accordance with the instructions of DoPT regarding conferment of casual workers with temporary status.

3. The applicants approached the CAT seeking regularization of their services contending that 566 vacancies in Group-D posts were unfilled in the DoE, GNCTD. This was based on the reply received by the second applicant to a query under the Right to Information Act, 2005. The applicants had earlier approached the CAT in OA No. 948/2007, which was disposed of on 04.01.2008 with a direction to respondents to reconsider the claim of the applicants for appointment against Group-D posts in the light of the RTI information received by the applicants, by passing a speaking order within the stipulated time. The GNCTD by its order dated 19.03.2008, rejected the claim for regularization. That order, after citing the previous directions of CAT, stated as follows:

"WHEREAS the post of Mali/Chowkidar and Peon sanctioned in the Sports Branch come under the regular Group-D posts of the Directorate of Education and recruitment/promotion to these posts is governed by the Recruitment Rules framed vide notification dated 10.06.1987 of the Delhi Government which stipulates that only 50% of the post be filled up by Direct recruitment and the remaining 50% of the posts are to be filled up from Part-time Group-D employees who have served as Part-time workers in the local offices of Delhi Administration for a total period of 5 years failing which by direct recruitment. According to the roster 50% quota is being filled up from Group-D workers, working in the Directorate, on the basis of their duly finalized Seniority List. Therefore these 23 casual labourers cannot be considered for promotion against the regular full time Group-D posts of this Directorate."

4. The applicants again approached CAT- this time through OA 833/2008, seeking directions for their regularization. The CAT noticed the terms of the 1993 scheme which directed grant of temporary status and also that the applicants had been conferred such status. In terms of Clause 7, emoluments and provident fund as well as other benefit were to be on par with regular employees, which was enjoyed by the applicants. At the same time, the CAT noticed that even though the correctness of the 1993 scheme had received consideration by the Supreme Court in the decision reported as Union of India (UOI) and Another Vs. Mohan Pal, etc. etc., , nevertheless, the later larger Bench ruling of that Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, constrained it from issuing a blanket direction to regularize casual or daily rated employees.

Uma Devi (supra) had, at the same time, directed that as a one-time measure, a regularization scheme to benefit those in casual and daily rate employment for 10 years or more ought to be formulated and implemented within six months.

5. Ms. Zubeida Begum, learned counsel for the GNCTD argued that the CAT fell into error in issuing the impugned directions. It was firstly argued that the grant of temporary status to the applicants through an order unmistakably clarified that it would not result in their regularization and their services could be dispensed with by issuance of notice. Stressing that the 1993 scheme could not be stretched indefinitely, though it was upheld in Mohinder Pal (supra) , learned counsel argued that regularization or the benefit of regular employment had to be only in terms of rules. The existing rules provided for regularization of part time workers, on the basis of a seniority list maintained by the authorities. The applicants, who were full time temporary workers, could not claim any relief under the rules. It was argued next that the GNCTD had decided in 2007 to dispense with the services of groundmen, who had been sent to the Sports Authority of India. The said Authority had decided to have its own arrangements in view of the forthcoming Commonwealth Games, in 2010. In these circumstances, the applicants' claim to any post or position in GNCTD, much less regularization, was tenuous. It was, therefore, urged that the CAT should not have allowed the applications and issued the impugned directions.

6. The applicants, arrayed as respondents justify the impugned order and submit that the order of GNCTD itself discloses that almost all- if not all of them had worked for more than 10 years and were clearly entitled to be considered for regularization. It was submitted that the condition imposed, i.e. that only part time workers could be regularized against 50% vacancies, had no rationale, considering that the applicants were in full time employment and had been given temporary status long ago, in 2001. They were entitled to the same wages and terminal benefits as regular employees. The discrimination in their exclusion from the benefit of regularization contravened Article 14 of the Constitution of India. It was highlighted besides, by the applicants that as of 2007, 566 unfilled vacancies in Group-D posts existed and GNCTD's position that Groundmen were not required had no basis. What the applicants sought was regularization as Group-D employees; undeniably 566 vacancies in various departments and in different posts existed where they could be accommodated.

7. The GNCTD's order of 19-03-2008 refusing to consider the applicants for regularization contains names and particulars of all 23 applicants. There is no dispute that by an order of 2001 all of them were granted temporary status. This was in terms of the DoPT circular of 1993. They even enjoy the same pay scales as those of regular Group-D employees. The list discloses that 15 (out of 23) had completed 10 years continuous employment as of the time of the judgment in Uma Devi (supra) . That judgment had, even while frowning upon engagement of casual workers against sanctioned post and enjoining Courts not to regularize such class of employment in public agencies and government departments,

carved out a one-time exception, expressed in the following terms:

"44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa (supra) , R.N. Nanjundappa (supra) , and B.N. Nagarajan (supra) , and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub-judice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

8. The Petitioner-GNCTD's stand regarding ineligibility of the applicants to the benefit of regularization is two fold. One, that its rules can accommodate only part time employees in accordance with their determined seniority and two, that the post of groundmen has been rendered redundant.

9. This Court is of the view that the GNCTD's objections are insubstantial. The first reason flies in the face of logic and the mandate of Article 14 of the Constitution of India. The applicants are undoubtedly working for more than 10 years; that they were granted temporary status or are made to work full time, cannot be held against them to deny regularization. As between them and part time workers, the applicants, in the opinion of the Court, have a superior claim; besides Para 44 of Uma Devi (supra) does not authorize such distinction. Granted, the state can spell out terms of regularization; yet those conditions cannot be extraneous to the object sought to be achieved. Regularization of part time workers may be a facet of, though not the only objective of the rules. That the scheme is to be framed by the executive which has chosen an artificial basis to classify and deny the benefit to full time workers is something beyond the latter's control. It is thus held that the rules cannot be cited to deny the benefit of regularization which had to be granted as a one time measure in terms of Uma Devi (supra) .

10. So far as the second ground urged by the GNCTD goes, the Court finds it to be equally meritless. The GNCTD has not denied that 566 vacancies existed at the relevant time. No doubt, it does not require Groundmen, who had been

deputed for a while to the Sports Authority of India. At the same time, it has a large number of schools; besides it is in constant need of employees to man Group-D posts. The applicants do not insist on regularization as Groundmen, but in Group- D posts. When such posts do exist, and regularization of part timers is enabled, it would be irrational to deny due consideration of the applicants claims.

11. In view of the above conclusions, the petition has to fail. The GNCTD shall examine the records of the case concerning each of the 23 employees mentioned in its order of 19-03-2008 and pass separate individual orders, in the light of the directions in Uma Devi (supra) and the vacancies which existed as on the date of the CAT's impugned order, granting benefit of regularization to such of them who fall within the parameters in the said para 44 of Uma Devi (supra) . The exercise shall be completed within 6 weeks and consequential orders issued individually by the end of that period. Subject to these directions, the writ petition is dismissed.