
(2014) 08 MAD CK 0226
In the Madras High Court
Case No : Writ Petition No. 359 of 2014

J. Mohan

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) 4 LLJ 704

Hon'ble Judges : Satish K. Agnihotri, J;M.M. Sundresh, J

Bench : Division Bench

Judgement

1. The challenge in this writ petition is to the order dated 19.11.2013 passed by the fifth respondent, viz., the Central Administrative Tribunal, Madras Bench, Chennai (for short "the Tribunal") in O.A. No. 61 of 2012, wherein and whereunder, the application filed by the petitioner was dismissed holding that the petitioner has been working in the leave vacancies with intermittent breaks and as such, he was not entitled to absorption in any of the vacant posts of Gramin Dak Sevak Mail Deliverer (for short "GDS/MD"). The indisputable facts in brief, as projected by the petitioner before the Tribunal are, as under:

1.1. The petitioner had been working in the respondent department in various capacities as an outsider as Postman, Group-D and GDS with effect from 1988. He had completed more than 240 days work during the period 1991-1992. He was thereafter appointed provisionally as Extra Departmental Delivery Agent-II (for short "EDDA-II"), now known as GDS Delivery Agent-II, vide order dated 07.11.1997. Thereafter, pursuant to the notification issued by the fourth respondent, he was also selected and appointed on provisional basis by order dated 17.03.1999. On review, the said appointment order dated 17.03.1999 was cancelled by higher authorities by order dated 10.04.1999. He filed an Original Application, being O.A. No. 483 of 1999 before the Tribunal. The Tribunal, by order dated 15.11.1999, set aside the cancellation of appointment. However, liberty was reserved to the respondents to issue notice to the petitioner and

other applicants and pass a fresh order on merit and it became final.

1.2. According to the petitioner, he was appointed on 10.04.1999 against leave vacancy and continued thereafter. The petitioner made a representation on 29.06.2011 to the third respondent to consider his appointment in any vacancy in the post of GDS in Tambaram Division. It was the case of the petitioner that some of the similarly situated outsiders approached the Tribunal in O.A. No. 811 of 1988 to absorb them as GDS, which was allowed by the Tribunal and the writ petition in W.P. No. 27274 of 2004 filed thereagainst was dismissed by this Court by order dated 23.01.2006. The Special Leave Petition filed thereagainst, being S.L.P.(C) No. 21825 of 2006, is pending consideration before the Supreme Court. The petitioner filed the present application on the ground that the respondent Department was directed to absorb the similarly situated outsiders and thus, he is also entitled to the same relief.

2. The case of the respondents 1 to 4 before the Tribunal was that the petitioner was engaged as a substitute in the leave vacancies of Postman/Group "D" as and when vacancy arose; he was initially engaged as an outsider with effect from 07.11.1997 purely on temporary basis in the post of GDS/MD, Gowriwakkam, due to unauthorised absence of a regular incumbent for a long time. Thereafter, the petitioner participated in the selection, which was cancelled subsequently; challenging the said order, O.A. No. 483 of 1999 was filed by the petitioner which was dismissed by the Tribunal, reserving liberty to the petitioner to challenge the order of appointment of a third party, if so advised. Consequent thereupon, a show cause notice was issued and thereafter, on consideration of the reply of the petitioner and others, the cancellation order of provisional selection was confirmed vide order dated 05.02.2000 passed by the fourth respondent. The said order was not challenged. The petitioner was appointed against leave vacancy, subsequently, not in accordance with the legal procedure and as such, he has no right to absorption or regularisation.

3. The Tribunal, having considered all aspects of the matter, held as follows:

"We have carefully considered the rival contentions and perused the records. The applicant's contention that he has been working since 1988 is not seen substantiated based on the record and as stated in the OA the applicant has been working in the Department from the year 1999 in the leave vacancies. The appointment given to the applicant on 07.11.1997 was by overlooking the candidature of a more meritorious candidate and the same was cancelled subsequently and the applicant has not chosen to challenge that cancellation as observed by this Tribunal in the order dated 15.11.1999. The order of the Tribunal and the judgments cited in respect of the case of A. Suguna and others as well as the case of V. Gurusamy supra are not applicable to the facts of the present case."

4. We have carefully examined the documents and considered the rival contentions advanced by the parties.

5. It is indisputable that the petitioner's name was shown in the list of outsiders working in Tambaram Division at Serial No. 144 from 01.05.1988. However, the petitioner has failed to establish that he continued thereafter on regular basis. The case of the petitioner is that during the period 1991-1992, he had worked for more than 240 days. That also does not confer on him, a right to absorption, as his service was dis-continued thereafter which was challenged unsuccessfully. The petitioner was thereafter appointed provisionally vide order dated 07.11.1997, which clearly indicates that:

? the appointment of the petitioner to the post of EDDA-II was provisional;

? it was against the vacancy of one C. Madhanagopal; and

? the provisional appointment would be terminated without notice.

After the aforesaid appointment came to an end, the petitioner was selected through some selection process and the appointment was cancelled. That also came to an end, as aforesaid. The petitioner was thereafter appointed in 1999, again, for a temporary period. The petitioner has failed to establish that on the date he made an application for absorption, he was, firstly in service and secondly, his appointment was in accordance with the Constitutional scheme of employment.

6. It is a well settled principle of law that an employee appointed dehors the Constitutional scheme of employment is not entitled to continuation of service or regularisation or absorption. A Constitution Bench of the Supreme Court, in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, , held that that any appointment made in violation of recruitment rules, would be violative of Articles 14 and 16 of the Constitution of India, rendering the same nullity, as such even if the appointee has continued in service for a long period, he cannot be further allowed to continue in service, but, if, however, it was found that the appointment was not illegal but irregular, in that eventuality, he could be permitted to continue in service and the same could be regularized, in case, he had worked for ten years or more on duly sanctioned post.

7. Further, in *Union of India (UOI) and Another Vs. Kartick Chandra Mondal and Another*, , the Supreme Court observed that if an appointment is made illegally or irregularly, the same cannot be the basis of further appointment. An erroneous decision cannot be permitted to perpetuate further error to the detriment of the general welfare of the public or a considerable section. In the case in hand, the appointment of the petitioner was neither through a proper selection process nor against a permanent vacancy. As such, the prayer of the petitioner to absorb him against the post of GDS was rightly rejected by the Tribunal. We do not find any error in the order impugned, warranting interference.

For the reasons stated hereinabove, the writ petition is dismissed. Rule discharged. No order as to costs.