
(2021) 03 JH CK 0206

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4220, 4267 of 2017

Mulchand And Ors

APPELLANT

Vs

Union of India And Ors

RESPONDENT

Date of Decision : 24-03-2021

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2021) 03 JH CK 0206

Hon'ble Judges : Aparesh Kumar Singh, J;Anubha Rawat Choudhary

Bench : Division Bench

Advocate : Pankaj Srivastava, Rabi Narayan Mukherjee, Prabhat Kumar Sinha, Niraj Kumar

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties.

2. These two writ petitions arise out of the order passed in O.A./051/00225/2014 dated 07.03.2017 by the learned Central Administrative Tribunal, Circuit Bench, Ranchi. The prayer of the applicants for regularization of their services as a onetime measure on the strength of their claim that they have been continuing for more than 10 years in the Cattle Yard Section of Military Farm, Namkum on daily wages and on job basis, has been rejected by the learned CAT holding as under:

"4. Admittedly, there is no appointment letter which would have shown the condition of appointment. If there is casual work for a short period, the persons working as casual labour cannot be regularized and for that regular post to be created with atleast 8 hours of continuous job. In the Military Farm, the work of the applicant is mostly confined to maintenance of cows in the farm including milking and such post cannot be regularized without a sanctioned post. Daily rated casual labours cannot ask for regularization when they are not working against a sanctioned post. Whole claim of the applicants is misconceived and no

relief can be granted by this Tribunal at this distance of time. Before pronouncement of constitutional Bench judgment in the case of Uma Devi, the matter could have been viewed from a different angle. Had the applicants approached this Tribunal at that point of time, but after pronouncement of the said judgment there cannot be any public appointment without resorting to public advertisement and following a recruitment process. Since the present applicants had not availed such opportunity prior to 2006, cannot be granted any relief at this distance of time, that too without any specific norms of appointment or condition of service or working pattern in the farm. There is considerable force in the submission of Id. Counsel for the respondents is that now the day-to-day casual work of the farm has been outsourced and the applicants working under contractor and not directly under the respondents and, as such, question of regularizing of service does not arise. Considering from all angles, we did not find any merit in the submission of the applicants for a suitable direction to the respondents. Hence ordered.

5. The O.A., being devoid of merit, is dismissed. No costs."

3. Applicants being aggrieved are before us and have inter alia contended as follows:

Applicant No. 1 and 2 (writ petitioner no. 1 and 2 in W.P.S. No. 4220 of 2017) were employed w.e.f. 24.11.1994 and applicant no.3 (writ petitioner no. 3 in W.P.S. No. 4220 of 2017) was employed in 1995 on the post of Mazdoor on sanctioned strength, on daily wages and on job basis w.e.f. 1998 till the filing of the writ petition. Applicant no. 4 to 18, who are writ petitioners in W.P.S No. 4267 of 2017 claim to have been working since 2001 uninterruptedly on daily wages. According to the petitioners, during pendency of the writ petitions respondents have stopped taking work from August 2018 and no payment are being made to them. The prayer of the writ petitioners for a direction upon the respondents to continue with their engagement during pendency of the writ petition made through I.A. No. 10218 of 2019 and I.A. No. 10219 of 2019 in the respective petitions were declined vide order dated 06.02.2020 by this Court. Petitioners have relied upon the decision rendered by the Apex Court in the case of Secretary, State of Karnataka vs Uma Devi reported in (2006) 4 SCC 1 in support of their plea for regularization as they have worked for 10 years on duly sanctioned post without any cover of orders of the Court or Tribunal. According to them, learned CAT has not appreciated the principles laid down in the case of Uma Devi (supra), which has been further explained in the case of State of Karnataka Vrs. M.L.Kesari reported in (2010) 9 SCC 247. Petitioners contend that one similarly situated employee Sanjay Kumar Yadav, who was also selected with applicant no.1 as per Annexure-2/1 to W.P.S. No. 4220 of 2017 has been regularized pursuant to the order passed by the learned CAT in OA No. 187/2004 dated 20.08.2004. It is submitted that challenge thereto before this Court in W.P.S. No. 2692 of 2005 was negatived. The Special Leave to Appeal (Civil) CC 8885-8887/2010 preferred by the Union of India was also dismissed on the

ground of delay as also on merits by order dated 12.07.2010 (Annexure-3/4 and 3/2 respectively). Petitioners further contend that the respondents have without following the procedure prescribed under the Industrial Dispute Act closed the Military Farm at Namkum and retrenched the applicants.

4. Learned counsel for the petitioners have relied upon a communication to the Employment Officer, Labour and Employment Department, Government of Bihar (Annexure 2/1 to W.P.S. No. 4220 of 2017) dated 24.11.1994 where under on requisition being made by the respondents names of 20 Mazdoors were provided which include names of petitioner no. 1 and 2 and one Sanjay Kumar Yadav. While Sanjay Kumar Yadav has been regularized in service, petitioners have been discriminated against. Learned counsel for the petitioners however have not been able to show any letter of appointment containing the terms and conditions of their engagement nor have been able to show that petitioners' engagement as Mazdoor or daily wager / casual labour was against any sanctioned vacant post. They have also not been able to show that petitioners were duly qualified for being appointment against regular post. The sheet anchor of the case of petitioners' is that having worked for more than 240 days under the respondents, they were entitled for regularization since they are continuously engaged for more than 10 years, which is indicative of the permanent nature of work performed by them. It is submitted that on the principles of parity, when one similarly placed Sanjay Kumar Yadav applicant in O.A. No. 187 of 2004 have been regularized as late as in 2014 in compliance of the directions of the learned CAT, respondents could not have discriminated against them. It is further submitted that respondents have prepared a seniority list in compliance of the directions of the learned CAT but none of the names of these applicants figured in the said list. It is not disputed that the Military Farm, Namkum have since been closed. Learned counsel for the petitioners have relied upon the order passed by the learned CAT, Chandigarh bench in batch of O.A.s led by O.A. No. 60/1129/ 2017 order dated 18.02.2019. It is submitted that the learned Tribunal has disposed of those O.A.s directing the respondents to constitute a committee to consider the claims of eligible persons who have been working in Military Farms since 1988 onwards.

5. Learned counsel for the respondents submits that in pursuance to the conscious decision all the cattle in Military Farm Namkum have been disposed of vide order of October 2018 and functioning of all sections of Namkum Military Farm has been ceased. Consequently, requirement of all kind of labours engaged in maintenance of livestock and other related activities have also ended. It is further stated that all the eligible candidates fulfilling the conditions have been regularized as per the previous order passed by the CAT and this Court. Claim of these petitioners have been denied vide order dated 7.3.2017 passed by the learned CAT, impugned in the writ petition. It is further submitted that a seniority list of casual labour working w.e.f. 13.4.1989 was prepared as per the directions of the Deputy Director General, Military Farms, (DDGMF), IHQ dated 24.07.1998 but name of none of the applicants figured in the list as they did not fulfill the

conditions and even in the new lists names of none of the applicants figured as they were not employed on casual labour basis against regular post in the Military Farm. Keeping into regard the departmental instructions no casual labours have been engaged under job basis or contract basis and none of them have produced any appointment letter in support of their continuous employment in the Military Farm. It is submitted that learned CAT has considered the case of the applicants and declined the plea on valid grounds. The case of Sanjay Kumar Yadav is distinguishable since the learned CAT had passed the order in his case in O.A. No. 187 of 2004 dated 20.08.2004, which stood affirmed up to the Apex Court. The applicants herein have approached the learned CAT after 10 years there of in 2014. It is submitted that in terms of the decision rendered by the Apex Court in the case of Uma Devi (Supra) and also relied in the case of M.L. Kesari (supra) only irregular appointment of persons, who are duly qualified, against the sanctioned vacant post could be regularized as a onetime measure provided they have completed 10 years of engagement without any interim order of any Court or Tribunal. Petitioners have not been able to show that they were duly qualified or they were engaged against sanctioned vacant post or that their appointments were only irregular and not illegal. It is submitted that the petitioners cannot seek reliance upon the decision of the learned CAT, Chandigarh Bench in the face of the well settled principle laid down by the Apex Court in matters concerning regularization of irregularly appointed employees. The applicants have straightway approached the learned Tribunal in 2014 instead of approaching the Industrial Court if at all they were aggrieved by their alleged retrenchment or closure of Military Farm. Without proper adjudication on issues of facts, in the instant writ proceedings petitioners cannot claim regularization by invoking the jurisdiction of this Court under Article 226 of the Constitution of India when they have not been able to satisfy the three conditions prescribed in the case of Uma Devi (supra) as above. Therefore, the writ petition being devoid of merits is fit to be dismissed.

6. We have considered the submissions of learned counsel for the parties and taken note of the relevant materials pleadings on record as also the decisions cited by them. It appears upon consideration of the materials on record that petitioners are seeking regularization on the strength of their claim that they have been working for 10 years or more at the Namkum Military Farm. However, petitioners have not been able to show any appointment letters under which they were engaged and whether they were engaged against any sanctioned vacant post. Petitioner also did not categorically state that they are they are duly qualified for being regularized against any sanctioned vacant post. Their plea is primarily based upon their engagement for 10 years in individual cases from 1994, 1995 (in W.P.S. No. 4225 of 2017) and from 2001 as daily wager (in W.P.S. No. 4267 of 2017). Their plea is also based upon regularization of one Sanjay Kumar Yadav, who is stated to have been engaged on daily wage basis in the 1994 along with petitioner no. 1 and 2 in W.P.S. No. 4225 of 2017. The case of Sanjay Kumar Yadav is distinguishable for the reason that he had approached the

learned CAT in 2004 itself in O.A. No. 187 of 2004. Pursuant to the directions of the learned Tribunal in his case which stood affirmed up to the Apex Court, said person was regularized in service. The decision in the case Sanjay Kumar Yadav had attained finality. However, by virtue of the judgment rendered by the Apex Court in case of Uma Devi (Supra), para 53 in particular, only cases of such irregular appointment (not illegal appointment), as explained in State of Mysore Vrs. S.V. Narayanappa [1967 (1) S.C.R. 128] ; R.N. Nanjudappa Vrs. T. Thimmiah [(1972) 1 S.C.C 409] and B.N. Nagarajan Vrs. State of Karnataka[(1979 4 S.C.C. 507)] of duly qualified persons in duly sanctioned vacant posts and who had continued to work for 10 years or more but without the intervention of orders of courts or of tribunal could be considered for regularization in the light of the principles settled by the Apex Court in the said judgment and the cases referred to therein. At para 54 of the judgment the Apex Court had also clarified that those decisions which run counter to the principles settled in the case of Uma Devi (supra) or in which directions running counter to what has been held therein, shall stand denuded of their status as precedents. Therefore, petitioners who have approached the learned CAT in 2014 with a claim for regularization cannot seek reliance on the principles of parity with the case of Sanjay Kumar Yadav.

7. As has been held in the case of M.L. Kesari (supra), where the appointment are not made against the sanctioned post or where the person appointed does not possess the minimum qualification, the appointments would be considered to be illegal. But where the person employed possess the prescribed qualification and was working against sanctioned post, but has been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular. As the facts of the case reveal, the engagement of the petitioners could not be regularized in the light of the decision rendered by the Apex Court in the case of Uma Devi (supra). Moreover, the issues concerning retrenchment or closure of Military Farm, Namkum are matters which could have been raised before the appropriate forum / tribunal created under the Industrial Dispute Act where issues of fact such as continued engagement of 240 days or more could have been decided on the basis of the evidence. . Since the petitioners have failed to satisfy the test prescribed in the Uma Devi Case, their claim for regularization cannot be allowed in exercise of writ jurisdiction of this Court. Petitioners' name also did not find in the seniority list prepared by the respondents as they did not fulfill such conditions. Such seniority list was not assailed before the learned CAT. Therefore petitioners cannot press into service the decision of the learned CAT, Chandigarh Bench for seeking regularization.

8. We therefore do not find any merits in these application. The writ petitions being devoid of merit are accordingly dismissed. Pending I.A.s are closed.