

(2018) 09 CAT CK 0043

In the Central Administrative Tribunal

Case No : Original Application No. 3116 Of 2016

Netra Pal Singh

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 26-09-2018

Acts Referred:

Citation : (2018) 09 CAT CK 0043

Hon'ble Judges : Nita Chowdhury, Member (A)

Bench : Single Bench

Advocate : A.K. Singh

Final Decision : Dismissed

Judgement

1. When the matter is taken up for hearing, it is noticed that on the previous dates, i.e., 27.03.2018, 15.05.2018 and 19.07.2018, the matter was adjourned on the request of proxy counsel for the applicant who sought time to argue the matter.

Again, on 27.07.2018, none appeared for the applicant. Today also, the applicant does not appear even in the revised call. Thus, this Court proceeds with the matter under Rule 15 of the CAT (Procedure) Rules, 1987.

2. The applicant has filed this Original Application, seeking the following reliefs:-

"(i) quash and set aside the order dated 12.05.2016 (Annexure A-1);

(ii) direct the respondents to consider the case of the applicant for regularization based upon the leave and liberty given by the Hon'ble High Court of Delhi in the order dated 27.07.2011 as affirmed by Hon'ble

Supreme Court in terms of order dated 18.03.2106;

(iii) May also pass any further order(s), direction(s) as be deemed just and proper to meet the ends of justice."

3. The relevant facts of the case are that the applicant was engaged as a part time casual labour (sweeper) on 01.12.1994 for few days in the Customs & Central Excise formation at Ghaziabad. When the applicant was not granted temporary status under the Casual Labourers Grant of Temporary Status Scheme of 1993, he approached the Tribunal vide OA No. 2308/2001 which was allowed on 21.03.2002. The respondents have challenged the said order in WP(C) No. 4858/2002 and the Hon'ble High Court, while referring to the decision in the case of Secretary, State of Karnataka & Ors. v. Uma Devi (3) & Ors. (2006)4 SCC 1, allowed the same on 27.07.2011 with the following directions:-

"4. In view of the aforesaid pronouncement and regard being had to the fact that the respondent is not eligible to be covered under the 1993 Scheme, which was introduced as one time measure, we find that the tribunal has faulted by relying on the affidavit and granting the relief by issuing number of directions.

5. Resultantly, the writ petition is allowed and the order passed by the tribunal is set aside. Needless to say, if the petitioners are advised to take certain positive/affirmative steps in favour of the respondent, they are at liberty to do so. In the facts and circumstances of the case, parties shall bear their respective costs."

4. Having been aggrieved with the aforesaid order of the Hon'ble High Court, the applicant filed SLP No. 12183- 12184/2012 in the Hon'ble Supreme Court. The said SLP was disposed of by the Hon'ble Court vide order dated 18.03.2016 with the following directions:-

"Without quoting as a precedent, in the peculiar facts of this case, we are of the view that the respondent should pass orders, as directed by the High Court in the last paragraph of the impugned order dated 27.7.2011.

Ordered accordingly.

The respondent shall pass such orders within one month from today.

The special leave petitions stand disposed of.

We also wish to note that the petitioner continued to work for the respondent till this date."

5. Thereafter, the applicant submitted a representation dated 01.04.2016 seeking regularization in the light of the directions of the Hon'ble High Court affirmed by the Hon'ble Supreme Court.

But, the respondents, vide impugned order dated 12.05.2016, rejected the same. Hence, present OA.

6. The applicant has also relied upon the judgment of the Hon'ble High Court of Delhi dated 11.11.2014 in WP(C) No. 7808/2012 & CM No. 19651/2012 (Ritu Kushwaha & Ors. v. Union of India & Ors.) in which services of similarly situated daily wagers working as Safaiwalas/Labourers were regularized with effect from the date they completed ten years of service on contract basis.

7. Opposing the OA, the respondents have filed their reply in which they have categorically stated that the order dated 12. 05.2016 impugned in this OA was issued by the Additional Commissioner, Central Excise Ghaziabad in compliance with the directions of the Hon'ble Supreme Court dated 18.03.2016 and the Hon'ble High Court dated 27.07.2011 as per DoPT OM dated 16.10.2014 wherein it has been pointed out that it was held in the SLP (Civil) No. 2224/2000 that Casual Labourers (Grant of Temporary Status & Regularization) Scheme of Government of India 1993 was not an ongoing scheme and the temporary status can be conferred on the casual labourers under the Scheme if they were in employment on the date of the commencement of the Scheme and they should have rendered continuous service of at least one year, i.e, at least 240 days in a year or 206 days (in case of officers having 5 days a week). The OM further submits that the Department of Expenditure had advised DoPT that a consolidated proposal for regularization of all such remaining CL-TS who were on the rolls of Ministries/Departments on 10.09.1993 and yet could not be regularized be forwarded for further consideration/examination.

8. The respondents in their reply have also contended that the Hon'ble High Court has unambiguously held that the applicant is not eligible to be covered under the 1993 Scheme which was introduced as one time measure, as he was not in temporary status in 1993.

9. The respondents also submitted that the judgment relied upon by the applicant in the case of Ritu Kushwana (supra) is not applicable to the facts of the case as the applicant is no more in service and has stopped attending the office from July, 2016 at his own will and that too without informing anybody in the office.

10. This Court has perused the order passed dated 12.05.2016 which reads as under:-

"5. The Order of the Hon'ble Supreme Court clearly indicates that an order with respect to the subject matter has to be passed in the light of the direction given by the Hon'ble High Court in the Order dated as directed by the High Court. As mentioned above, the Hon'ble High Court has unambiguously held that Shri Netra Pal Singh is not eligible to be covered under the 1993 Scheme. It has been further held by the Hon'ble High Court that the said Scheme of 1993 had been introduced as one time measure. At the same time, the Hon'ble High Court made the observation that "if the petitioners are advised to take certain positive/affirmative steps in favour of the respondent" then the Department is at liberty to do so. The phrase, "if the petitioners are advised to take certain positive/affirmative steps in favour of the respondent" only indicates that if any relaxation in application of the said Scheme of 1993 is granted by the authority concerned (i.e. DOPT), then Shri Netra Pal Singh may be granted temporary status without prejudice to the order of the hon'ble High Court to the effect that he is not eligible to be covered under the 1993 Scheme. Thus, what is to be seen is, whether or not, at least as an exception, any relaxation by the DOPT that may

cover the case of Shri Netra Pal Singh.

6. In the above connection, Shri Netra Pal Singh attended personal hearing on 11.5.2016 and reiterated the submissions which he has made in the representation dated 1.4.2016. He further stated that he has nothing to say further in the matter.

7. It is observed that in the DOPT's OM No.49014/3/2014-Estt.(C) dated 16.10.2014, it has been pointed out that it was held in the Mohan Lal Case SLP (Civil) No.2224/2000 that Casual Labourers (Grant of Temporary Status & Regularization) Scheme of GOI, 1993 was not an ongoing scheme and the temporary status can be conferred on the casual labourers under the Scheme if they were in employment on the date of commencement of the scheme and they should have rendered continuous service of at least one year i.e. at least 240 days in a year or 206 (in case of offices having 5 days a week). In the said OM (para 2), it has categorically been stated that regularization of CL-TS cannot be done by the Ministries/Departments on their own and requires relaxation of para 8 of the Appendix to the OM dated 10.9.1993. Further, in the said OM (para 4), it has been mentioned that the Department of Expenditure had advised the DOPT that a consolidated proposal for regularization of all such remaining CL-TS who were on the rolls of the Ministries/Departments on 10.9.1993 and yet could not be regularized be forwarded for further consideration/examination. Furthermore, Vide F.No.C 18013/37/2009-Ad-III B dated 28.7.2015, it was intimated that in pursuance of the Madras High Court order dated 20.9.2011 in WP No. 20664/2011 in the case of A Murugan & 6 others Vs. UOI & Ors." it has been decided to formulate a scheme for grant of temporary status and regularization of their services who had been engaged continuously for a long period and not covered under the Scheme of 1993".

Thus there is no final decision on the matter and instructions of competent authority is awaited.

8. From the above, it is observed that there is no relaxation in the provision of the scheme of 1993 and the said Scheme is still applicable to the Casual Labour only when the same was in position on 1.10.1993. The fact is that Shri Netra Pal Singh was engaged on 1.12.1994. Therefore, he is not covered by the said Scheme of 1993 for the grant of temporary status. Hence, unless the advice/direction for taking positive/affirmative action in favour of Shri Netra Pal Singh is received from the competent authority i.e. DOPT or administrative branch of the Department of Revenue, Ministry of Finance, Shri Netra Pal Singh cannot be conferred with the temporary status."

Quite clearly, the Casual Labourers (Grant of Temporary & Regularization) Scheme, 1993 was not an ongoing scheme and the applicant was not eligible to be considered under that Scheme as he was not in employment in 1993 and that the said Scheme of 1993 had been introduced as one time measure.

11. The respondents have since been able to distinguish the case of of Ritu

Kushwana (supra) in para 9 above, no benefit of the same is applicable to the applicant.

12. It is also noticed that the respondents have considered all the contentions raised in the representation of the applicant after affording him a personal hearing on 11.05.2016 and as such, have rejected the same by following the principles of natural justice.

13. It is also well settled that no right has accrued to the person for regularization on merely forwarding his application and more so when he is not in service and when there is no vacancy available.

14. In view of the above facts and circumstances, there is no merit in the OA and the same is hereby dismissed. No costs.