

(2015) 02 BOM CK 0125

In the Bombay High Court

Case No : Writ Petition No. 1357 of 2014

Union of India and Others

APPELLANT

Vs

Sumla Shankar Chavan

RESPONDENT

Date of Decision : 04-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 02 BOM CK 0125

Hon'ble Judges : N.M. Jamdar, J.;Anoop V. Mohta, J.

Bench : Division Bench

Advocate : K.R. Chaudhary and R.R. Shetty, for the Appellant; S. Ramamurthy, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Anoop V. Mohta, J.—Rule, returnable forthwith. Heard finally by consent of parties.

2. The Petitioners (Original Respondent Nos. 1 to 4) have challenged order dated 4 September 2013 passed by the Central Administrative Tribunal, Bombay Bench, Mumbai (CAT). CAT has directed the Petitioners to extend the benefits of the scheme envisaged in the Office Memorandum of 1993 (OM) to the Respondent (Original Applicant) and further directed to treat him working as a casual labourer as on September 1, 1993 and grant temporary status as per clause 4 of the OM read with all the consequential benefits within three months from the date of the receipt of copy of the order.

3. The case of the Applicant is as under:-

In 1976, the Applicant was engaged as Casual Labourer in the Arnala Customs Office under Respondent no.4. The Applicant has been continuously working since then for the last 35 years. On 30 July 1984, an order was passed by Respondent No. 3 continuing the temporary appointment of the Applicant and the designation of the Applicant is shown as Sweeper. On 26 September 1997, a

representation was made by the Applicant for grant of temporary status and which was addressed to Respondent No. 3. The representation was also forwarded by Respondent No. 4. On 4 March 1999, the representation of the Applicant for grant of temporary status was forwarded by Respondent No. 4 to Respondent No. 3. On 6 August 1999, further letter sent by Respondent No. 4 to Respondent No. 3 recommending the case of the Applicant. On 17 November 2008, further representation made by the Applicant to regularize his service forwarded by Respondent No. 4 to Respondent No. 3. No action taken on the said representation. In January 2009, further representation was made by the Applicant for grant of temporary status and regularization. No reply received from the Respondents. On 22 July 2011 Original Application was filed in the CAT. The parties have filed reply and rejoinder and sur-rejoinder also. 4. The learned counsel appearing for the Petitioners has read and referred the OM dated 7 June 1988 and other documents in support of the contention to say that the impugned judgment is contrary to the OM and the Petitioners' service policy. There is no serious dispute and denial to the fact of Applicant (Respondent) being in service in the capacity so referred above since 1976. There is at least no contra material placed on record to the averments made. There is no serious dispute also to the fact that the Respondent has been continuously working for past 35 years. The request of Respondent to grant temporary status on the recommendation of Respondent No. 4 (Original Respondent No. 4) to Respondent No. 3 in the year 1990 is also not in dispute. There was no proper response received to the representations made, the Applicant filed the Original Application in the year 2011 and thus the Judgment. Therefore, considering the scope and jurisdiction of Article 226 of the Constitution of India, the judgment is based upon the true and proper interpretation of the OM based upon the facts so referred needs no disturbance. There is no perversity. The view so expressed based upon the material on record cannot be stated to be contrary to law and/or beyond the jurisdiction. The reasons mentioned in paragraphs 6, 7 and 8, in our view, needs no interference.

5. In addition to above, there is un-controverted material on record to show that the work done by the Applicant is regular and normal and perennial and it requires regular person/worker to do the same every day. The work cannot be done by a peon or other employees though it is regular and usual work, but daily essential work. The Respondent, who has been working continuously for 35 years as stated to be full day, the claim of temporary status and regularization, just cannot be overlooked. The submissions and interpretation that Respondent failed to work for more than 4 hours in every day though working continuously for 35 years, that itself disentitles to claim a temporary status and regularization is unacceptable. Though the facets of continuous working for 35 years and yet the Department, dis-entitling him to claim the status, in our view, is unjust and contrary to settled law, specifically when, as averred, other juniors have been already granted such temporary status. Some of them have also been regularized, reflects the discrimination and arbitrariness.

6. The Apex Court's judgment in Secretary, State of Karnataka and Others Vs. Umadevi and Others, and State of Karnataka and Others Vs. M.L. Kesari and Others, in our view also supports the case of the Respondent-Applicant and in no way assist the submission of the Petitioners.

7. In M.L. Kesari (supra), the Apex Court in para 11 observed thus:

11. The object behind the said direction in para 53 of Umadevi is twofold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi was rendered, are considered for regularisation in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad hoc/casual basis for long periods and then periodically regularise them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10-4-2006 [the date of decision in Umadevi] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation. The fact that the employer has not undertaken such exercise of regularisation within six months of the decision in Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularisation in terms of the above directions in Umadevi as a one-time measure. The same view has been further reiterated in State of Jharkhand and Others Vs. Kamal Prasad and Others, of granting benefits of regularization as in that case also the employee has completed at least more than 10 years of service.

8. The Office Memorandum/circular so read and referred to deny the benefits to the Respondent has not taken into consideration the factual background of this nature where the employees though have been working for more than 35 years, but merely because not worked for eight hours every day, therefore, cannot be entitled to extend the benefits cannot be used and utilised against the Respondent. The OM cannot be read in isolation by overlooking the law and the subsequent Judgments so referred above. This is not the case of illegal or even irregular appointment. Therefore, we are declined to interfere with the judgment so passed by the CAT, also for above reasons. The Respondent is entitle for all the benefits as claimed.

9. Therefore, the following order:

ORDER

(i) The Writ Petition is dismissed.

(ii) The Petitioners to comply with Order dated 4 September 2013 as early as possible and preferably within three months.

(iii) Rule is discharged accordingly.

(iv) There shall be no order as to costs.