
(2020) 02 DEL CK 0652

In the Delhi High Court

Case No : Civil Writ Petition No. 1230 Of 2020

Union Of India & Ors.

APPELLANT

Vs

Karam Chand

RESPONDENT

Date of Decision : 04-02-2020

Acts Referred:

Citation : (2020) 02 DEL CK 0652

Hon'ble Judges : G.S. Sistani, J;Anup Jairam Bhambhani, J

Bench : Division Bench

Advocate : Vikram Jetly

Final Decision : Dismissed

Judgement

G.S.Sistani, J

C.M. No.4233/2020 (exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) No.1230/2020

1. The present petition is directed against order dated 09.05.2012 passed by the Central Administrative Tribunal ('Tribunal' for short) and order dated 20.01.2017 passed in an MA filed by the respondent when the order of 09.05.2012 was not complied with.

2. It may be noted that order dated 09.05.2012 was a consent order, which reads as under:-

"After some arguments, learned counsel appearing for the parties are ad idem that present OA may be disposed of with a direction to respondents that applicant would be considered for his re-engagement as casual labourer and regularization as group D employee on availability of next vacancies by relaxing

maximum age limit to the extent of length of service rendered by him as daily rated worker. Ordered accordingly. OA stands disposed of."

3. Other things apart, we find that there is gross unexplained delay on the part of the petitioner in approaching this court. The only explanation which has been rendered is in para 14 of the writ petition, which we reproduce below:-

"14. That the learned Tribunal has passed the first impugned order dated 09.05.2012 and in compliance of the said order dated 09.05.2012, the petitioners vide their letter dated 24.12.2012 informed the respondent to contact the contractor of Out Sourcing Agency for work but the respondent has not replied to the said letter nor has disclosed the same in his application M.A.No.1939 of 2013 filed before the learned Tribunal. Thereafter the respondent filed the said M.A.No.1939 of 2013 for implementation of order dated 09.05.2012 to which the petitioners have filed their detailed reply, while contesting the same and the same was adjudicated vide order dated 20.1.2017 by the learned Tribunal and thereafter the respondent filed the Contempt Petition No.308 of 2017 for initiating contempt proceedings against the petitioners herein, wherein the petitioners have filed a compliance affidavit and after having satisfied with the said compliance affidavit, the learned Tribunal was pleased to drop the said contempt proceedings. Thereafter the respondent was re-engaged as casual labour in the department vide its order dated 4.9.2017. On 31.12.2018, respondent submitted application for regularization of his service in IMD/ Petitioners. Thereafter the Department had processed the present case file to the Department of Personnel & Training on 03.06.2019, which on 28.08.2019 recommended that the Department does not agree to the proposal of his regularization and the petitioner-Department is also advised to agitate the matter before the higher court clearly pointing out that such regularization would be against the spirit of Apex Court's directions. Thereafter the file was entrusted to the Ministry of Law and Justice, Department of legal Affairs, which vide advise dated 16.10.2019, in terms of DOPT opinion, the petitioner-Department is advised to challenge the said orders of the learned Tribunal. Accordingly the Department approached the litigation Department of High Court and engaged the present counsel on 06.11.2019 and thereafter on 16.12.2019 the entire record of the learned Tribunal was provided to the present counsel for preparing the writ petition and to file the same before this Hon'ble Court. Hence there are no laches or delay in filing the present writ petition. In case there is any delay or laches the same may kindly be condoned in view of the submissions and circumstances elaborated hereinabove."

4. As per the Tribunal's order of 09.05.2012, the respondent was to be considered for re-engagement as a casual labourer and for regularization as Group 'D' employee on availability of vacancies by relaxing the minimum age limit to the extent of length of service rendered by him as a daily rated worker. Para 14 detailed above shows that in compliance of the order, an offer was made to the respondent to contact the contractor of the Outsourcing Agency for work.

The other reasons mentioned for the delay are that the respondent filed a contempt petition in 2017 and the matter remained pending thereafter. In view of the above, we find that the petitioner is unable to sufficiently explain the delay in compliance with order dated 09.05.2012 as also the delay in approaching this court.

5. In our view, if it was so aggrieved, the petitioner should have, at the first available opportunity, assailed order dated 09.05.2012 in accordance with law. Even otherwise, we find that the impugned order of 09.05.2012 is a consent order and therefore requires no interference on merits either.

6. Counsel for the petitioner has placed reliance on a judgment of the Supreme Court in the case of Director of Elementary Education, Odisha and Others vs. Pramod Kumar Sahoo reported as AIR 2019 SC 4755 in support of his contention that consent of the parties cannot be a ground to reject the present writ petition. We are of the opinion that this judgment would not apply to the facts of the present case since the petitioner did not take any steps to seek recall of order dated 09.05.2012 and the writ petition has been filed after unexplained, inordinate delay.

7. We accordingly find no merit in this petition ; and the delay also remains unexplained. Accordingly, the writ petition is dismissed.

C.M. No.4234/2020 (stay)

7. Since the main petition is dismissed, this application is also dismissed.