

J U D G E M E N T

The instant MA has been filed praying for a leave to file the contempt petition in substitution of his deceased father Shri Panchanan Pramanik, who had approached this Tribunal through OA No. 786 of 2015 with a prayer for a direction to the authority to absorb or regularize as per the Memo dated 16-03-2009 issued in concurrence with the decision of the Cabinet Meeting held on 29-07-2009. The deceased applicant in OA had approached this Tribunal twice and this Tribunal vide Judgment dated 03-10-2018 passed in OA 786 of 2015 has held inter alia :-

“In view of the above, we are of the opinion that the instant case is squarely covered by the aforesaid order dated 18-06-2008 as in the instant case also the respondents vide their communication dated 14-08-2009 had clearly communicated the approval of the Cabinet held on 29-07-2009 as well as Finance Department concurrence dated 16-03-2009. Therefore, unless and until the decision with regard to the applicant revisited and reverse by the Cabinet, the Finance Department observation dated 04-05-2015 cannot nullify the earlier decision by way of rejecting the claim of the applicant. Accordingly, we quash and set aside the communication dated 04-06-2015 and direct the respondent authorities to take necessary steps within a period of 3(three) months from the date of receipt of the order.

Accordingly, the O.A. is allowed with above observation and direction with no order as to costs”.

However before completion of 3(three) months time for compliance of the said order, the said applicant Late Panchanan Pramanik died on 27-12-2018. It

has been submitted by the Counsel for the applicant that though as per Cabinet decision 167 persons were ordered to be absorbed vide order dated 14-08-2009. However, except the Late Panchanan Pramanik and one Shri Gyani Ram, all other incumbents were absorbed/regularized in the said department. Thereafter both Late Panchanan Pramanik and Shri Gyani Ram had challenged the said action of the respondents, which were heard together and same order was passed in favour of both the applicants. Therefore the legal heirs of the said deceased applicant in OA, having no other alternative, have filed the instant MA to pursue the contempt petition for non-compliance of the order dated 03-10-2018. In the mean time the respondents had filed one Review Petition being RA No. 09 of 2018, which was dismissed vide order dated 07-01-2020.

2. The Counsel for the respondent has vehemently opposed the maintainability of the instant MA as well as the CCP, as the applicant in the original application has not accrued any legal right since he was not absorbed till the date of his death. Therefore his legal heirs have no locus standi to file contempt petition under the Contempt of Court Act.

3. During the course of the hearing, the Counsel for the applicant has referred one judgment passed by the Division Bench of Madras High Court reported in (1986) ILLJ 229 Mad of **(K. P. Marimuthu (Since Deceased),... -VS- The Superintendent of Police)** and has prayed for extension of benefit of the said judgment. He has further submitted that till date the said order of this Tribunal, even after rejection of review petition, has not been complied with. If their father would be alive, he should be absorbed/regularized

retrospectively as per the Tribunal's direction as well as the decision of the Cabinet meeting dated 29-07-2009 along with other similarly situated person. Moreover in the mean time, vide Memo dated 21-08-2019, the respondents have asked for certain documents, therefore unless the instant MA would be allowed, they will suffer irreparable losses and injuries being legal heirs of the erstwhile applicant.

4. We have heard the parties and perused the records. This is a peculiar case where the original applicant was deprived of being absorbed/regularized along with one Shri Gyani Ram though other 165 persons out of list of 167 persons were absorbed as per the decision of the Cabinet leaving both of them. In this background, this Tribunal has held that rejection of claim of the applicant for regularization is not tenable as the erstwhile decision of the Cabinet dated 29-07-2009 is still in vogue and unless and until the said decision would be altered by the Cabinet itself, the department cannot deny such benefit.

However it is also fact that till date deceased applicant has not been regularized therefore he is not in a regular establishment. Thus no hereditary legal heirship right on pension or pensionary benefit has been accrued by the applicants presently. However as and when the deceased applicant would be treated to be regularized, since the said deceased applicant was alive at the time of passing the order in OA, in that case the present applicants would be entitled to ask for any consequential benefit out of such absorption/regularization of the deceased applicant along with another person namely Shri Gyani Ram, who is similarly situated along with deceased

applicant. Therefore the judgment referred by the applicants passed in **K. N. Rai and Mr. S. N. Rai –VS- UOI and Others dated 29th July, 2008** is distinguishable as in the aforesaid case, the deceased employee was dismissed from service, which he challenged. Therefore if such dismissal order would be quashed by the Court then obviously the said deceased applicant would revive his status retrospectively as an employee of the said organization and in that case the legal heirs would be entitled to get the consequential benefit. However in the instant case, the deceased applicant has not borne in regular establishment of the respondents till date, therefore unless he would be absorbed or regularized as per our order dated 03-10-2018, the present applicants would not accrue any right to file the instant MA.

5. In view of the above, we are not in a position to entertain the instant application by substituting the present applicants in place of their father and/or husband to file the contempt petition. However it is fact that as the Review Petition has been dismissed by this Tribunal vide order dated 07-01-2020 and our original order dated 03-10-2018 is still in existence, the respondents are duty bound to comply with the said order in letter and spirit of the said order.

6. Accordingly, the MA is disposed of with no order as to cost.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA (SEN)
MEMBER (J)

