# S. Shivaprasad Vs. The Controller and Auditor General of India, New Delhi and Another

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**SooperKanoon Citation** : sooperkanoon.com/1183137

**Court** : Karnataka

**Decided On :** Feb-15-2016

**Judge** : Mohan M. Shantanagoudar &Amp; K.N. Pheneendra

**Appeal No.** : Writ Petition No. 46740 of 2015 (S-CAT)

**Appellant** : S. Shivaprasad

**Respondent** : The Controller and Auditor General of India, New Delhi and Another

**Judgement** :

**K.N. Phaneendra, J.**

1. The respondents have issued a notification in Employment News dated 16/22.10.2010 for Selection and Appointment to the post of Multi Tasking Staff (MTS). The respondents have also prescribed the qualification of 10th Class Pass and work experience, if any. The petitioner has also applied for the above 'MTS' post and as he was not selected, has challenged the selection process, before the Central Administrative Tribunal, Bengaluru Bench (for short, 'CAT').

2. Earlier he filed Original Application before the Central Administrative Tribunal, Bengaluru Bench (for short, 'CAT'), in O.A. 222/2011. The said application was allowed on 17.01.2012 and the respondents were directed to reconsider the

applicants' request. Having reconsidered the same, the respondents have once again rejected the claim of the petitioner vide order dated 07.01.2014 on the ground that the marks secured by him in the Selection Process is less than the marks secured by the last candidate in the Selection List. Being aggrieved by the same, the petitioner once again called in question the order of Respondent No. 2 dated 07.01.2014 in O.A. No. 1323/2014, on the ground that the weightage has not been given to the work experience of the petitioner otherwise, he would have secured more marks than the last candidate in the selection list. The CAT has once again disposed of the said application vide order dated 06.08.2015 with a direction to the respondent No. 2 to consider the matter afresh. Being aggrieved by the same, the petitioner is before this court.

3. We have heard the arguments of Sri. P.A. Kulkarni, the learned counsel appearing for the petitioner and Sri. M. Vasudeva Rao, learned counsel appearing for the Respondents. We have carefully perused the material on record and also the orders of the CAT.

4. On perusal of the records, it is clear that the applicant is an unsuccessful candidate for the post of MTS. On perusal of the said notification issued by the respondent-authorities, which is marked at Annexure-Al dated 16.09.2010, apart from the other terms and conditions, Item No. 3(B)(8) prescribes that,-

"As per the orders of Comptroller and Auditor General of India, Casual Workers, who have been earlier engaged at least for two years in the concerned offices of the Indian Audit and Accounts Department, to which the vacancies relate, will also be eligible for age relaxation to the extent of the period of their engagement as Casual Labourers. This relaxation would be over and above the relaxation admissible to the SC/ST/OBC/PH/Ex.-S candidates."

Except the age relaxation, there is no specific condition available in the notification with regard to providing weightage to the post and experience of the candidates. However, Item No. 8 in the said notification empowers the employer to adopt the method of short-listing of the candidates and only the short listed candidates would be called for the interview, which reads as follows:-

"Item-8 : No candidate will be admitted to the interview unless he/she holds a certificate of admission from the office of the Principal Accountant General (C and CA), Karnataka, Bengaluru. "The office, if considered necessary may adopt a system of short-listing of the candidates and only the short-listed candidates would be called for interview."

As could be seen from the above terms, the candidates whose names found in the short-list, would be called for the interview. A format of the application is also produced. Item 9 of the format of application, a copy of which is produced at Page No. 91, reads thus:

" Have you the worked as a Casual Worker in any of the offices of the Indian Audit and Accounts Department mentioned in this notice. If yes,-

(i) Name of the office :

(ii) Period of engagement:"

The said question pre-supposes that the applicants have to mention their past experience.

Be that as it may. The short-listing of the candidates has been made by means of adopting a method as stated in Item No. 8 (above cited). What is the procedure for 'short-listing' is not stated anywhere in the objections statement by the respondents. However, Annexure-RJ.9 indicates that some guidelines with reference to the criteria for short-listing of candidates are given vide letter dated 27.08.2010 by the office of the Comptroller and Auditor General of India, wherein it prescribes the educational qualification and also past experience as a Casual Worker in Central Government Department for showing appropriate weightage to each of the candidates. In those guidelines it is categorically stated as to how the marks have to be allotted for work experience.

So far as the claim of the petitioner is concerned, he claimed to have worked in the Central Government Department i.e., the Urban Development Department in State of Karnataka as a Casual Worker from 01.03.2010 to 01.10.2010 and as such, it is his contention that he is entitled for the weightage of 28 marks towards his work experience as per the guidelines referred to supra. It is also seen from the records that the petitioner has obtained 44 marks. But for him, no marks towards weightage has been given. But the last selected candidate by name Vinod Kumar, who has obtained 47 marks, has been given weightage of 32 marks. If weightage of 28 marks is added to 44 marks taken by the petitioner, he would have been the last successful candidate. Therefore, it is the contention of the petitioner, the respondents have not properly considered his eligibility. It is contended that the petitioner should have been selected by giving marks towards weightage. Entire case of the petitioner revolves around the above said two important aspects.

5. Sri. Vasudeva Rao, learned counsel appearing for the respondents has strenuously contended that, the Respondent-authorities have not selected any candidate, who worked as daily wager/casual worker in any other department, except the Central Accounts and Audit Department. They have only preferred to select those candidates, who have work experience in that department only. Further he contended that, the petitioner has not furnished any certificate to show that he worked as a Casual Worker under the said Department and he has also not furnished any document to show that he was appointed as a Casual Worker by any of the Departments.

6. Sri. Kulkarni, the learned counsel for the petitioner has submitted that the notification is conspicuously silent so far as the work experience is concerned and also of which department the work certificate has to be furnished But, According to the guidelines of the office of the Comptroller and Auditor General of India dated 27.08.2010, the past work experience as a Casual Worker means, the experience gained by the candidates from any Central Government Ministry/Department and they are entitled for weightage marks on the basic of past work experience, if any, as indicated at Item No. 2(B) of the letter issued as per Annexure-RJ.9. Therefore, he contended that the respondents would have given 28 marks to the petitioner considering his for past experience.

7. Sri. Vasudeva Rao has failed to convince us that only persons who had past experience in Internal Audit and Accounts Department have been selected. The document produced before the court in No. Pr.AG (G and SSA)/Admn-I/A

10/2014-15/60 (Annexure-RJ4) issued from the office of the Principal Accountant General of Karnataka, Bengaluru, vide order dated 17.06.2014 shows that the respondents have considered the appointment of a person by name Sri. Srinivas, who had worked as temporary worker for 100 days in the office of the Director Census Operation, Karnataka by awarding him 14 marks on weightage basis, as such, he was successful in getting appointment. Therefore, apart from Internal Audit and Accounts Department, the candidates working in other Central Government Departments have also been considered by the respondents for the purpose of giving weightage marks for their past experience. So, the argument of Sri. Vasudevarao is not tenable sofar as this point is concerned.

8. The second point, in fact, raises an important issue. The petitioner admittedly has not produced the work experience certificate along with the application. Even assuming that the guidelines at Annexure-RJ.9 as referred to by the learned counsel Sri. Kulkarni, are to the effect that the candidates who have past experience in the Central Government Ministry/Department are entitled for the weightage, according to the format of application, the past experience certificate should have been produced along with the application. Admittedly, the certificate has not been produced by the petitioner.

9. Another important question raised is, whether the petitioner had been working in any of the Central Government Department as a Casual Employee. Even if it is accepted that the petitioner has worked as a driver of the car attached to the Secretary to the Government, Urban Development Department, but the said certificate issued by Secretary to the Government, Urban Development Department, which is produced before this court for the first time, discloses that he was an out-sourced contract employee. Again a point arises that, whether an Out-sourced Contract Employee can be called as 'Casual Employee under the Government Department". In this regard, Sri. Kulkarni, the learned counsel, submitted that there is no specific procedure to show as to how the word "casual employee" can be considered. But the said submission is not supported by any law or rule or any guidelines of the Central Government or the State Government. On the other hand, Sri. Vasudeva Rao, learned Counsel has produced a decision of the Hon'ble Apex Court reported in (2014) 9 SCC 407 : (AIR 2015 SC 375)

between Balawant Rai Saluja v. Air India Ltd., wherein the Hon'ble Apex Court has considered the point as to whether the workers of the contractors can be treated as employees of any Company or the Factory, in the following manner:-

"The Apex Court, to ascertain whether the workers of the contractors can be treated as the employees of the Company or the Factory, has applied the test of complete administrative control. Further more, it would be necessary to show that there exists the employer and employee relationship between the Factory and the Workman working in the Canteen. The relevant factors to be taken into consideration to establish the 'employer and the employee' relationship would include inter alia,-

(i) Who appoints the workers

(ii) Who pays the salary/remuneration

(iii) Who has authority to dismiss

(iv) Who can take disciplinary action

(v) Whether there is continuity of service

(vi) whether there exists complete control supervision.

(Emphasis Supplied)

The above said observations of the Hon'ble Supreme Court are applicable to this case. Admittedly the petitioner is an out-sourced employee. The Central Government Department has no control with regard to the appointment of the petitioner as a casual worker. The Central Government or the Central Government Department does not pay salary or remuneration to him and it has no authority to dismiss or to initiate any Disciplinary Action, and the petitioner had no continuity of service. The entire power of control and supervision of the petitioner is vested with the contractor, who supplies the services of the petitioner to the Central Government Department. If a person works only under contractor and he works according to the directions of the contractor, the Central Government Department has no power to initiate any proceedings against such person, except informing the contractor to withdraw his services with alternate arrangements. Therefore, the petitioner has not satisfied this court that he was appointed by any of the Central Government Department as a Casual Worker and he has the past experience in the Central Government Department or State Government Department, as to enable him to get weightage marks as claimed. Therefore, in this point also the petitioner fails.

10. In view of the above said facts and circumstances of the case, we do not find any strong reason to deviate from the findings given by the CAT. Therefore, the petition fails and accordingly, it is dismissed.

Petition dismissed.