

**Central Administrative Tribunal
Madras Bench**

OA/310/01404/2012 & OA/310/01413/2012

Dated the 20th day of February Two Thousand Twenty

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

OA 1404/2012

1. S.Pushpa
2. R.Krishnaveni
3. V.Sivaraman
4. M.Flora
5. A.Sivaraj
6. K.Saravanan .. Applicants

By Advocate **M/s.Akbar Row**

Vs.

1. The Union of India, rep. by
The Secretary to Government,
M/o Finance, Department of Revenue,
Central Board of Excise & Customs,
North Block, New Delhi 110 001.
2. The Chief Commissioner of Central Excise,
121, M.G.Road, Nungambakkam,
Chennai 600 034.
3. The Commissioner of Central Excise,
Goubert Avenue,
Pondicherry 605 001.
4. The Assistant Commissioner of Central Excise,
Cuddalore Excise Division,
Cuddalore. ..Respondents

By Advocate **Mr.Sunderaswaran**

OA 1413/2012

1. S.Sivakumar
2. R.Kanniappan
3. N.Latchiyaperabu
4. M.Siva Prabhu
5. M.Vadivelan ..Applicants

Vs.

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The Secretary to Government,
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Pondicherry 605 001.
4. The Assistant Commissioner of Central Excise,
Central Excise Division-I,
Puducherry.
5. The Assistant Commissioner of Central Excise,
Central Excise Division-II, Puducherry.
6. The Assistant Commissioner of Central Excise,
Central Excise Division-III,
Puducherry. ..Respondents

By Advocate **Mr.Mr.Sunderaswaran**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The above OAs are filed seeking the following relief(s):-

OA 1404/2012:

“to direct the first respondent and 2nd respondent to consider the names of the applicants for conferring Temporary Status with consequential benefits taking into account applicants long service of nearly 10/14 years as Casual Labourer and;

to pass such further or other orders as this Court may deem fit and proper in the circumstances of the case and thus render justice.”

OA 1413/2012:

“to direct the first respondent and 2nd respondent to consider the names of the applicants for conferring Temporary Status with consequential benefits taking into account applicants long service of 10 years as Casual Labourer and;

to pass such further or other orders as this Court may deem fit and proper in the circumstances of the case and thus render justice.”

2. As the issue involved in all these applications is identical and the relief sought for also is similar, these applications have been heard together and are being disposed off by this common order.

3. The applicants in OA 1404/12 were all employed as Casual Labourers in the 4th respondent office, Cuddalore. Applicants 1 to 3 were appointed in the year 1998, the applicants 4 to 6 were appointed in the year 2000, 2001 and 2005 respectively.

4. The applicants in OA 1413/2012 were employed as Casual Labourers in the office of respondents 4 to 6, Puducherry. The 1st applicant was appointed in the year 2002 and the applicants 2 to 5 were appointed in the year 2003.

5. They were discharging various types of duties in the said office. From the date of initial appointment, they are working more than 8 hours a day without any break.

6. In short, the applicants' case is that they had put in more than 206 days in a year. Eventhough Government of India by OM dt. 07.6.88 had ordered not to engage persons on daily wages for work of regular nature, the respondents continued with the engagement of applicants in the office. So, applicants are continuously engaged as Casual Labourers for last 10 to 14 years.

7. The DOPT had introduced a scheme for conferment of temporary status on 10.9.93. As per the said scheme, those Casual Labourers who are sponsored by Employment Exchange and had rendered at least 240 days (206 days for offices with 5 working days a week) are eligible for conferment of temporary status. Eventhough applicants had given representation for getting temporary status, the respondents did not accede to it.

8. According to the applicants, Trichy Commissionerate has given temporary status to 45 Casual Labourers on 13.1.1994. They were not engaged through Employment Exchange. According to the applicants, the non-grant of temporary status suffers from vice of arbitrariness and it is also violative of Article 14 and 16 of

the Constitution.

9. The respondents entered appearance and filed objections against maintainability of the OAs itself. According to them, the applicants are not eligible to be considered for conferment of temporary status as per DOPT OM dt. 10.9.93. The applicants in OA 1404/12 had worked as Casual Labourers as per orders dt. 01.6.98, 02.8.98, 16.7.01 and 03.1.05. The applicants in OA 1413/12 had worked as Casual Labourers as per orders dt. 20.11.2002, 13.1.2003, 24.1.2003 and 29.1.2003. These engagements will not come under the scheme, as the cut off date of scheme was 01.9.93. The scheme is applicable only to those who are working as Casual Labourers as on 01.9.93.

10. According to the respondents, the OA is actually time barred since the cause of action arose years back. The applicants had given representations for granting temporary status on dates as shown below:-

OA 1404/2012

Sl. No.	Name of the applicant	Date of Representations
1	S.Pushpa	03.12.2002, 21.10.2005, 17.9.2008 and 09.10.2011
2	R.Krishnaveni	14.12.2002, 25.11.2005, 5.10.2008 and 24.11.2011
3	V.Sivaraman	13.12.2002, 2.11.2005, 22.9.2008 and 29.11.2011
4	M.Flora	27.9.2005, 21.10.2008 and 19.11.2011
5	A.Sivaraj	29.8.2005, 16.10.2008 and 13.11.2011
6	K.Saravanan	9.12.2008 and 24.10.2011

OA 1413/2012

Sl. No.	Name of the applicant	Date of Representations
1	S.Sivakumar	9.12.2005, 17.9.2007, 12.10.2009 and 23.12.2011
2	R.Kanniappan	4.5.2006, 12.8.2009 and 19.12.2011
3	N.Latchiyaprabu	2.6.2006, 8.9.2009 and 10.11.2011
4	M.Siva Prabhu	24.6.2006, 15.11.2009 and 5.12.2011
5	M.Vadivelan	25.6.2006, 10.8.2009 and 22.12.2011

11. According to the respondents, as per the decision in ***SS Rathore v. State of MP [AIR 1990 SC 10]*** repeated representations do not give a fresh cause of action.

12. The applicants had worked as Casual Labourers only till 2005. It is not true that the applicants were continuously engaged for 10/14 years. The applicants have no legitimate right for getting their relief and hence these OAs are not maintainable. It is also averred that from 2005 onwards, there is no employer/employee relationship with the applicants. After 2005, the engagement of Casual Labourers were discontinued and the jobs were handed over to Service Providers. The Single Bench of this Tribunal had allowed these OAs on 05.7.12. The respondents filed WP 11351 & 10111/14 & 11351/14.

13. The Hon'ble Madras High Court set aside the order of the Single Bench of this

Tribunal dt. 05.7.12 and remanded back this case observing as follows:-

“4. The Tribunal, without considering the merits of the matter allowed the original application by following certain earlier orders. There was no attempt made by the Tribunal to ascertain as to whether the facts are similar and as such, the respondents are entitled to the benefits given to the other employees.

5. The Tribunal in a case of this nature must consider the individual case and ascertain as to whether the employees were entitled to Temporary Status. There is no question of simply mentioning the earlier proceedings and granting the relief, without there being an adjudication as to whether the employees before the Tribunal are similarly situated and as to whether they are also entitled to the grant of Temporary Status. The order passed by the Tribunal does not contain any material, much less justifiable material, to grant temporary status to the respondents. We are therefore of the view that the matter requires fresh consideration.

6. In the result, the order dated 5 July 2013 is set aside. The Original Applications in OA Nos.1413 and 1404 of 2012 are restored to file.”

14. Both sides appeared before this Tribunal and we have heard both sides. We had also gone through the pleadings.

15. The case of the applicants is that they were being engaged as Casual Labourers in the office of the respondents from 1998 onwards. According to them, they are continuing as such in the office of the respondents and they seek the benefit of conferment of temporary status. The counsel for the applicants relies on the judgment of the Hon'ble Madras High Court in ***WP Nos.16733/09 & Batch dt. 19.7.11*** in support of his case. He also cited the decision of Hon'ble Supreme Court in ***State of Karnataka v. M. KL Kesari & 7 Others*** and ***OA 97/2009 of Hyderabad Bench*** for their cases.

16. On the other hand, counsel for the respondents mainly relies on the decision of the Hon'ble Apex Court in *Union of India v. Arulmozhi Iniarasu & Others (Civil Appeal No.4990-4991 of 2011)* and *State of Karnataka v. Uma Devi [2006 (4) SCC 1]* to content that the applicants are not entitled to get the conferment of temporary status. According to them, these applicants were engaged as Casual Labourers only upto 2005 and thereafter they were not engaged. Thereafter, the House Keeping jobs were handed over to a Service Provider. So there is no employer/employee relationship between the applicants and respondents. The applicants had worked as Casual Labourers only from 1998 onwards. The scheme introduced by DOPT dt. 10.9.93 cannot be adopted to the applicants as they came 5 years later after the scheme was implemented. The employer/employee relation was terminated in the year 2005 itself and the present OAs are time barred. There is no legal right to the applicants for conferring temporary status or regularization. The OM of 1993 is applicable only to those employees who were working in 1993. The decision of Hon'ble Madras High Court in WP 16733/09 & Batch has no application in this case. The decision in *M. KL Kesari & 7 Others* (cited supra) has also no application in this case. The applicants were not engaged in any post and they were engaged intermittently for certain hours and they have no right to get benefits.

17. On a perusal of pleadings and records produced in this case, it can be seen that the applicants were engaged as Casual Labourers from 1998 till 2005. According to

the respondents, after the introduction of scheme by DOPT OM dt. 10.9.93, the Central Government had discontinued the engagement of Casual Labourers w.e.f. 1995. On going through Annexure A5 in OA 1413/12 dt. 09.8.06, it can be seen that the request for regularization was declined by the department stating that the applicant R.Kanniappan is a contract employee in 2006. If we go through the scheme dt. 10.9.03, it can be seen that it is applicable to Casual Labourers in employment as on 01.9.93. If we go through Annexure A10 in OA 1413/12, it can be seen that the applicant S.Sivakumar had given representation for grant of temporary status in the year 2005 itself and it was not granted.

18. We have gone through the decision of the Hon'ble High Court in WP 16733/09 & Batch dt. 19.7.11. The Hon'ble High Court has given the following direction to the petitioners:-

“117. Viewed in that perspective and also taking note of the overall assessment of the facts and circumstances of the present cases on hand which float on the surface, in the interest of Equity, Fair Play, Good Conscience and on humane considerations, we direct the Writ Petitioners in W.P.Nos.16733 of 2009 & 16889 of 2009 and the Respondents in W.P.Nos.11492 of 2006 & 18969/2006 (Department) to frame a similar Scheme like that of Department of Personnel and Training Official Memorandum dated 10.09.1993 (one time regularization scheme framed already) to provide an opportunity of regular entry to the 1st Respondent in WP.No.16733 of 2009, Respondents in WP.No.16899 of 2009, Writ petitioners in WP.Nos.11492 of 2006 & 18969 of 2006/Applicants subject to eligibility, possessing qualification, if any and after relaxing the age bar and consider their case for regularisation, keeping in mind the Article 41 and Part IV of the directives of Constitution of India and grant them security of tenure in accordance with law and in the manner known to law, within a period three months from the date of receipt of a copy of this order.”

19. The High Court has only given a direction to consider the case of the respondents therein to be granted regularisation by introducing a scheme etc. So, no ratio was settled in favour of the respondents (petitioners) therein for conferment of temporary status or regularisation.

20. OA 97/2007 of Hyderabad Bench was a case wherein the applicants claiming themselves as qualified workers and were appointed against sanctioned post and qualified to be considered as per decision of the Hon'ble Apex Court in ***State of Karnataka v. Uma Devi***. Here, in this case, there is no case for the applicants that they were appointed to sanctioned post and are qualified for the same and they are working in the department now for granting temporary status. In ***M. KL Kesari*** 's case the applicants were employed from 1988 onwards. So, they were granted temporary status. The case of applicants herein is different. The applicants were not in engagement when the scheme of 1993 was introduced. So, the facts of this case is not similar to the one in ***M. KL Kesari*** 's case. None of the applicants were qualified to get temporary status and regularisation as per scheme introduced by DOPT in 1993.

21. In ***Union of India & others v. All India Trade Union Congress [Civil Appeal No.3146/2019]*** the Hon'ble Apex Court held that it is not the function of court to frame any scheme and it is the prerogative of the Government.

22. In ***Secretary to Government, School Education Dept., Chennai v. R.Govindaswamy & Others [(2014) 4 SCC 769]***, the Hon'ble Supreme Court had

held that *“Even where a scheme is formulated for regularization with a cut off date (i.e. a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut off date), it is not possible to others who were appointed subsequently to that cut off date, to claim or contend that the scheme should be applied to them by extending the cut off date or seek a direction for framing of a fresh scheme providing for successive cut off dates.”*

23. So, it is clear that the applicants herein who were engaged as Casual Labourers after 1998 has no right to get the benefits of the scheme of the Government in OM dt. 10.9.1993.

24. Further, the counsel for the respondents submits that the applicants ought to have approached this Tribunal when their engagement was terminated and services by outsourcing began in 1995. On a perusal of the records and copies of representations produced by the applicants, it can be seen that their representations for granting regularisation was denied even from 2002 onwards. So, this OA is barred by limitation. On a perusal of the representation of the 2nd applicant in OA 1404/12, it can be seen that she had sought for grant of temporary status on 14.12.02 itself. But it was not granted. The 3rd applicant, V.Sivaraman in OA 1404/12 had sought for temporary status in the year 2002 by giving representation dt. 13.12.02. But it was not given. The 2nd applicant, R.Kanniappan in OA 1413/12 had demanded temporary status in the year 2006 onwards, but it was not considered. These applicants came to

the Tribunal only after a long gap i.e. 2012. There is considerable delay and latches on the part of the applicants. In this view of the matter, these OAs are barred by limitation also.

25. The counsel for the respondents had produced a copy of this Bench's order in OA 1160/14 & Batch wherein the applicants were similarly placed as the applicants herein and those OAs were dismissed.

26. **From the above discussion, it can be seen that the applicants are not entitled to get any relief as claimed for. Accordingly, these OAs are dismissed.**

No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

20.02.2020

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