

CENTRAL ADMINISTRATIVE TRIBUNAL**MADRAS BENCH****OA/310/00120/2017****Dated Thursday ,the 27th day of February, 2020****PRESENT****Hon'ble Mr.T. Jacob, Member (A)**

B.Shankar, S/o. Balakrishnan,
No.3/C, T.V.K Nagar,
1st Street, Chitlapakkam,
Chennai – 600 064.Applicant

(By Advocate M/s .R. Malaichamy)

Vs

1. Union of India
Rep. by the Chief Postmaster General,
Tamil Nadu Circle, Anna Salai,
Chennai – 600 002.

2. Senior Accounts Officer,
O/o. The Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai, Chennai – 600 002.

3. The Assistant Director(TECH)
O/o. The Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai, Chennai – 600 002.

4. The Manager,
Regional Workshop
Postal Machines (RWPM),
Mail Motor Services,
Chennai – 600 006.Respondents

(By Advocate Mr. G. Dhamodaran)

O R D E R
(Pronounced by Hon'ble Mr.T.Jacob, Member (A))

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"I. To call for the records of the 1st respondent pertaining to his order which is made in memo No.Tech.SM/Mazdoor.Gen.Dlgs/2014 dated 11.08.2016 and set aside the same, consequent to;

II. To direct the respondents to reinstate the applicant into service as casual labourer (Mazdoor) and thereafter to absorb the applicant as MTS with all attendant benefits"

2. The brief facts of the case as submitted by the applicant are as follows:

The applicant was appointed as a Part Time Contingent (PTC) (Helper) Sweeper-cum-Water Carrier by the Director of Postal Services, Madras Region in the year 1996 in the 4th respondent office and worked as such till 30.10.2001. Thereafter, he was engaged as Mazdoor for 8 hours from 01.11.2001 to 01.08.2015 and has put in more than 24 years of service. As per the instructions issued by the Postal Department dated 17.05.1989 and 30.06.2014, he is entitled for absorption in the cadre of MTS, since he was working from the year 1996. But the respondents did not consider his case for absorption in Group-D cadre and disengaged him w.e.f 01.08.2015 without assigning any reason in writing. The information on casual labourer as on 10.04.2006 supplied by the authority to him is the evidence that he was working as casual labourer for more than 10 years against sanctioned vacant posts as on 10.04.2006. As per the judgement of the Hon'ble Supreme Court of India in the case of M.L.Kesari, he is entitled for absorption. Since, no action was taken by the

respondents to absorb him as MTS, he filed OA. No.177 of 2016 before this Tribunal wherein this Tribunal by order dated 02.03.2016 directed the respondents therein to consider the representation of the applicant and pass a speaking order. However, his case came to be rejected by the respondents by order dated 11.08.2016 on the ground that he was not engaged prior to 01.09.1993. But, the case of the applicant is squarely covered by the judgement of the Hon'ble Supreme Court in the case of M.L.Kesari. Hence, the applicant has filed this OA seeking the above reliefs, Inter-alia, on the following grounds:-

- i. The applicant was working for more than 10 years as on 10.04.2006. Hence, disengaging the applicant w.e.f 01.08.2015 without assigning any reason in writing is unjustifiable.
- ii. The respondents admit that the applicant was working for 8 hours per day against sanctioned vacant posts. Hence, disengaging the applicant without notice to him amounts to violation of principles of natural justice.
- iii. The respondents admit that the sanction was issued permanently in which the applicant was working for more than 10 years. Hence, disengaging the applicant by the 4th respondent is arbitrary and illegal.
- iv. The applicant has rendered around 24 years of service in the respondents Department. Hence, he is entitled for absorption as per the judgement of the Supreme Court of India in the cases of State of Karnataka and others Vs Umadevi and others and M.L.Kesari.
- v. The applicant is eligible for absorption as MTS in accordance with the instructions issued by the Department of

Posts made in No.05-24/88-SPB-I dated 17.05.1989. But, for the reasons best known to the respondents his request has been rejected.

3. The learned counsel of the applicant would submit that the action of the respondents in not giving the benefits of temporary status and regularization is illegal and in violation of Article 14 and 16 of the Constitution of India. He has relied on the following citations in support of his submissions:-

- i. Order of the Supreme Court in Civil appeal No 2018 [Arising out of SLP (C) No. 15774/2006] in State of Karnataka & ors Vs M L Kesari & Ors.
- ii. Order of the Madras High Court in W.A No.47 of 1988 dated 25.06.1990.
- iii. Order of the Madras High Court in W.P No. 19823 of 2009 dated 25.04.2011 (R.Bharathan Vs UOI)

4. Per contra, the respondents in their reply statement have stated that the applicant was engaged as contractual outsider in the Regional Workshop for Postal Machine, Chennai from 12.01.2001 for cleaning, providing water and conveying files without observing any recruitment formalities. The applicant is not engaged as Casual labourer through Employment Exchange and was purely engaged as contractual outsider. He filed OA No.177/2016 before this Tribunal seeking reinstatement into service as casual labourer and, thereafter, for absorbing him as MTS. This Tribunal in its order dated 02.03.2016 directed the respondents to consider the representation dated 15.02.2016 of the applicant in accordance with law and as per rules and pass a speaking order. The applicant submitted another representation on 25.04.2016 along with the Tribunal's orders in OA 177/2016 claiming that he was

engaged as Mazdoor from 08.11.1991 whereas as per the available records, he was engaged only as contractual Outsider from 12.01.2001. Hence, to provide a reasonable opportunity to the applicant, he was directed to submit proof for his engagement for the period from 08.11.1991 within a month period. The applicant in his reply dated 05.05.2016 had submitted that the entire document relating to his service records are available with the Manager, Regional Workshop for Postal Machines. As such, the Senior Manager of Mail Motor Services where the Regional Workshop for Postal Machines was functioning during the said period was requested to furnish the relevant service records for considering the applicant's representation. The Senior Manager, Mail Motor Services had intimated that no such records are available with him. The first respondent had also fixed a personal hearing on 15.06.2016 in which the applicant had stated that he does not have any records to prove his engagement from 08.11.1991. Accordingly, his representation was disposed of rejecting his claim for absorption by a speaking order in Memo No. Tech/SM/Mazdoor.Gen.Dlgs/2014 dated 11.08.2016. Hence, the respondents pray for dismissal of the OA.

5. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

6. Having regard to the above facts and circumstances of the case, the short point for consideration in this OA is whether the claim of the applicant for absorption as MTS w.e.f 08.11.1991 is sustainable in the eye of law.

7. Admittedly, this is the second round of litigation before this Tribunal. The applicant had earlier filed OA.No177/2016 before this Tribunal seeking reinstatement into service as casual labourer and, thereafter, for absorbing him as MTS. This Tribunal vide order dated 02.03.2016 directed the respondents to consider the representation dated 15.02.2016 of the applicant in accordance with law and as per rules and pass a speaking order. The applicant submitted another representation on 25.04.2016 along with the Tribunal's order in OA. No 177/2016 to consider him as Mazdoor with effect from 08.11.1991. The case of the applicant has been rejected by an order dated 11.08.2016 stating that the applicant was not engaged prior to 01.09.1993.

8. As per the available records, he was engaged only as contractual outsider from 12.01.2001. There is no record in support of the claim that he was engaged from 08.11.1991 as casual Mazdoor. Even assuming for a moment that the applicant was engaged as casual Mazdoor w.e.f. 08.11.1991, the applicant's whose date of birth is 08.09.1977 would not have completed 18 years of age in the year 1991. His age in 1991 is only 13 years and, as such, the claim of the applicant that he was engaged as casual Mazdoor at the age of 13 years is not acceptable. On this ground alone, this OA is liable to be dismissed. Further, as per G.I., M.F., O.M.No.49014/16/89-Estt. (C), dated the 26th February, 1990, there is a complete ban on engagement of casual workers for performing the duties of Group 'C' posts and, hence, no appointment of casual workers was made for performing duties of Group 'C' posts.

9. The applicant has clearly stated that he does not have any records to prove his engagement from 08.11.1991. The only record he could produce was a note dated 11.01.2001 given by the PMG(MM) which states that he is engaged for five hours as on that date and his working hours can be increased to eight hours. Thereafter, he was engaged for eight hours per day and was paid the minimum wage rate approved by the District Collector. He was engaged from 1999 for 5 hours and from 2001 onwards for 8 hours. He was not engaged against any vacant or sanctioned post. As per the orders of the Supreme Court in Civil Appeal No. 3595-31612/99 (Umadevi's case) a temporary, contractual, casual or daily wage employee does not have a legal right to be made permanent unless he has been appointed in terms of the relevant rules or in adherence of Article 14 and 16 of the Constitution". He was not engaged prior to 01.09.1993 and, therefore, cannot claim regularization under temporary status Casual Labourer (TSCL). There is no justification to fill up the post of MTS in RWPM now as the work of this Unit has drastically come down and the original sanctioned strength of 36 posts in 1989 has been reduced to only 6 persons at present. Taking into consideration all the aspects of the case and documentary evidence, the respondents have concluded that Shri B.Shankar, petitioner has no right for absorption and his disengagement from 01.08.2015 is in order.

10. Admittedly, the applicant was engaged as an Outsider in the year 2001. He was not sponsored through Employment Exchange, no pre-recruitment formalities were observed at the time of his engagement and he was not appointed as a part time casual labourer. He was stated to be working as Outsider for cleaning, providing

water and conveying files in the regional workshop for postal machine, Chennai and not appointed as casual labourer against any sanctioned post. There is no provision in the rules for regularisation of the services of Outsiders who are not appointed as per the Recruitment Rules and who are not engaged through Employment Exchange or any other employment agency. The benefit of temporary status is available only to those casual labourers who were in employment as on 01.09.1993 and grant of temporary status is not permissible after that date.

11. As per the Directorate's letter dated 12.04.1991, the following conditions are prescribed for conferment of temporary status to a casual labourer:

"1. Temporary status should be conferred on the casual labourers in employment as on 29.11.89 and who continued to be currently employed and have rendered continuous service of at least one year. During the year they must have been engaged for a period of 240 days.

2. After rendering three years continuous service after conferment of temporary status, the casual labourers would be treated at par with temporary Group 'D' employees."

As such, the applicant is not eligible for regularisation/conferment of temporary status as per rules and instructions on the subject. The Casual Labour (Grant of Temporary Status and Regularisation) Scheme of Government of India was a one time measure and was applicable only to the casual labours working in the year 1993 and was not an ongoing Scheme and in view of the said Scheme, the applicant cannot claim the benefit of temporary status or claim status at par with the workmen having temporary status. The said Scheme has been considered by the Hon'ble Supreme Court in the case of *Union of India vs. Mohan Pal* reported in AIR 2002 SCV 2001,

Union of India vs. Gagan Kumar reported in AIR 2005 SC 3107, *Director General, Doordarshan vs. Manas Dey and Ors.*, reported in AIR 2006 SC 263 and *Controller and Defence Accounts vs. Dhani Ram and Ors.* reported AIR 2007 SC 2650. Further reference has been made to the case of *State of Rajasthan vs. Daya Lal* by the Hon'ble Supreme Court in the case of *Secretary to Government, School Education Department, Chennai vs., R. Govindaswamy and others* reported in 2014 (4) SCC 769 wherein it has been held as under:-

“(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme under/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be litigious employment. Even temporary, ad hoc or daily wage service for a long number of years, let alone service for one or two years, will not entitle such employees to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut off date (that is 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 dates), it is not possible to others who were appointed subsequent to the 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 fresh schemes providing for successive cut off dates.

(iv) Part time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuation of part time temporary employees.”

As such, the judgements referred to by the counsel for the applicant are not relevant to the facts of the present case.

12. The Hon'ble Supreme Court in Civil Appeal No. 3595-3612/1999, in Umadevi case has held as under:

“A temporary, contractual, casual or daily wage employee does not have a legal right to be made permanent unless he has been appointed in terms of the relevant rules (or) in adherence of Article 14 and 16 of the Constitution.”

None of the stipulated conditions had been fulfilled by the applicant for securing regularization of services of the casual labour including the fact that he was not sponsored by the Employment Exchange and that he could not have been engaged by the respondents from the time when he had not attained majority. Again, some proof or the other should have been produced by the applicant when he makes any asseveration in connection with his claim that he was appointed as a casual labourer by the respondents and was not a contract engaged labour. Thus, the applicant cannot be said to have been appointed to any posts in terms of the relevant rules and the question of absorbing him either as GDS or MTS does not arise at all. Hence, his claim for regularization is rejected.

13. One aspect, however, has to be deeply examined. May be the applicant did not enter the department through Employment Exchange and thus the judgement of the Hon'ble Apex Court in Umadevi, if applied, regularisation in this case is impossible. However, the same judgement has approved the decision in another case of State of Haryana vs. Piara Singh (1992) 4 SCC 118 wherein the Apex Court has held as under:-

"...an adhoc or temporary employee should not be replaced by another adhoc or temporary employee, he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority."

14. The respondents have filed an affidavit dated 19.01.2018 stating that the applicant is not working in the Regional Workshop Postal Machines, Chennai at present, but nowhere it is stated that the service of the applicant was no longer required nor in the place of the applicant none else had been engaged on ad hoc basis to function in an identical job. If verification of the same surfaces that the respondents have actually, after termination of the applicant engaged some one else, though not exactly in the same place or function but in any other aligned function and on ad hoc basis, to which the applicant would have filled the bill, the respondents are duty bound to explore the feasibility of engaging the applicant, to this extent, the applicant has crystallised his rights.

15. In view of the above, it is held that the applicant cannot derive any benefit of past service for regularisation, but subject to the following two aspects, he is entitled to be considered for adhoc appointment as and when necessity arises for engagement of part time adhoc labour:-

- a. After termination, either in the same place or in respect of any aligned function, respondents did engage any other person ignoring the entitlement of the applicant.
- b. The applicant has not crossed sixty years of age.

The above exercise shall be carried out within a period of three months from the date of receipt of a copy of this order and further action taken. In case, none has been so appointed, the fact of the same shall be intimated to the applicant.

16. The OA is disposed of on the above terms. No costs.

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(T.JACOB)
Member(A)
-02-2020