



**Central Administrative Tribunal
Principal Bench**

OA No.1378/2018

Order Reserved on:31.01.2020

Pronounced on:06.02.2020

Hon'ble Mr. Pradeep Kumar, Member (A)

Smt. Anjuman (aged about 48 years),
W/o Mohd. Nisar,
Working as House Aunty,
O/o Asha Kiran Complex,
Rohini Sector-I, Awantika,
New Delhi-110086
R/o H.No.13, Gali No.3, 'D' Block,
Begumpur, New Delhi-110086.

-Applicant

(Applicant in person)

-Versus-

1. The Chief Secretary,
Govt. of NCT of Delhi,
Delhi Secretariat, I.P. Estate,
New Delhi-110002.
2. The Director,
Department of Social Welfare,
Govt. of NCT of Delhi,
GLNS Complex Firozshah Kotla,
Delhi Gate, New Delhi-110002.

-Respondents

(By Advocate Shri Amit Anand)

ORDER

The applicant is an illiterate woman and had been working as 'House Aunty' in Asha Kiran, which is under Samaj Kalyan Vibhag of Government of National Capital Territory of Delhi (GNCTD). She was appointed as



casual labour in the year 1992, and thereafter her services were terminated on 02.12.1997. This termination was challenged in Labour Court vide ID No.1026/1998 and as per the Award passed on 05.04.2003, she was reinstated and was also granted 50% of back wages.

The question before Labour Court, submissions, decision and Award, as recorded in this Award, read as under:

"The present industrial dispute between the management of M/s Village Cottage Home Kasturba Niketan Campus Lajpat Nagar New Delhi and its worker Ms. Anjuman have been referred to this court for adjudication by the Secretary (Labour) Government of NCT Delhi vide reference No. F.24(2622)/98-Lab/21366--70 dt. 2/7/98 and the terms of which are as under:-

"Whether the services of Anjuman have been terminated illegally and/or unjustifiably by the management, and if so, to what relief is he entitled and what directions are necessary in this respect."

2. After receiving of the reference notice of the same was issued to the worker through concerned trade union and in response thereto the worker filed her statement of claim on 21/5/99 through her trade union thereby alleging that she had been in the employment of management for the last about 8 years and working as an Aaya and her last drawn wages was Rs.1000/- per month and was having a flawless record of service. It is further alleged that various statutory benefits such as attendance card, appointment letter, minimum wages, paid leave etc. were not given to the worker by the management for which the workman had been requesting the management and consequently the management got annoyed and refused to give employment orally to the workman on 7/8/97 without paying her earned wages.....It is further alleged that due to illegal action of the management she has become



unemployed and accordingly has prayed for reinstatement with full wages.

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3....the services of a House Aunti is not considered as a Government servant and the job carries only honorarium and no salary was paid. **The management further contended that the claimant was appointed on 17/1/92.** The management further contended that the claimant was not entitled to benefits such as attendance, appointment letter, minimum wages, paid leave etc because of the fact that the House aunties are not considered as a government servants

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11. Leaving apart the controversy as regards the date of termination of the services of the claimant by the management. **It has come on record that the claimant Smt. Anjuman was working as House Aunti with the management and drawing fixed honorarium of Rs. 1000/- per month and that her services have been terminated by the management without issuing her any notice or offering her notice pay or paying her any service compensation. It has also come on record that no inquiry as conducted against the claimant. Further, I find no weight in the case of the management that the work and conduct of the claimant was not satisfactory and that she was irregular in attending to her duties.....** Thus in the light of above discussion, **I am of the opinion that the claimant has been successful in showing that her services have been terminated by the management in an illegal and unjustified manner.** Accordingly, issue is decided in favour of the workman and against the management.

Relief :

12. As regards relief is to be given to the claimant is concerned, the claimant **Smt. Anjuman is entitled for her reinstatement**, however, as regards question of payment of back wages is concerned the reference in the court was received on 6/7/98 and the statement of claim was filed by the worker on 21/5/99 i.e. after a delay. Accordingly considering the case and facts and circumstances of the case I am of the opinion that the interest of justice would be metted out if the claimant 1st awarded back wages @ 50% of the last wages drawn w.e.f. 2/12/97 onwards. Award is passed and reference answered accordingly."

(Emphasis supplied)



Thereafter she was reinstated on casual basis vide Department of Social Welfare letter dated 19.01.2007 and is continuing till date as such.

2. The applicant also pleads that two other "house aunty" namely Ms. Anjali Pal & Ms. Maya, who were appointed on casual basis subsequent to the applicant, had also been terminated and had approached the Tribunal instead of Labour Court, vide O.A. No. 3027 of 2001. The Tribunal disposed off the OA vide orders dated 24.05.2002 and accordingly they were granted temporary status in terms of DoP&T Scheme, dated 10.09.1993. With this, at present, even though the applicant is senior, she is only being paid as a casual worker whereas her juniors are being paid regular salary. Feeling aggrieved, the applicant had preferred the instant O.A. The background of this OA is brought out below in paras 3 to 7.

3. Per contra, the respondents pleaded that applicant had never represented for being granted temporary status and the relevant scheme dated 10.09.1993 is no more in force. The applicant is not literate, even though she can speak Bangla, Hindi and Urdu. The respondents also pleaded that now the post for group D has also been abolished and the cases of



uneducated staff cannot be considered for granting temporary or regular status.

The O.A. No. 1089 of 2016 filed by the applicant was dismissed on 14.11.2017. Further, Ms. Maya and Ms. Anjali Pal had sought relief in O.A. 3027 of 2001 which was decided on 24.05.2002. It was challenged by respondents in WP(C) 6687 of 2002 and this was decided against the respondents on 19.07.2006.

Respondents brought out that after termination of services, all the three employees namely the applicant, Ms. Maya and Ms. Anjali Pal had the option to agitate the matter before a judicial forum of their choosing and while applicant approached Labour Court, Ms. Maya and Ms. Anjali Pal approached the Tribunal. It is the direction of these forums that have been implemented. In case of applicant, direction was for reinstatement which is distinct from granting temporary and/or regular status and this was complied with and accordingly she is continuing as a casual employee.

For Ms. Maya and Ms. Anajali Pal, the plea before the Tribunal was for grant of temporary status. This was allowed and was complied with. In due course, these two employees were regularized also and with this



the applicant happens to be paid lesser as compared to Ms. Maya and Ms. Anjali Pal.

Respondent pleaded that no other benefit can be extended to the applicant and OA needs to be dismissed.

4. It was noted from proceedings of Labour Court that applicant was engaged on 17.01.1992 (para-1 supra). During the hearing of 23.04.2019, respondents were directed to indicate, in an affidavit by the next date of hearing, the details as specified therein in respect of Ms. Anjali Pal & Ms. Maya after checking their records. The details were their date of initial engagement, their education status, their dates of temporary and regular status and pay scale.

It was also to be specified whether the duties being performed by applicant are same as those being performed by Ms. Anjali Pal & Ms. Maya.

These details were submitted vide affidavit dated 14.08.2019.

It comes out that Ms. Anjali Pal and Ms. Maya were also engaged as 'House Aunty' on 15.02.1992 and 16.02.1992 respectively on casual basis to start with. They were paid fixed consolidated honorarium of



Rs.600/- which was later enhanced to Rs.1,000/-. Both were assigned the duties of “washing the clothes of girls hostel children and looking after the children of girls hostel”. Their services were terminated.

In compliance of CAT's directions in OA No.3027/2001 dated 24.05.2002, filed by these two employees, followed by order by Hon'ble High Court dated 19.07.2006 in C.W.P. No.6687/2002, both were conferred temporary status w.e.f. 10.09.1993 in accordance with DoP&T instructions on Casual Labour (Grant of Temporary Status & Regularization) Scheme, 1993 issued vide OM dated 10.09.1993. Their educational status was not advised. At present, both of them are drawing the pay scales in Level-1 as per 7th CPC.

It was also brought out that the duties performed by Ms. Anjuman are to look after children of Institution.

5. Ms. Maya and Ms. Anjali Pal had been terminated vide order dated 26.05.2000. They approached Tribunal earlier by filing OA No.1099/2000 seeking grant of temporary status. Vide order dated 20.02.2001, respondents were directed to consider the case. This was considered and denied vide order dated



09.05.2001. Feeling aggrieved, they filed OA No.3027/2001 which was decided vide order dated 24.05.2002. Following order was passed:

“6. Having regard to the reasons recorded above, in the result, the OA is allowed. The impugned order Annexure A1 is quashed and set-aside. The respondents are directed to accord temporary status upon applicants if otherwise they conform to the eligibility criteria laid down in DoPT’s OM dated 10.9.1993. In that event the applicants shall also be entitled to all the consequential benefits including arrears of outstanding wages as also reinstatement in service, in accordance with the rules and instructions, within three months from the date of receipt of a copy of this order. No costs.”

5.1 This was challenged by respondents by filing the Writ Petition (C) No.6687/2002 before Hon’ble High Court of Delhi. This was dismissed vide order dated 19.07.2006. The operative para of this order reads as under:

“3. Tribunal noted that even though the post had been described as House Aunties (part time), they were functioning as full time House Aunties. The appointment letter mentions their consolidated salary while in another document, their emoluments are described as honorarium. **Tribunal, therefore, concluded that they were working on full time basis and they should be treated as casual workers entitled to the benefit of Casual workers under the DOP&T Scheme of 1993.** The Tribunal after considering the entire matter concluded that they were casual workers entitled to the benefit under the Scheme for conferment of temporary status.

It may be noted that the Tribunal itself has recognized that what was under consideration was a claim for conferment of temporary status, which entitled them to certain benefits under the scheme and not regular appointment. Regularization could only be considered subject to recruitment rules and the availability of regular posts, which was not in issue in the present case. Mr. Tandon before us feebly sought to reiterate that they were not casual labourers and were volunteers being paid honorarium.



Considering the nature of work, its duration it has been demonstrated before us that the House Aunties, who look after the deaf and dumb children, is a full time occupation. It cannot be described as part time or voluntary work for which an honorarium is paid. From the admitted facts, it would be seen that in view of the provision of boarding and lodging they were being paid a consolidated reduced amount by way of salary. **Considering that they have been in engagement since 1992 i.e., for over eight years and the specific finding of the Tribunal holding them to be the casual workers which has attained finality, the present writ petition has no merit and is liable to be dismissed.** No ground is made for interference under Article 226 of the Constitution of India. Petition is, accordingly, dismissed. The interim order stands vacated.”

(Emphasis supplied)

5.2 It is in compliance to above that both the petitioners therein, were granted temporary status vide orders dated 06.10.2006. It appears that it was followed by regularization subsequently. Following endorsement was made by respondents in this reinstatement order dated 06.10.2006:

“Both the above House Aunties are also reinstated from the date when they were disengaged by DDO/HO, GLNS, Delhi Gate. They will also be entitled to all consequent benefit including arrear of outstanding wages as also reinstatement service in accordance with the above instructions.”

6. The applicant herein, had earlier approached the Tribunal in OA No.1089/2016 seeking grant of temporary status as was granted to Ms. Maya and Ms. Anjali Pal. Tribunal passed certain interim directions on 26.04.2017. In compliance, respondents passed an order dated 29.09.2017 and submitted to Tribunal.



The relevant parts of this order dated 29.09.2017 read as under:

“The Hon’ble CAT vide Dasti order dated 26.04.2017 in OA /100/1089/2016 has mentioned that the applicant **Ms. Anjuman submits that two other persons namely, Ms. Anjali Pal and Ms. Maya had been given temporary status in pursuance of Government of India, DOPT instructions dated 10.09.1993** and decision of the Tribunal dated 24.05.2002 in OA No. 3027/2001 and the Hon’ble Court has sought clarification from the Department as under:-

“The respondents may submit reasons why the applicant not been similarly treated as the applicants in this aforesaid OA, within three weeks”.

The matter has been examined by the Department of Social Welfare looking into the available records. It is found that Ms. Anjuman, House Aunty at the time of this scheme ie. Casual Labourers(Grant of Temporary Status & Regularization) Scheme of Government of India, 1993, circulated vide DoP&T OM No. 51016/2/90-Estt (C) dated 10.09.1993, had neither applied nor submitted any representation to the competent authority for grant of temporary status and regularization.

Further it is also submitted Ms. Anjuman was terminated from her services from this department on dated 02.12.1997.

Furthermore, it is also submitted that **Ms. Anjuman, House Anuty reinstated in Asha Kiran Complex in January, 2007 and the process of making a seniority list of Group D vacancies amongst the part time employees of the department started on 10.12.2008. The list was finalized on 11.11.2010**, in between lots of communication made by the HQ to all the DDO/HOO of Homes/institutions/schools/MCUs/District Offices of this department for providing the name of part time workers of this department for making a seniority list of Group D vacancies. But **neither any Homes/institutions/schools/MCUs/District offices of this department sponsored her name i.e. Ms. Anjuman for the same nor Ms. Anjuman submitted any representation to this department personally as per record..**

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In view of para 2 of DOPT OM dated 16.10.2014 all Group D posts have been upgraded to Group C posts. Recruitment to erstwhile Group ‘D’ posts placed in Group ‘C’ PB-1, Grade Pay 1800/- (non technical as MT staff) is now made only through Staff Selection Commission and minimum educational qualification for appointment is



Matriculation or ITI pass. Regularization of CL-TS therefore cannot be done by the Ministries/Departments on their own and requires relaxation of para-8 of the Appendix to the O.M. dated 10.09.1993. The Department is not in a position to grant Temporary Status to Ms. Anjuman, House Aunty.”

(Emphasis supplied)

The Tribunal disposed off the OA and passed following directions on 14.11.2017:

“2. In view of the order dated 29.09.2017 passed by respondent No.3, the parties are ad idem that this OA has become infructuous and the same is dismissed accordingly. **The applicant, however, shall have the liberty to take appropriate remedial measures as available to her in case she chooses to challenge the order dated 29.09.2017.**”

(Emphasis supplied)

7. In view of this liberty, applicant has filed the instant OA and sought relief to set aside the letter dated 29.09.2017 (para-6 supra) and to treat her at par with her juniors, namely Ms. Maya and Ms. Anjali Pal, and she be granted same relief as was given to them.

8. Matter has been heard at length. The applicant, Ms. Anjuman appears in person and pleads that because of her financial conditions, her case should be heard in person and she is not able to engage an advocate any more. Shri Amit Anand, learned counsel represented the respondents.



9. It comes out that applicant herein is the senior-most amongst the three employees on the basis of their date of engagements as a casual worker:

S.No.	Name	Date of Engagement
1.	Applicant	17.01.1992
2.	Ms. Anjali Pal	15.02.1992
3.	Ms. Maya	16.02.1992

The terms of engagement, payment and duties assigned and being performed since by all three, were same.

10. Therefore, facts of this case are not in doubt. Applicant was a casual worker for the job of 'House Aunty', which was observed by Hon'ble High Court to be a full time job (para 5.1 supra). By now, applicant has served for almost 22 years, but she still continues to be casual, even though her two juniors had been granted temporary status and had also been regularized (para-5, 5.1 & 5.2 supra).

11. The reason as brought out by respondents is that applicant, after termination, approached Labour Court which ordered reinstatement but made no mention about grant of temporary or regular status, whereas the two juniors, after termination, approached Tribunal which granted temporary status. Thus the relief



granted was forum specific, although cause of action and agitation was same, i.e., termination.

This contention is not acceptable on the touchstone of parity with juniors and especially so since they were all placed exactly similar.

12. Moreover, it is noted from respondents' letter dated 29.09.2017 (para-6 supra), that applicant did not represent for grant of temporary status and regularization in 1993 in follow up of DoP&T OM dated 10.09.1993.

In this context, it defies logic that a casual worker will not even want to apply for grant of temporary status with possible regularization in follow up, when a Scheme for this very purpose was promulgated and was in force. It appears that this Scheme of 10.09.1993 was not well publicized especially amongst those casual workers who were illiterate like the applicant. Thus, there appears to be certain mitigating circumstances for applicant in not making a specific representation at that point of time.

13. It is, however, also seen from respondents' letter dated 29.09.2017 that when names of those working in Group 'D' were sought on 10.12.2008 to prepare a



seniority list, applicant's name was not sent by any "Homes/Institutions/Schools/MCUs/ District Offices etc." despite pursuance by respondents and the list, finalized on 11.11.2010, did not contain the name of applicant.

This is taken to be a serious clerical error on the part of concerned office since applicant was already working there on casual basis since 1992 and was terminated on 02.12.1997 and whereas this termination was not only set aside by Labour Court vide orders dated 05.04.2003, but she was reinstated vide order dated 19.01.2007 issued by the office of Deputy Director (Lit), Department of Social Welfare, GNCTD, along with 50% of back wages.

This error on the part of concerned office in not including her name in seniority list finalized on 11.11.2010, cannot also be a reason to deny the applicant her due place on said seniority list at least when it came to light and for all due benefits that would have accrued to her in normal course.

14. The two juniors to applicant, namely Ms. Anjali Pal and Ms. Maya, had already been granted temporary status under the Scheme of 10.09.1993, vide orders issued on 06.10.2006, though under court directions.



Denial of these same benefits to the applicant on the plea that she approached a forum other than the one which was approached by these two juniors, and these benefits cannot be extended to her now, defies logic and hence not accepted. Relief in the form of reinstatement was granted to the applicant by Labour Court along with 50% back wages. Labour Court also held that termination itself was illegal and unjustified.

Relief in the form of reinstatement followed by grant of temporary status, was allowed by Tribunal which was upheld by Hon'ble High Court of Delhi to the two juniors.

Tribunal notes that there is similarity in the case of the applicant and her two juniors, except in regard to forum, even though the relief granted was substantially same.

Once casual workers were in employment, the policy benefit of OM dated 10.09.1993 was to follow in normal course. Denial of the same on such technical reason "even though reinstated but no mention was made to grant temporary status", as pleaded by respondents in para 11 above is not acceptable.



15. In this connection, it is relevant to recall the observations made by Hon'ble Apex Court in **State of Uttar Pradesh v. Arvind Kumar Srivastava**, [(2015) 1 SCC 347], which read as under:

“22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.”

This Tribunal is of the view that applicant is similarly situated vis-à-vis her two juniors Ms. Anjali Pal and Ms. Maya, who had since been granted certain benefits which have been denied to applicant.

16. In view of foregoing, this OA is allowed with directions to respondents to grant the applicant temporary as well as regular status with effect from respective dates, with all consequential reliefs, including notional pay fixation as has been granted to her junior Ms. Anjali Pal, within a period of 03 months of receipt of a certified copy of this order under advice to the applicant. However, payment of arrears shall remain limited to the period from 01.04.2018 onwards



only when this OA was filed. Further, these arrears will not carry any interest. No costs.

(Pradeep Kumar)
Member (A)

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