

**ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
O.A.Nos.203, 329, and 404/2013**

Date of Reserve: 06.07.2020

Date of Order : 14.08.2020.

CORAM:

Hon'ble Sh. Jayesh V. Bhairavia, Member (Judicial)
Hon'ble Dr. A.K.Dubey, Member (Administrative)

OA No. 203/2013

Kirtibhai Makwana S/o Sh. Chhaganbhai Makwana aged 38 years residing at 14, Manav Mandir Society, Radhaswami Road, Ranip, Ahmedabad – 382480.

.....**Applicant**

OA No. 329/2013

Harish Vasudie S/o Sh. Karsanbhai Vasudie aged 39 years, residing at C/142, Punit Nagar Society, Dhodasar, Ahmedabad – 380 050.

.....**Applicant**

OA No. 404/2013

Ashokbhai Vaghela S/o Sh. Mansukhlal Vaghela, aged 45 years, residing at C/10, Tapobhumi Society, Vibhag-1, Opp. Vishal Nagar, Isanpur, Ahmedabad – 382443.

.....**Applicant**

[Advocate : Mr. P.H.Pathak]

Versus

- 1- Union of India notice to be served through the Secretary, Ministry of Posts, Dak Bhavan, New Delhi – 110 001.
- 2- Chief Post Master General, Gujarat Circle, Khanpur, Ahmedabad-380 001.

... **Respondents in All the OAs**

[Advocate : Ms. R.R.Patel]

O R D E R

Per: Jayesh V. Bhairavia, Member (J)

In these three OAs grievance of the applicants is that respondents have not considered their claim for grant of certain benefits of Welfare Scheme promulgated by the Department of Posts i.e. Casual Labourers (Grant of Temporary Status & Regularization), Scheme, Department of Posts No. 45-95/87 SPB-1, New Delhi dated 12.04.1991 (hereinafter referred to as “the Scheme of 1991”). It is seen that aggrieved by rejection of the representation the applicants have filed OAs before this Tribunal, vide order dated 23.12.2016 the O.A. No. 329/2013 and 404/2013

were dismissed as also the O.A. No. 203/2013 filed by the another applicant was also dismissed on 31.07.2015.

Aggrieved by the orders passed by this Tribunal the applicant of OA No. 329/2013 had filed SCA No. 17697/2015 and applicant of OA No. 404/2013 had filed SCA No. 17698/2015 before the Hon'ble High Court of Gujarat. While quashing and setting aside the order passed by this Tribunal, the Hon'ble High Court in its common order dated 31.1.2018 has held that the claim of applicants was not for regularization as such their prayer for grant of benefit under the Scheme 1991, however, this Tribunal had not looked into the said aspect, thus matter was remanded back to consider the issue afresh. It is further noticed that applicant of OA No. 203/2013 had also filed SCA No. 18340/2017 since the identical issue on the similarly placed part-time employees was decided by the Hon'ble High Court in SCA No. 17697/2015 and therefore, by following the said judgment the SCA 18340/2017 was also disposed of by Hon'ble High Court whereby the order passed by this Tribunal was quashed and set aside and OA No. 203/2013 was ordered to consider afresh by remanding it to this Tribunal. Thus, the facts are almost identical and the prayers are also made on the same lines in all these three cases i.e. OA No. 329, 404 and 203 of 2013 and hence, the same are heard together and are disposed of by this common order.

2. The brief facts as contended in the O.As are as under :

OA NO. 329/2013

Applicant, being aggrieved by the inaction by the respondents in not granting him benefit under the Scheme of 1991, had filed this O.A. stating that initially, after calling the names from the Employment Exchange, he was appointed/engaged on 12.09.1995 (Annex.A) as substitute Sweeper on temporary basis against the vacancy that arose on account of leave of regular staff. Since then, the respondent Department has been taking his services as Sweeper-cum-Water-Server continuously till date. It is stated that applicant is 60% physically challenged candidate and has been allowed to work as part time employee since last about 25 years without any complaint and presently, is working at RLO Office, Ahmedabad.

OA NO. 404/2013

Applicant, being aggrieved by the inaction by the respondents in not granting him benefit under the Scheme of 1991, had filed this O.A. stating that initially after calling names from the Employment Exchange, he was appointed/engaged on 22.03.1994 (Annex.A) as Sweeper on temporary basis against the vacancy that arose on account of leave of regular staff. The respondents have been taking his services as Sweeper-cum-Water-Server till date. Applicant has been allowed to work as part time employee since last about 25 years without any complaint and presently, is working at Circle Office, Ahmedabad.

OA NO. 203/2013

Applicant, being aggrieved by the inaction by the respondents in not granting him benefit under the Scheme of 1991, had filed this O.A. stating that initially, after calling names from the Employment Exchange, he was appointed/engaged on 12.09.1995 (Annex.A) as Sweeper on temporary basis against the vacancy that arose on account of leave of regular staff and the respondents have been taking his services as Sweeper-cum-Water-Server till date. He is a physically challenged candidate having 40% permanent disability and he has been allowed to work as part time employee since last about 25 years without any complaint and presently, is working at Circle Office, Ahmedabad.

3. It is submitted that applicants are continuously working as sweeper/water servers since 1994-1995, and are performing their duties which are of permanent nature of work and have been working almost for the entire day. However, respondents are showing their engagement only for 5 hours and treating them as part-time sweeper/casual labour.

4. It has been averred that as per judgment of Hon'ble Apex Court in the case of Daily Rated Casual Labours employed under the P&T Department through Bhartiya Dak Tar Mazdoor Manch, Vs. UOI & Ors. reported in AIR 1987 (SC) 2342, the Department of P&T framed a Scheme called "Casual Labourers (Grant of Temporary Status & Regularisation), 1989". Thereafter, the Department of Posts vide its letter dated 17.5.1989 issued certain clarification(s) as to which class of worker should be treated as full time or part time casual labours (Annex.A/2), clarifying that all daily wagers working in Post Offices or in RMS Offices or in Administrative Offices or PSD's or MMS under different designation (Mazdoor,

Daily Rated Mazdoor, Outsider) are to be treated as Casual Labours; those Casual Labours who are engaged for a period of 8 hours a day should be described as Full Time Casual Labourers. All other designation(s) should be dis-continued. For purpose of recruitment to Group D post, Substitutes should be considered only when casual labourers are not available, that is, Substitutes will rank last in priority, but will be above outsides. It is also stated in the said letter that the following priorities will be observed :

- (i) NTC Group – D Officials
- (ii) EDAs of the same Division
- (iii) Casual Labourers (Full Time or Part Time) for purpose of computation of eligible services, held of the service rendered as part time casual labourers, should be taken into account. This is, if a part time casual labourers has served for 480 days in a period of two years he will be treated for purpose of recruitment to have completed one year of service as full time casual labourers.
- (iv) EDAs of other Division in the same Region
- (v) Substitutes (Not working in Metropolitan Cities)
- (vi) Direct recruits through employment exchange

Note : Substitutes working in metropolitan cities will however, rank above number (iv) in the list.

5. Subsequent to aforesaid clarification the Department had introduced a Scheme called “Casual Labourers (Grant of Temporary Status and Regularisation) Scheme dated 12.4.1991 (for short “the Scheme of 1991) (Annex.A/2/1) which stipulates that ,

(1) *“Temporary Status would be conferred on the Casual Labourers in Employment as on 29.11.1989 and who continued to be currently employed and have rendered continuous service at least one year, during the year they must have been engaged for a period of 240 days (206 days in the case of offices observing 5 days a weeks)*

(2) *Such casual workers engaged for full working hours viz. 8 hours including one and a half hours lunch time will be paid at daily rates on the basis of the pay scale for a regular Group D official including DA, HRA and CCA.*

- (3) xxxx xxxx
- (4) xxxx xxxx
- (5) xxxx xxxx
- (6) xxxx xxxx

(7) *Confirment of Temporary Status does not automatically imply that the casual labouruers would be appointed as a regular Group ‘D’ employee within any fixed time framed. Appointment to Group ‘D’ vacancies will continue to be done as per the extent recruitment rules, which stipulates preference to eligible ED employees.*

(8) *After rendering three years continuous service after conferment of temporary status, the casual labourers would be treated at par with temporary group D employees for the purpose of contribution to General Provident Fund. They would further be eligible for grant of festival*

advance / flood advance on the same conditions as are applicable to temporary group 'D' employees, provided they furnish two sureties from permanent government servant of this department.

It is further stated that after aforesaid declaration of the scheme the respondents also further clarified to the effect that half of the service rendered as part-time casual labour shall be taken into consideration for grant of temporary status as casual labour.

6. The applicants in their respective applications pleaded that after absorbing of all full time casual labourers still there were large number of vacancies in Group 'D' cadre remaining due to imposition of ban on new recruitments and therefore, respondents had engaged employees on daily wages/part time like applicants, to meet the increased requirements of work.

7. In these OAs, submission of applicants is that their prayer is limited to extending the benefits under the 1991 Scheme after giving them temporary status and viewing them entitled to be considered as full time casual labours and treating them accordingly by paying them equal pay / wages.

8. Learned counsel for the applicants further submits that Department of Telecommunication had also decided on conversion of part time casual labours working with 4 or more working hours per day into full time casual labour vide policy decision dated 16.09.1999 (Annex.A/2-A). It is further submitted that the Postal Department had also circulated a Scheme for temporary status i.e. Scheme of 1991 (Annex.3/1) and the object of the policy of the Government of India was decasualization of casual labourers. For grant of temporary status, the Department of Posts has further clarified as under :

"Casual Labourers (full time or part time) for purpose of computation of eligible service, half of the service rendered as part-time casual labour should be taken into account. That is, if part-time casual labour has served for 480 days in a period of two years, he will be treated, for purpose of recruitment, to have completed one year of service as full time casual labourer." It is submitted that in the case of applicants, they were part-time employees, and have been continuously engaged for last 25 years and have served 480 days in two years and therefore, they were entitled to be considered for grant of temporary status under the Scheme.

9. It is the grievance of applicants that though they were eligible to be considered under the aforesaid scheme, the respondents did not consider them and their representations were rejected on the ground that they were not entitled to

regularization under the statutory rules. Aggrieved by it, they had approached this Tribunal and prayed for direction to consider them for grant of benefits under the Scheme 1991. However, this Tribunal rejected the OAs earlier solely on the ground that applicants were not entitled to regularization under the Scheme of 1991. The said finding of this Tribunal was quashed and set aside by the Hon'ble High Court vide its order dated 31.01.2018 passed in SCAs No. 17697, 17698/2015 and order dated 04.10.2017 passed in SCA 18340/2017 and the matter was remanded back to this Tribunal. The Hon'ble High Court of Gujarat in the said judgment had referred to and followed the decision of Division Bench passed in the case of Virendrabhai Chaudhary Vs. UOI in SCA 13222/2014 dated 23.2.2015 and the decision in the case of Telecom District Manager Vs. Jagdish Kumar D. Varatiya & Ors. dated 13.8.2014 in SCA 8499/2013 wherein in para 13, it was held as under :

"the Court has made clear distinction between the claim for regularization and claim for seeking benefits admissible as akin to the temporary status employee flowing from the scheme and when there is a specific averment qua not laying any claim for the permanency for regular absorption based upon the continuity of service alone, the same is required to be viewed in the light of the judgment cited hereinabove and, we are of the view that Tribunal failed in appreciating this aspect and proceeded on the premises as if the petitioners were claiming mere absorption on permanent basis, which are in our view would not be the stage even they are given the benefit of converser of full timer, as that in itself would not make them eligible to claim permanency and hence in our view the ratio laid down in case of Uma Devi (3) will have no applicability."

10. By relying upon aforesaid observations of the Hon'ble High Court, counsel for the applicants submits that claim of applicants is required to be considered by the respondents in terms of the said Scheme.

11. It is also submitted that the welfare scheme for the benefit of part-time/casual labourer promulgated by the Department of Telecommunication & Posts, had never been declared invalid even in the case of *Secretary, State of Karnataka & Ors. Vs. Uma Devi & Ors*, reported in (2006) 4 SCC (1).

12. Learned counsel for the applicant submits that respondents have not given any reason whatsoever for not granting benefit under the Scheme of 1991 while rejecting their representations and same has been rejected solely on the ground that applicants cannot be allowed to claim for regularization in group 'D'.

Therefore, their grievance for non grant of temporary status under the Scheme 1991 had never been looked into nor any reasons for it were communicated to the applicants. In this regard, reliance has been placed on the judgment passed by Hon'ble Apex Court in the case of *Mohinder Singh Gill & Anr. Vs. the Chief Election Commissioner* reported in AIR 1978 (SC) 851 and has been submitted that the respondents ought to have considered the representations in spirit of object of Scheme 1991.

13. Learned counsel for applicants submits that the issue about applicability of Scheme 1991 and grant of temporary status to daily wagers, has been decided by the CAT Hyderabad Bench in OA 398/1998 decided on 25.11.1999 which was upheld by Hon'ble High Court of Andhra Pradesh in *WP 17048/2000* dated 07.09.2010 (*The Postmaster General & Anr. Vs. Pampana Appalaraju*) and, the SLP filed against it by the Department was dismissed. Therefore, the scheme for grant of temporary status is a continued one and the respondents ought to have granted benefit to the applicants.

14. The learned counsel for applicants by relying upon the judgment reported in (2015) 12 SCC 775 Umrala Gram Panchayat Vs. Secretary, Municipal Employees Union & Ors. contended that deprivation in grant of temporary status and other benefits under the Scheme 1991 to casual labourers / part time workers such as applicants herein, amounts to unfair labour practice.

Further, relying upon the judgment reported in (2018) 8 SCC 238 *Narendra Kumar Tiwari and Ors. Vs. State of Jharkhand and Anr*, it is submitted that it was held in the said judgment that intention of *Uma Devi (3)* was to prevent irregular /illegal appointments and to confer benefit on those who were irregularly appointed in past and continuation of such irregular appointee for almost a decade after decision in *Uma Devi (3)* case, was nothing but exploitation. It is further submitted that in the case of *State of Karnataka Vs. M.L. Kesri* reported in 2010 (2) SCC (L&S) 826, precisely the Court held that said practice should be avoided. Therefore, in the present case, undisputedly the respondents continued to take permanent nature of work since last 25 years and deprived equity in pay to them which amounts to unfair labour practice.

15. It is submitted that respondents have admitted in their reply that applicants were/are working as part-time daily wagers from 1994-95 as on date and therefore, it cannot be said that their continuous engagement is for temporary or as Substitute.

16. In sum, learned counsel for the applicants submits that there exists permanent nature of work with the respondents which is being performed by the applicants regularly from 1994-1995 and, the benefit of Scheme 1991 had been extended to other similarly placed part-time casual labourers by the respondents and, therefore, applicants are also required to be treated equally. Lastly, it is submitted that their claim is also required to be considered by the respondents in the light of judgment rendered by Hon'ble High Court of Gujarat in SCAs referred herein above.

17. On the other hand, respondents have filed their reply and denied the claim of applicants. The counsel Ms. R.R. Patel mainly submitted as under :-

17.1 In their representations the applicants had only claimed for their absorption in Group 'D' and said claim was rejected by the respondents in terms of provisions of Department of Posts Multi Tasking Staff Recruitment Rules, 2010 (Annex.R/3) and, they were not entitled for regularization.

17.2 It is further stated that applicants had never submitted any representation(s) or application for grant of temporary status under the Scheme 1991, and without there being filing any such claim before the competent authority, the applicants directly approached this Tribunal.

17.3 The counsel for respondents further submitted that even otherwise, applicants were not entitled for benefit under the Scheme for the reason that they were working as Part Time workers only for 5 hours in a day and part-time casual labourers who were working for less than 8 hours were not covered under the scheme. Therefore, they were not entitled to conferment of temporary status. To fortify their submission, the counsel for respondents placed reliance on the judgment passed by Hon'ble Apex Court in Controller of Defence, Dehradun Vs. Dhani Ram and referred para 12 of the said judgment wherein, Hon'ble the Apex Court held that temporary status can be given to those casual labours who were in employment as on the date of commencement of the scheme and

further the Scheme is not an On-going Scheme. It is submitted that in the present case, the Scheme Casual Labourers (Grant of Temporary Status & Regularisation) came in force on 12.4.1991 which stipulates that the casual labourers who were engaged for eight hours till 01.09.1993 are eligible to be conferred temporary status whereas, applicants herein, were engaged in the year 1994-95 as part time sweeper as substitutes that too only for five hours and hence they were not entitled to claim any benefit under the scheme.

17.4 Learned counsel for respondents, further, by relying upon the judgment passed in *Official Liquidotor Vs. Dayanand and Ors.* reported in (2008) 10 SCC 1, submitted that the Hon'ble Apex Court had held that principles laid down in *Uma Devi's* case, should not be bye-passed which is the Constitutional Bench (5 Judges) Judgment and, the judgment relied upon by the applicant in *Daily Rated Casual Employees of the Postal Department Vs. UOI & Ors.* has been over-ruled in *Uma Devi's* case (Referred Paras 18 & 22). She submitted that the policy framed in pursuance to order passed in *Daily Rated Casual Employees* case cannot be allowed to continue further and therefore, applicants were not entitled to claim any benefit under the said scheme.

17.5 The learned counsel for the respondents argued that engagement of applicants was only a stop-gap arrangement and they were working as substitutes, and after introduction of Recruitment Rules of 2010, no conversion from part time to full time casual labour was permitted.

17.6 It is submitted by the respondents that the applicants were being paid on daily rate basis and their continuation was a voluntary conduct of their own which does not create any right whatsoever to claim full time employment or higher remuneration at par with the regular employees and, therefore, applicants were not entitled to any relief as sought for.

18. Heard the learned counsel for the parties and perused the material on record.

19. In these OAs, the dispute mainly related to non-consideration of applicants' claim for grant of temporary status and consequential benefits as per

the provisions of Casual Labourers (Grant of Temporary Status & Regularisation) Scheme dated 12.4.1991 as amended from time to time.

20. The learned counsel for applicants Mr. P.H.Pathak stated that applicants were not claiming regularization on their long term engagement as part-time casual labour but only prayed for equal pay in terms of the Scheme 1991 by granting temporary status, since other similarly placed/engaged part-time casual labourers had been granted benefit of the said Scheme.

21. It is noticed that the earlier orders passed by this Tribunal whereby the claim of applicant for regularization was rejected, the said orders were quashed and set aside by Hon'ble High Court of Gujarat in judgment dated 31.01.2018 in SCAs No. 17697 & 17698 of 2015 and matter (OAs) has been remanded back to this Tribunal for fresh decision with following observation and direction :-

"11..... The conclusion of the Tribunal that by virtue of the judgment of the Supreme Court in the case of Umadevi (supra), the petitioners even though may be covered by the Temporary Status Scheme cannot claim the benefits flowing therefrom also cannot be accepted. We have noticed that the Temporary Status Scheme allowed certain limited benefits to the workmen after certain duration of work. The benefits did not include automatic regularization in service. They would be granted semi permanency benefits and better working conditions. They would still not draw salary in any regular scale. These benevolent provisions by the State employer have not been frowned upon by the Supreme Court in the case of Umadevi (supra). This issue has come up for consideration before Division Bench of this Court at least on two occasions, reference to which may be presently made.

In the case of **Telecom District Manager v. Jagdishkumar D. Varatiya and Ors.**, in a judgment dated 13.8.2014, in Special Civil Application No.8499 of 2013, this Court held and observed as under:

12. It can thus be seen that the temporary status scheme was a welfare scheme prepared by the department. It was not a scheme for regularization of casual labourers. Nowhere the scheme envisaged regularization. The scheme itself recognized a degree of continuity of a casual labourer who had worked continuously for one year or for a period of 240 days during the past one year. In such cases, instead of treating a casual labourer as a purely daily rated workman whose relationship with the employer would be snapped at the end of each day without any further liability of the employer, some basic benefits were made available to such temporary status casual labourers. By very nature of things, organizations such as telecommunications and railways would have perennial need for casual labourers in large number. Instead of, for years together, treating their status as merely in casual employment, if some benefits of temporary status are made available to them, it was merely in tune with the concept of welfare State and model employer and otherwise also in tune with the basic philosophy of fairness by the State in the matter of employment of labourers. As noted, the scheme was to alleviate the status of a casual labourer after serving a period of continuous work under which he would be entitled to basic benefits, such as, paid leave, carry forward of leave, festival and food advances and productivity linked bonus. In our opinion, nowhere in the scheme envisaged regularization. BSNL therefore had no locus to challenge the direction for considering their cases for grant of temporary status.

13. Coming to the question of merits of the decision of the Tribunal, we do not find that the Tribunal committed any error. All that the Tribunal directed the department was to consider the case of original applicants for grant of temporary status in terms of the scheme. They had put in more than six years of service, in each year exceeding 240 days. At the time they approached the Tribunal, they were protected against termination. Even without such

protection, the original applicants had rendered more than six years of almost continuous service. The Tribunal, therefore, directed DOT to implement their scheme qua these applicants and grant them temporary status, if they are otherwise found suitable.

14. The judgment in case of Umadevi (*supra*) struck at the root of regularization of casual employees in government departments and its agencies, when such actions were without following any procedure. It was held that such regularization would amount to backdoor entry in public service which would be hit by Articles 14 and 16 of the Constitution. It may be argued that, any action of employer, being a State within the meaning of Article 12 of the Constitution, regularizing service of an employee who was not selected regularly after inviting all eligible applicants who applied, would be impermissible. It may also be argued that even a scheme framed for such purpose of regularization, unless was saved by the observations of the Court in para 53, would also be unconstitutional. In the present case, we are concerned not with the scheme of regularization, but with grant of temporary status. We have taken detailed note of various provisions contained in the said scheme. Such provisions would demonstrate that the scheme nowhere envisages regularization of casual labourers. The scheme merely grants some enhanced benefits in terms of leave, advances and bonus. Essentially, it alleviates the status of casual labourer from merely a daily rated worker, who would be paid only for the number of days he actually worked, to that of a person who would, on completion of ten days of work, be entitled to one day paid rest who, because of his length of service with the department, can seek festival and food advances. Such welfare measures even in favour of casual labourers have not been held to be impermissible by the Supreme Court in case of Umadevi (*supra*). If ultimately the question of regularization of these original applicants arises in future, applicability of the decision of the Supreme Court in case of Umadevi (*supra*) may have to be examined.

15. In the judgment dated 09.07.2013 in State of Gujarat & Ors. v. PWD Employees Union & Ors. in Civil Appeal No.53215322 of 2013 arising out of SLP(C) 1361913620 of 2012, the Supreme Court upheld the directions given by this Court for granting certain benefits under the scheme framed by the Government. Our attention is also drawn to the judgments of Division Bench of this Court in case of Bharat Sanchar Nigam Ltd. v. R.K.Shaikh dated 09.01.2014 in SCA No.5778 of 2008 and in Union of India v. Lalsingh K. Rathod dated 18.7.2013 in SCA No.6205 of 2011 where same or similar issues came up for consideration before the Court. Petitions of the Government of India and its agencies were dismissed.

Likewise, in the case of Ashok Virambhai Kargatia v. Union of India, in a judgment dated 12.1.2015 in Special Civil Application No.9721 of 2014, this Court observed as under:

15. Coming to the issue, on merits we have recorded the petitioners service history. After being initially engaged as a casual labourer, his services were terminated. He had to move one forum after another to have the question of legality of the termination decided on merits. The Civil Suit was transferred to the Tribunal. The Tribunal dismissed the Original Application as involving issues of Industrial Disputes Act. The petitioner, thereupon, raised an industrial dispute. The Industrial Tribunal held that the department is not an industry. The High Court corrected the view and remitted the matter back to the Industrial Tribunal for decision on merits. The Tribunal, thereupon, declared that the termination was illegal and directed reinstatement of the workman with continuity of service but without backwages. The case of the petitioner, therefore, ought to have been considered for temporary status in terms of the departments scheme considering his continuous service from his inception. His case could not have been excluded from the consideration basing reliance on the judgment of the Supreme Court in the case of Secretary, State of Karnataka and others vs. Umadevi (3) and others (*supra*). Even in the Constitution Bench judgment in the case of Secretary, State of Karnataka and others vs. Umadevi (3) and others (*supra*), the Supreme Court has kept a window open for consideration of regularization of those workmen who had rendered more than 10 years of service. While doing so, it was, of course, provided that such benefit would not flow in favour of litigious employees. The basis of this was that one who enjoyed interim protection of Courts successively by challenging termination from service, cannot then argue that having rendered continuous service for years together, he should be considered for regularization. The facts of the present case were starkly different. The petitioner had to battle before different Courts for having his termination declared illegal. Once such declaration was made, he was entitled to full benefits flowing from the final directions of reinstatement with continuity. Such judgment of the Industrial Tribunal had become final. The department could not have taken shelter of the exclusion clause contained in the judgment of Secretary, State of Karnataka and others vs.

Umadevi (3) and others (supra) nor could have the Tribunal non suited the petitioner on this ground. To reiterate, the petitioner had succeeded before the Court of competent jurisdiction in establishing that his termination by the department was illegal with further direction for reinstatement with continuity. That being so, he was entitled to all consequential benefits. It is not the case of the respondents that he was not covered by the scheme of temporary status and regularization in service. They have also not denied that other employees engaged after him have got such benefit of temporary status and regularization long back. Unfortunately, since the case of the petitioner for reinstatement got tangled in one legal dispute after another, the final direction for reinstatement got delayed. He, therefore, did not get the same benefits which his coworkers and juniors received. He has, by now, put in 28 years of service without any benefit of permanency or even regular salary.

16. Under the circumstances, the judgment of the Tribunal dated 10.5.2013 passed in Original Application No.439 of 2010 is set aside. The respondents are directed to grant the benefit of temporary status and regularization to the petitioner in terms of the scheme of the department from the respective date when his immediate juniors received such benefit with all consequential benefits including actual difference in salary. These directions shall be carried out latest by 31.3.2015. Petition is disposed of accordingly. In the result, the impugned judgment dated 3.8.2011 of the Tribunal is reversed."

12 Thus, in the aforesaid decision, also Court has made clear distinction between the claim for regularization and claim for seeking benefits admissible as akin to the temporary status employee flowing from the scheme and when there is a specific averments qua not laying any claim for the permanency or regular absorption based upon the continuity of services alone, the same is required to be viewed, in light of the judgment cited hereinabove, and we are of the view that the Tribunal failed in appreciating these aspects and proceeded on the premise as if the petitioners were claiming mere absorption on permanent basis, which are in our view, would not be the stage even they are given the benefit of conversion of full timer, as that in itself would not make them eligible to claim permanency and hence in our view the ratio laid down in case of *Umadevi* (supra) will have no applicability. The subsequent decisions in light of the following observation of the Supreme Court are as under:

In case of State of Punjab & Ors. Vs. Jagjit Singh & Ors. rendered on (2017)1 SCC, 148.

In case of Hari Nandan Prasad & Anr. Vs. Employer I/R To Management of Food Corporation of India & Anr. rendered on (2014)7 SCC 190.

In case of Umrala Gram Panchayat Vs. Secretary, Municipal Employees Union rendered on (2015)12,SCC 775.

In case of State of Gujarat & Ors. Vs. PWD Employees Union & Ors. Etc. rendered on 2013(2) G.L.H,692.

13. The principle emerge that when the question of seeking parity in terms of the service condition is arisen and when the principle of Industrial definition are also pressed into the service, as the definition of industry has, so far as not been whittled down, and the observation of the Supreme Court in case of Bangalore Water Supply Vs. R. Rajappa & Ors. is not, so far as whittled down, and hence the distinction in the position when the employees seeking larger benefits which may be akin to larger monetary benefits based upon the working condition, the same can not be brushed aside on larger principle of so called irregularities in the employment. The principle under the provisions of Industrial Disputes Act, would also required to be borne in mind.

14. Thus, in view of the aforesaid factual aspects, we are of the view that the decisions' in question are quashed and set aside and the matters are remanded to the Tribunal for deciding the same afresh, in light of the submissions that may be canvassed by both the sides. Rule made absolute to the aforesaid extent. No order as to costs."

22. It is seen that the Hon'ble High Court in the aforesaid judgment held that there exists a clear distinction between the claim for regularization and claim for seeking benefits admissible as akin to the temporary status of the employee flowing from the scheme and when there is a specific averment qua not laying any claim for

the permanency or regular absorption but, only for grant of certain benefits stipulated in the scheme, the said claim of casual labour required to be considered by the employer.

It is also noticed that the Hon'ble High Court of Gujarat also held that, such welfare measures even in favour of casual labourers had not been held to be impermissible by the Hon'ble Supreme Court in case of Umadevi (supra) and further held that if ultimately the question of regularization of these original applicants arises in future, applicability of the decision of the Supreme Court in case of Umadevi (supra) may have to be examined.

23. In the present case, undisputedly, the applicants' prayer is limited to the effect for grant of temporary status as welfare measure available under the Scheme of 1991 and not put forth for any claim for regularization. In this regard, it is revealed from the records that respondents had invited names of eligible candidates for engaging substitutes (Safaiwalas) for cleaning work etc. in the respective offices through Employment Exchange, Ahmedabad, and in response to it, names of applicants were sponsored and consequently they were engaged as Sweeper in 1994-95. It is also not in dispute that till date, the applicants are working. In other words, applicants are allowed to perform their duties as part-time casual labour till date.

24. Further, it is noticed that the respondent Department had promulgated a Scheme called ***Casual Labourers (Grant of Temporary Status & Regularisation) Scheme dated 12.4.1991*** which stipulates that temporary status would be conferred on the casual labourers in employment as on 29.11.1989 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 (206 days in case of offices observing 5 days a weeks). Subsequently, vide communication dated 30.11.1998 of Department of Posts, it was further clarified that part-time casual labourers who were engaged up to 1.9.19993 would only be considered under the scheme.

The said scheme further stipulates that such casual labourers were engaged for full working hours viz. 8 hours including 1 ½ hours lunch time will be paid at daily rate on the basis of the minimum of the pay scale for a regular group "D" official

including DA, HRA and CCA along with other benefits as stipulated in the said scheme.

It is reiterated by the applicants that the Department of Posts had further clarified that "Casual Labourers (full time or part time) for purpose of computation of eligible service, half of the service rendered das part-time casual labour should be taken into account. That is, if part-time casual labour has served for 480 days in a period of two years, he will be treated, for purpose of recruitment, to have completed one year of service as full time casual labourer."

25. In the present case, as noted herein above, undisputedly the applicants are working as part-time casual labourers (Sweeper) continuously for last 25 years that too without any interim orders of Court/Tribunal before the date of decision in the case State of Karnataka Vs. Uma Devi (3) [reported in (2006) 4 SCC 1].

Therefore, such Continuation of applicants for more than a quarter of century as part-time sweeper cannot be construed that they were engaged as substitutes on leave staff-vacancies. It can also not be said that they were illegally engaged/employed; their engagement and continuation till date may at the most be termed as irregular engagement as per the dictum of Hon'ble Apex Court in Uma Devi (3) case.

26. In view of above, we found substance in the submission of counsel for applicants that now after lapse of twenty five years continuous engagement as part-time Sweeper of applicants cannot be treated as substitutes.

27. The submission of counsel for applicants that in the case of similarly placed part-time casual labourers engaged for 5 hours and were continued for more than 15 years had claimed temporary status which was rejected by respondent Department of Post, has to be noted in this context. The said decision was challenged before Hyderabad Bench of this Tribunal in OA No. 398/1998 and vide order dated 25.11.1999 a direction was issued to the respondents that such casual labours were entitled for grant of benefit of temporary status scheme 1991. The said order was upheld by the Hon'ble High Court in Writ Petition No. 17048 / 2000 decided on 7.9.2010. In its para 8, the Hon'ble High Court of Andhra Pradesh in the said order held that the Clause iii of the letter dated 17.5.1989 makes it clear that in case of computation of eligible service pertaining to a part time casual labourer, half of the service rendered by such labourer shall be taken into consideration. For eg. If

a part time casual labourer has rendered 480 days service in a period of two years, he shall be treated for the purpose of recruitment , to have completed one year of service of full time casual labourer. Therefore, the applicants herein, claimed that the applicants are also required to be treated equally and their claim is required to be considered by the respondents. In this regard it is worthwhile to mention that the respondents have not rebutted the implementation of the order passed by the Hon'ble Andhra Pradesh High Court (supra). The applicants' claim therefore holds good seeing the principle of equity.

28. Further, it is also noticed that the submission of respondents for non-applicability of Scheme 1991 in the case of applicants was not accepted by the Hon'ble High of Gujarat while disposing of their SCAs, therefore, it is not open for respondents to contend here that Scheme 1991 is not applicable in the case on hand.

29. It is categorically stated by the respondents that the applicants had never applied to avail the benefit under the Scheme 1991 and there was no occasion for the Department to consider such claim. To appreciate this submission, it is noticed that except the prayer sought in this O.A. for direction to the respondents to consider their claim under the scheme 1991, we do not find any specific representation or application of the applicants on record which can be said that same had been submitted by them before the competent authority. Therefore, we found substance in the submission of the respondents.

30. In the present scenario, on one hand the respondent Department has been taking a stand that as per the statutory rules of 2010, no part-time casual labourer be conferred 'temporary status' if their engagement is against substitutes, but on the other hand, they have been taking work continuously from substitutes of 1994-95 who were engaged against leave vacancies. In furtherance, the applicants are paid from the contingent fund since long i.e. for a quarter to the Century, notwithstanding the fact that term 'Contingent' cannot prevail perpetually and it amounts to not only exploitation but also unfair labour practice as per the law propounded by the Hon'ble Supreme Court repeatedly. Undisputedly, respondents had engaged the applicants as Safaiwala for last more than 25 years without extending any protection and the equitable right promulgated under the welfare scheme and the jurisprudence.

We are now constrained to mention the sorry state of interpretation by the Officers of the Department in keeping /engaging Casual Labourers for such long period [1994-95 –till date] despite being fully aware that their long continuance after 10.09.1993, would amount to an unwarranted act under the prevalent Scheme, as very aptly observed by Hon'ble High Court, the entitlement to welfare measures cannot be lost sight off. The Department did not even appreciate that the applicants came from poorest strata and the Department even today, contends that it is their 'voluntary decision' to work, which, in our firm opinion, is very unfortunate because it does not consider welfare entitlements even under a declared scheme. Had the Department implemented the scheme with due diligence and sincerity, such a situation could perhaps have been avoided. Thus, let the competent authority reconsider this issue and fix responsibility on the officers of the Department who messed up this matter.

30. Thus in view of aforesaid discussions as also in the light of observations and directions issued by the Hon'ble High Court of Gujarat and orders passed by Hon'ble Andhra Pradesh High Court in similarly situated part-time casual labours of the postal department, we are of the considered opinion that the grievance of applicants for grant of temporary status under the scheme 1991 deserves to be considered and decided by the employer i.e. Department of Posts.

31. In the result, we deem it appropriate to grant liberty to the applicants to file their fresh representation within 30 days from today and in turn, respondent Department, on receipt of the same, shall examine/consider applicants' claim within two months as per the Scheme 1991 as amended from time to time and, in the light of the observations made by Hon'ble the High Court of Gujarat in its judgment dated 31.1.2018 in SCAs No.17697 & 17698/2015 as also judgment passed by Hon'ble High Court of Andhra Pradesh in Writ Petition No. 17048/2000 dated 7.9.2000. Ordered accordingly.

32. O.As are disposed of accordingly with no order as to cost. M.A. if any pending is also disposed of.

(A.K.Dubey)
Member (A)

(Jayesh V. Bhairavia)
Member(J)

