

CENTRAL ADMINISTRATIVE TRIBUNAL**MADRAS BENCH****OA/310/00893/2019****Dated 29, the ^{Hunday} day of June, 2020****PRESENT****Hon'ble Mr.T.Jacob , Member (A)**

Lakshmi,
W/o (Late) Subramani,
Old No.4, New No.17,
Kamarajapuram, Pon Nagar, Trichy 620 001.

...Applicant

By Advocate M/s C. Samivel

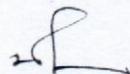
Vs

1. Union of India rep. by its
Secretary to Government of India,
Department of Youth Affairs,
Ministry of Youth Affairs and Sports,
Room No.401, C- Wing,
Shastri Bhavan, New Delhi – 110 001.

2. The Director General,
Nehru Yuva Kendra Sangathan,
Core IV, II Floor, Scope Minar,
Lexmi Nagar, District Centre, Delhi – 110 092.

3. The Deputy Director(GA),
Nehru Yuva Kendra Sangathan,
Ground Floor, 4 Jeevan Deep Building,
Parliament Street, New Delhi – 110 001.

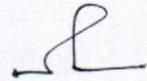
4. The State Director / The Zonal Director,
Nehru Yuva Kendra Sangathan,
No. 71, 2nd Main Street, VGP Layout,
Part- III, Palavakkam, Chennai – 600 041.



5. The District Youth Coordinator,
Nehru Yuva Kendra Sangathan,
Race Course Road, Khajamalai,
Opp to Government Law College,
Tiruchirapalli – 620 023.

.....Respondents

By Advocate Mr.M.Kishore Kumar, SPC (R1-R5).



ORDER

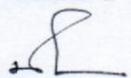
(Pronounced by Hon'ble Mr.T.Jacob, Member (A))

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

"I. To call for the records relating to the impugned order passed by the 3rd respondent in his proceedings No. NYKS/GA/Sweeper-Trichirapalli/2019 dated 10.06.2019 and quash the same and further direction, directing the 3rd respondent to fix the time scale of pay from the date of appointment and further to regularise the applicant's service as a Sweeper and granting all service benefits including seniority to the applicant within a stipulated period fixed by this Hon'ble Tribunal may deem fit and proper in the circumstances of the case and thus to render justice"

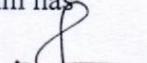
2. The brief facts of the case as submitted by the applicant are as follows:

The applicant is working as a Part Time Sweeper (PTS) under the 5th respondent since 1980 for the past 39 years without any break. She is not regularised till date and she is earning only a meagre amount of Rs.2000/- and unable to maintain her family with this insufficient amount. The other employees of the same category have been regularized ignoring the claim of the applicant. She submitted representations to the respondent authority to fix the time scale of pay and to regularize her services and promote her by granting all service benefits including seniority. In the State of Kerala, the services of Part Time Sweepers who are working under the Nehru Yuva Kendra have been regularized with fixed scale of pay. They are also of the same category as that of the applicant but unfortunately even after serving 39 years, her services have not been regularized. On 31.07.2017, the Zonal Director issued a



Circular to the State Director/ Deputy Director and the District Youth Co-ordinators of Nehru Yuva Kendra Scheme in South to revise the pay scale of these workers. Based on that circular, the wages for the Part Time Sweepers were fixed differently in every state thus causing discrimination. According to the G.O.Ms.22 dated 28.02.2006, the service of an employee who completes 10 years of continuous service must be regularised. The applicant is entitled for regularization of her services and grant of scale of pay. Hence, the applicant had earlier approached this Tribunal by filing OA.678/2019. When the case came up for admission, learned counsel for the respondents submitted that the claim of the applicant was rejected vide order dated 10.06.2019. Aggrieved by the above, the applicant has filed this OA seeking the above reliefs inter-alia on the following grounds:-

- i. The respondents have failed to consider that the applicant has been continuously working for more than 39 years without any break under the 5th respondent institution.
- ii. The respondents have failed to consider the several representations made by the applicant to fix the time scale of pay and regularize her services.
- iii. The respondents have failed to note that G.O.Ms 22 dated 28.02.2006 on completion of 10 years continuous service (before revising this G.O) the service must be regularized. Based on the G.O, the applicant is entitled for regularization of her services.
- iv. The respondents have failed to consider the precedents set by Hon'ble High Court and Supreme Court to regularise the service based on the G.O.
- v. The 3rd respondent has failed to consider the fresh application dated 28.02.2019 after the second round of litigation but the applicant's claim has



been rejected by way of passing the impugned order dated 10.06.2019.

vi. The 3rd respondent has failed to consider the principles of equal work for equal pay.

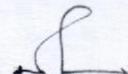
vii. The 3rd respondent has wrongly come to conclusion that there is no post of Sweeper as per the recruitment rules of NYKS. Moreover, in the South Zone of States particularly Kerala, Karnataka and Andhra Pradesh there is a post of Sweeper and their services have been regularized and also the time scale of pay has been fixed in the same institution of NYKS.

viii. The 3rd respondent has failed to note that the post of Sweeper has been functioning in the Ministry of Youth Affairs & Sports (Govt. of India) and subsequently these PTS employees were also appointed in the Office and the said post is established in the District also. Hence, there is no question that there is no post of Sweeper.

ix. The 3rd respondent has failed to note that the applicant has been engaged by the 5th respondent for the post of PTS in the year of 1980. Since 1980 to till date, she is continuously working as PTS as a full time worker and periodically her payment also increased up to Rs. 2000/-.

x. The act of the respondent clearly shows that there is a discrimination among the PTS employees which is against the fundamental rights for giving equal treatment.

xi. The respondents have not properly established their stand that the PTS is a contractual appointment and the appointment comes to an end at the end of the contract. Therefore, according to the case of the applicant, the 5th respondent engaged the applicant in the post of PTS and she is continuously working and being paid her salary. Therefore, as per the scheme/advertisement/



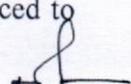
notification, the authority has engaged the PTS employees. Therefore, she comes under the regular appointment and she is also entitled for the regularization.

xii. According to the statement of respondents that the post is only for temporary appointment on daily wages, but the period till which it is a temporary appointment is not mentioned in their rules and regulations.

xiii. The 3rd respondent complied with the order passed by the Ernakulam Bench in OA Nos. 180/00216/2019 and 180/00606/2016 and fixed the wages of PTS under Category II vide his letter dated 06.06.2019. But unfortunately, the 3rd respondent has passed the impugned order and complied with the order passed by this Tribunal and stated that there is no post of Sweeper as per Recruitment Rules of NKYS. The stand taken by the respondents is against the Recruitment Rules of NYKS and is in violation of the Fundamental Rights of Constitution of India.

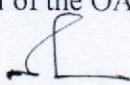
3. The respondents have filed a detailed reply statement. It is submitted that the Nehru Yuva Kendra Sangathan, (hereinafter referred to as NYKS) is an Autonomous body under the Ministry of Youth Affairs and Sports, Government of India running on 100% grant-in-aid sanctioned by the Central Government. NYKS is governed by the rules and regulations as approved by the Competent Authority from time to time. As per the Recruitment Rules of NYKS, there is no post of Sweeper. NYKS has its own policy in regard to wages to be paid for cleaning the district offices in States. The prevailing system of payment of wages to such workers engaged at district level is as under:

(iv) In the year 2009-10, the sweepers were paid consolidated amount of Rs.800/- per month. In the year 2010-11, wages were enhanced to



Rs.1000/- per month. In the year 2016-17, wages have been enhanced to Rs.2000/- per month. As per the existing policy, the district offices functioning under NYKS have been provided the required funds under the head of "Other Expenses on Establishment" to pay consolidated remuneration of Rs.2000/- per month to sweepers for cleaning in the morning on working days.

4. It is further submitted that the G.O Ms. 22 as referred by the applicant is applicable only to full time daily wage employees appointed against the sanctioned vacancies paid not out of contingent fund or on consolidated pay. They must also have completed 10 years of continuous service as on 01.01.2006. Further by G.O.Ms No. 74, the Government clarified that G.O.Ms.No.22 issued by the Department of Personnel and Administrative Reforms dated 28.02.2006 is not applicable to part time employees, the consolidated pay employees and employees appointed on temporary basis. In any event G.O.Ms. No. 22 Personnel and Administrative (Reforms) Department dated 28.02.2006, is applicable only to full time daily wage earners who had completed 10 years of continuous service as on 01.01.2006. The said G.O cannot be applied for part time employees and employees receiving consolidated salary. Further, the appointments in NYKS are made in accordance with the Recruitment Rules against the sanctioned post/vacancy. The applicant has neither been appointed against any sanctioned post / vacancy nor the post of Part Time Sweeper exists in NYKS. Also, there is no provision under the Recruitment Rules to regularize the services on a non-existing post. 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. The issue to be decided is whether the applicant is entitled to regularisation and to be brought on time scale of pay or not.

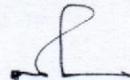
7. Admittedly, this is the third round of litigation before this Tribunal. The applicant had earlier filed OA. No. 43/2019 seeking the above relief and this Tribunal by order dated 21.01.2019 without going into the substantive merits of the case directed the applicant to submit a fresh representation and the respondents were directed to examine the said representation in accordance with relevant rules and pass a reasoned and speaking order thereafter. In pursuance of the said directions, the applicant has submitted a detailed representation dated 28.02.2019 whereafter, the respondents after considering the said representation had passed order dated 10.06.2019 rejecting the request of the applicant for fixing the time scale of pay from the date of appointment and to regularise her services as Sweeper for granting all service benefits including seniority. Even before receipt of the said order of the respondents dated 10.06.2019, the applicant filed another OA No.678/2019 seeking the same relief and this Tribunal by order dated 14.06.2019 disposed of the said OA at the admission stage on the basis of submissions made by the learned counsel for either side that an Office Order dated 10.06.2019 has been issued by the respondents rejecting the request of the applicant. Challenging the said rejection order, the applicant is again before this Tribunal.



8. The DOP&T has issued consolidated instructions on casual labour and has formulated a Scheme called "Casual Labourers (Grant of Temporary Status and Regularisation)Scheme 1993" issued vide OM No.51016/2/90-Estt(C) dated 10.09.1993, according to which an employee seeking regularisation has to fulfil the following conditions:-

- i. Temporary status was to be conferred on all casual labourers who are in employment on the date of issue of this OM and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week).
- ii. Such conferment of temporary status was to be without reference to the creation/availability of regular (erstwhile) Group 'D' posts.
- iii. Conferment of temporary status on a casual labour did not involve any change in his duties and responsibilities. The engagement was on daily rates of pay on need basis. He might be deployed anywhere within the recruitment unit/territorial circle on the basis of availability of work.
- iv. Such casual labourers who acquire temporary status will, however, not be brought on to the permanent establishment unless they are selected through regular selection process for (erstwhile) Group 'D' posts.

9. Further to the above, the DOP&T vide OM No.49014/2/93-Estt(C) dated 12.07.1994 has issued certain clarifications regarding the above Scheme.



Sl.No	Points raised	Clarifications
1	Whether the casual employees who were not initially engaged through employment exchange are entitled to the benefit of temporary status.	Since it is mandatory to engage casual employees through employment exchange, the appointment of casual employees without employment exchange is irregular. Hence such casual employees cannot be bestowed with temporary status.
2	Whether temporary status could be granted to the part-time casual employees.	No
3	Will the casual labourers initially engaged after crossing the upper age limit prescribed for recruitment to Group 'D' posts be eligible for grant of temporary status?	No age limit has been prescribed for grant of temporary status. However, for the purpose of subsequent regularisation, the conditions regarding age and educational qualifications prescribed in the relevant recruitment rules will apply.

10. Further by G.O.Ms.No.74, the Government has clarified that G.O.Ms.No.22 issued by the Department of Personnel and Administrative Reforms dated 28.02.2006 is not applicable to part time employees, the consolidated pay employees and employees appointed on temporary basis. In any event G.O.Ms. No.22 is applicable only to full time daily wage earners who had completed 10 years of continuous service as on 01.01.2006. The said G.O cannot be applied for part time employees and employees receiving consolidated salary.

11. The Hon'ble Supreme Court in the case of Union of India a& Anr. vs. Mohan Pal etc. had directed that "The Scheme of 10.09.1993 is not an ongoing Scheme and the temporary status can be conferred on the casual labourers under that Scheme only on fulfilling the conditions incorporated in clause 4 of the scheme".

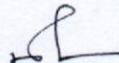
12. As such, the applicant is not eligible for regularisation/conferment of



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 (supra) 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 adhoc 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, adhoc 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.

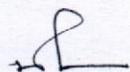
iii. Even where a scheme is formulated for regularisation with a cut off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut off dates), it is not possible to others who were appointed subsequent to the cut off 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.”

13. 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.”

The applicant was not at all appointed as Part Time Sweeper in terms of the relevant rules and as such the question of regularising her services does not arise. However, the Supreme Court in para 44 of the aforesaid judgment had directed that the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one time measure the services of such irregularly appointed, who are



duly qualified persons in terms of the statutory recruitment rules for the post and who have worked for two years or more in duly sanctioned posts but not under cover of orders of courts or tribunals. The Apex Court has clarified that if such appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularised.

14. In the instant case, the following features are to be kept in view to ascertain the entitlement or otherwise of the applicant for regularisation and other benefits claimed in the OA :-

- a. The character of the engagement of the applicant in the respondents office is one of part time sweeper.
- b. There is no sanctioned post of sweeper against which the applicant could have been engaged.
- c. The duration of part time has been just one hour a day, which means 8 days work would constitute a full time casual labour work.
- d. Wages paid to the applicant has been from the Establishment/Contingency fund and
- e. The applicant is not on payroll of NYKS.
- f. Being a contingent part time employee, she is not subject to service rules or other regulations which govern and control the regularly appointed staff of the department.
- g. Engagement of the applicant as part time casual labour is not through the medium of Employment Exchange.

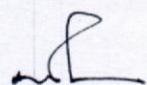


Regularisation of the service of casual labour is governed by certain prescribed terms and conditions as have been dealt with by the Apex Court in a number of cases. The instructions provide for regularisation being preceded by grant of temporary status to full time casual labourers subject to fulfilment of prescribed conditions. The concessions available to full time casual labourers are not ipsofacto applicable to the part time casual labourers. As regards equation of part time casual labourers with full time casual labourers, the Apex Court has in its judgement in the case of Ministry of Communications Vs Sakkubai (1997 11 SCC 224) held as under :-

“10. The Tribunal in our view, was not right in coming to the conclusion that the scheme for conferring temporary status on full time casual labourers is also applicable to part time casual labourers.”

Thus, when there is no comparison between the part time and full time casual labourers even in respect of grant of temporary status, the question of equating the status of a part time sweeper who worked for just one hour a day with a full time casual labour does not arise. Telescoping the law on the subject upon the facts of the instant case, none of the conditions of regularisation as claimed by the applicant could be found fulfilled by the applicant. As such the applicant is not entitled for grant of temporary status and regularisation of part time service as per the above scheme.

15. In the conspectus of the above facts and circumstances of the case and the instructions and Judgements on the subject, I do not find any merit in the claim of the applicant to fix the time scale of pay from the date of her appointment and to



regularise her services warranting interference of this Tribunal.

16. In the result, the OA is liable to be dismissed and is accordingly dismissed. No costs.