

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

O.A. No.319/2016

CORAM:

HON'BLE MR. SWARUP KUMAR MISHRA, MEMBER(J)
HON'BLE MR. C.V. SANKAR, MEMBER(A)

Umakanta Naik, aged about 38 years, S/o Gangabhanu Naik, presently working as OSM, Casual Labourer in the Office of H.R.O., K-Division, Jharsuguda, At/Po/Dist. Jharsuguda-768201.

.....Applicant

VERSUS

1. Union of India represented through its Secretary, Ministry of Communications, Department of Posts, Dak Tar Bhawan, New Delhi-110 001.
2. Chief Post Master General, Odisha Circle, At/PO-Bhubaneswar, Dist-Khurda, Odisha-751001.
3. The Superintendent of Post Offices, RMS-K Division, At/Po/Dist. Jharsuguda.
4. Head Record Officer, RMS-K Division, At/Po/Dist. Jharsuguda.
5. The I.R.M. RMS, K-Division, Rourkela.

.....Respondents.

For the applicant : Mr. D.K. Mohanty

For the respondents: Mr. B.P. Nayak

Heard & reserved on : 22.01.2021

Order on :19.03.2021

O R D E R

Per Hon'ble Mr. Swarup Kumar Mishra, Member (J):-

This Original Application has been filed by the applicant the following relief(s):-

- “(i)To quash the order dt.19.11.2012 under Annexure-A/9
- (ii) To direct the Respondents to regularize the service of the applicant against the vacancy any Group-D/MTS available in the dept. rules and judgemade laws.

- (iii) To direct the Respondents to make all efforts to regularize the services of the applicant against the vacancy available in other divisions.
- (iv) And further be pleased to pass any other order/orders as deemed fit and proper in this case."

2. The factual matrix of this case is that the applicant on selection for the post of Part Time Casual labourer, joined in the said post under Respondent No.4 in August, 2000. Thereafter, respondent No.4 issued a letter dated 17.11.2008 (Annexure-A/1) to respondent No.3 in connection with the review of the contingent staffs/casual labourers. It is submitted that the applicant has been continuing in the said post as Part Time Casual basis since his date of joining and put in more than 240 days in one year and 480 days in two years. It is further submitted that the respondents have appointed/engaged some more other person as Water Man on Part Time casual basis subsequent to the appointment of the applicant even though eight hours duty are available to be assigned to the applicant, instead of doing so the Respondents went on appointing more casual labours so as to deprive the applicant to perform eight hours duty as a full time worker and to be absorbed regularly in Group-D cadre. Since the works are available for the applicant to perform eight hours a day, the applicant along with 2 other similarly placed persons approached the respondent No.3 by submitting representation dated 05.03.2012 (Annexure-A/2) to give them eight hours duty and regularize their service as they worked more than 480 days in 2 years in view of **D.G. Posts letter dt. 19.02.1988 (Annexure-A/3) and G.I. letter dated 17.05.1989**. It is submitted that none consideration of the said representation dated 05.03.2012 (Annexure-A/2) the applicant along with 2 others filed O.A. No.780/2012 before this Tribunal.

3. It is further submitted in the case of **M. Johan Roses case (Supra) the Ernakulum Bench of the CAT**, relied on the order of the Ministry of Communication in their letter No.65-24/88-SPB, dt. 17.05.89 (Annexure-A/4) and

held that part time casual labourers are also covered under the scheme meant for the casual labourers. It is submitted that in similar case in ***O.A. Nos.16 & 17 of 2002*** which was disposed of on 03.11.2004 (Annexure-A/5 series) wherein this Tribunal held that ‘casual labourers who do not enjoy the safety net of temporary status scheme, however, do not lose their right of regularization, if they have worked for more than 240 days of year for successive years.’ Apart from that **another OA No.227/2011 filed by one Sri Narendra Kumar Parida and others** which was disposed of on 08.05.2011 (Annexure-A/5 series) wherein this Tribunal held that ‘(i) To Treat the applicant as part time casual labourer from 1994 having due regard to instruction/clarification issued by Dept. of Posts vide letter dated 17.05.1989. (ii) To examine whether the applicants could be made full time by readjustment or combination of duties as per stipulation in G.I Dept. of Posts vide letter dated 16.09.1992. (iii) To examine whether the applicants have served for 480 days in a period of 2 years so as to treat them, for the purposes of recruitment to have completed one year of service as full time casual labourers as per department of posts vide letter dated 17.05.1989.’

4. It is submitted that delay in regularization has an adverse impact on their future prospect of employment. Right to life is a fundamental right as enshrined under Article-21 of the Constitution of India. It is submitted that the applicant sought certain information under RTI Act, in reply dt.28.09.2012 (Annexure-A/6) wherein it has been stated in column-3, the post is sanctioned for 5 hours per day and PTW is being drawn and paid month wise.

5. It is submitted that this Tribunal disposed of the O.A. No.780/12 vide its order dated 18.10.2012 (Annexure-A/8) with a direction to the respondent No.3 to consider and dispose of the representation dated 05.03.2012 (Annexure-A/2). It is further submitted that the applicant also filed O.A. No.784/2012, wherein, this Tribunal vide its order dated 17.10.2012 directed to the respondent No.3 to

consider and dispose of the representation of the applicant. Thereafter, vide order 12.11.2012 the respondents have rejected the prayer of the applicant with regard to continuance of service as well as revision of allowance as per 6th Pay Commission. Further with regard to regularization, rejected the prayer of the applicant on 19.11.2012 without whispering the Circular dated 17.05.1989 and DG Post letter dated 19.02.1988.

6. It is further submitted that being aggrieved the applicant filed O.A. No.60/2013 challenging the rejection order of the respondents. This Tribunal vide its order dated 11.03.2015 (Annexure-A/10) disposed of the O.A. with liberty to the applicant to submit a representation to the Respondent No.4 and Respondent No.4 was directed to consider the case of the applicant as per rules and pass appropriate orders. Thereafter the applicant made representations dated 18.03.2015 and dated 14.07.2015 vide Annexure-A/11 and A/12 respectively.

7. It is further submitted that law is well settled *in the case of State of Karnatak and others-Vrs. M.L. Keshari and others reported in AIR 2010 SC 2587.* “Para-8 The object behind the said direction in Para-53 of Umadevi (AIR 2006 SC 1806 AIR SCW 1991). First is to ensure that those who have put in more than 10 years of continuous service without protection of any interim orders of Courts or Tribunals, before the date of decision in Umadevi 2006 AIR SCW 1991 was rendered, are considered for regularization in view of their long service. Second is to ensure that the department in Instrumentalities do not perpetuate the practice of employing persons on daily wage/adhoc/casual for long periods and therein periodically regularize them on the ground that he has served for more than 16 years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment.” Hence, in view of the settled position of law, the applicants are entitled to be regularized in the service.

8. The respondents by filing counter to the O.A. submits that the applicant Sri Umakanta Naik was engaged as a part time worker to perform the duty of part time Farash-cum-Water Carrier at Divisional Office and HRO RMS, K- Division Jarsuguda. The applicant was being engaged to perform duty for five hours per day on part time basis. The wages as applicable from time to time was being paid to the applicant. The engagement against Part Time Farash cum Water Carrier was based on the observation of the superintendent RMS, K Division on the continuance of the part time worker or otherwise. The applicant was allowed to perform duty for a period of 5 hours per day on part time basis. The applicant was not appointed through any process of recruitment by any appointing authority. He was also performing duty for a period of five hours per day which do not confer on him the status of full time Casual Labourer in accordance with the instruction contained in Directorate letter number which is Annexed as Annexure-R/1.

9. It is further submitted that the Postal Directorate in its order bearing No.4-4/2009-PCC dated 19-11-2010 which was communicated by the Office of the Chief Postmaster General, Odisha Circle, Bhubaneswar through letter No.EST/1-4/Rlg/86 dated 29.11.2010 had directed that no casual labourer shall be engaged in the administrative offices like CO (Circle Office), RO (Regional Office and DO (Divisional Office). Further the existing practice of engaging casual labourer as waterman, gardener, watch and ward or any other miscellaneous category shall be dispensed with. A copy of the order of the Directorate referred to above is annexed as Annexure-R/2. The Office of the superintendent, RMS K Division, Jharsuguda is an administrative office. In accordance with the instruction contained in the said letter the engagement of the applicant was dispensed with.

10. It is further submitted that being aggrieved with this the applicant had filed OA No.784/2012 which was disposed of by the Tribunal vide order dated 17.10.2012. In obedience to the order a speaking order issued by Superintendent

RMS K Division Jharsuguda on 12.11.2012 and rejected his claim for continuance in service. A copy of the said order is annexed as Annexure-R/4. Again the applicant being aggrieved had filed OA No.60/2013 which was disposed of by this Tribunal vide order dated 11.03.2015. The Respondent No.4 consider the case of the applicant and allowed him to work as OUT Side Mazdoor as and when required.

11. It is submitted that the authority neither issue any type of advertisement for appointment nor conducted any selection for the post of Chowkidar and hence no one was engaged for the post of Chowkidar in Division Office/HRO Jharsuguda. As per the Dte. Letter No.45-95/87-SPB-I dated 12.04.1991, Rule-1 temporary status would be conferred on the casual labourers in Employment as on 29.11.1989 and who continue to be currently employed and have rendered continuous service. As such the applicant Sri Umakanta Naik is not eligible for conferring temporary status of Casual Labour.

12. It is further submitted that the OA is misconceived. Carefully scrutiny of all such OAs so filed by the applicant previously before this Tribunal with different prayer if clubbed together, it reveals that this application is hit by the principle of res-judicata. The applicant was not appointed through any process of recruitment mechanism and was engaged to perform the duty on part time basis, five hours per day. The applicant was neither appointed against any sanction post nor was his engagement made even on part time casual basis through employment exchange. The applicant was engaged to perform the duty for five hours on a day as and when required and accordingly he was paid the wages as applicable from time to time. The applicant already has accepted the same. As such the applicant is not entitled to be regularized in service in consonance with ***Hon'ble Apex Court Judgment*** *vide State of Karnatak Vrs. Uma Devi*. Nowhere the interest of the applicant is

affected. Hence he is also not entitled to have the protection so enshrined in Article 14 and 21 of the Constitution of India.

That in view of the above facts and submissions, the applicant is not entitled to any relief as sought for in this OA and therefore the OA is not maintainable and hit by the principles of Res-judicata, thus the same is liable to be dismissed.

13. The applicant has filed the rejoinder to the counter filed by the respondents, in which it is submitted that the action of the respondents in not extending the benefit of DG Post Letter dated 19.02.1988 (Annexure-A/3) & DI Dept. Post Circular dt. 17.05.1989 (Annexure-A/4) in the matter of regularization of the applicant's service though he is working since August, 2000 (Annexure-A/6) Part Time casual worker which is clear violation of the rules and judgemade laws and as per direction of this Court made representation which is still pending under Respondent Nos.4 & 5 and prays for a direction to the respondents to take a diligence steps in the matter of regularization of his service against Group-D/MTS post.

14. It is further submitted that law is well settled in Seven Judge Bench that reasonableness and non-arbitrariness is part of Article 14 of the Constitution. It follows that the Government must act in a reasonable and non-arbitrary manner otherwise Article 14 of the Constitution would be violated. Law is well propounded in the case of Umadevi (3) supra in para-53 that 'the question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this judgment. In that context, the UOI and State and their instrumentalities should take steps to regularize as a onetime measure, the services of irregularly appointed, who have worked for 10 years or more'. This assertions taken in M.L. Kesari's case in 2010 held that if the employees who have completed 10 years service do not possess the educational qualifications prescribed for the post, at the time of their appointment, they may

be considered for regularization in suitable lower post. The similar stand taken in the case of *Amar Kant Rai's case in 2015* directed to regularize the services of the applicant retrospectively. So, as the applicant working as part time casual worker since 2000 with break in August, 2012 to January, 2014, he was a right to be considered for regularization on any post because he is now age barred for other posts. This Court also directed for consideration of regularization of their service under above noted GI letter and implemented the same by the Respondents. Non consideration of the representation in a perspective manner which shows the clear discrimination and violates Article 14 & 16 of the Constitution of India. Hence consideration under Annexure-A/9 is illegal, arbitrary and colourable exercise of power which is not sustainable in the judicial scrutiny.

15. It is further submitted that the review of engagement hours is made on regular process and letter dated 29.11.2010 that he is now continuing as outside Mazdoor, if the applicant is engaged as outside Mazdoor then under Annexure-A/6 issued by the respondent No.3 on RTI Act that the post continuing by the applicant is sanctioned post and proportionate of pre-revised Gr-D pay is fixed so the stand cannot be sustained. The respondents admitted in the counter that earlier order passed by this Hon'ble Court has already been implemented. The question of res-judicata does not arise as the prayer of the applicant confined to regularization of his service as he has worked for more than 17 years as part time casual worker. Hence the stand is not sustainable in the eye of law. Non consideration of the said representation of the applicant while considering the similar issue is clear violation of Article 14 and 16 of the Constitution of India. The law is well settled that the transparency in public administration is a prime test in democratic setup. The act of governance has to withstand the test of judiciousness and impartiality and avoid arbitrary or capricious action. Therefore,

principles of governance have to be tested on the touch stone of justice, equity, fair play and good conscience, which is legitimate expectation of an employee.

16. It is further submitted that in the similar persons extend the similar benefits admitted in the counter the same benefit ought to have been extended to the applicant. Law is well settled that the principles decided by a Court are also applicable to the case of other similarity situated persons even if they have not approached the Court/Tribunal.

17. The applicant's counsel by filling the written note of submission reiterated the pointes raised in the O.A. and also relied on few citations including the following:-

- (1) Order dated 28.06.2016.
- (2) D.G. Posts letter dt. 19.02.1988 (Annexure-A/3) and G.I. letter dated 17.05.1989. (Annexure-A/4)
- (3) M. Johan Roses case (Supra) the Ernakulum Bench of the CAT, relied on the order of the Ministry of Communication in their letter No.65-24/88-SPB, dt. 17.05.89 (Annexure-A/4).
- (4) In O.A. Nos.16 & 17 of 2002 and In OA No.227/2011 (Annexure-A/5 series).
- (5) In the case of State of Karnatak and others-Vrs. M.L. Kesari and others reported in AIR 2010 SC 2587.
- (6) In the case of Secretary, State of Karnataka and Others Vrs. Umadevi (3) and Others (2006) 4 SCC.
- (7) In the case of Amarkant Rai Vrs. State of Bihar and Others (2015) 8 SCC 265.

17. The respondents' counsel relied on few citations including the following:-

- (1) Letter No.45-95/87-SPB dated 12.04.91 (Annexure-R/1).
- (2) Letter dated 29.11.2010 (Annexure-R/2).
- (3) Gazette of India dated 14.05.2015 (Annexure-R/3).
- (4) Order dated 12.11.2012 (Annexure-R/4).

18. We have heard learned counsels for both sides, gone through the pleadings and citations relied upon by them. The applicant was not working from 28.9.2012 to January 2014. He was working as part time casual labourer for 5 hours. He is not continuing in job since January 2014. He was not engaged by following any due procedure for selection and his name was not sponsored by employment exchange.

19. 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 had held as under:

"8(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 and/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 employee 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 date), 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 continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute."

9. The present appeals are squarely covered by clauses (ii), (iv) and (v) of the aforesaid judgement. Therefore, the appeals are allowed. However, in the light of the facts and circumstances of the case as Sri P. P. Rao, learned senior counsel has submitted that the appellant has already implemented the impugned judgments and does not want to disturb the services of the respondents, the services of the respondents which stood regularised should not be affected.

10. With the aforesaid observations, the appeals stand disposed of accordingly. No order as to costs."

20. It is seen from annexure A/10 the final order dated 11.03.2015 passed in OA NO. 60/2013 by this Tribunal that the applicant had filed the said case praying for quashing of order dated 12.11.2012 and to direct the respondents to reinstate him in his post with all consequential benefits including back wages notwithstanding that he was discharging such duty under Respondents 3 & 4 since 2000 and though he made several representations against such action, no heed was paid to such representation.. Prior to that he had filed OA 784/2012 which was disposed of on 17.10.2012 by granting liberty to the applicant to make representation to the respondent no. 3. His representation was rejected with the following order :

"The applicant was engaged to perform the duty of part time chowkidar of DO/HRO Jharsuguda. He was performing duty for a period of 5 hours per day. The applicant was not appointed through any process of recruitment mechanism and was engaged to perform the duty as mentioned above on part time basis. Remuneration was also paid to him from time to time". In the final order vide annexure A/10 in the subsequent OA this tribunal had found that "Admitted facts of the matter are that the applicant was engaged as a part time casual labour for a period of five hours in a day and that such engagement of the applicant was neither after following due process of selection, or after calling names from employment exchange or against any sanctioned post. A part time casual labour even cannot be equated with a causal worker working full time of eight hours in a day. He is also not a civil post holder. No rule has been produced by the applicant that any right has been accrued on a part time causal workers to claim his continuance. His prayer in the representation was to allow him to continue 'as usual' and to revise his allowance as per the recommendation of the 6th CP whereas in the present OA he has prayed him in service with back wages. When admittedly the very engagement of the applicant was on part time casual basis, the question of reinstatement does not arise. It is noteworthy that 'reinstatement' comes into play only when a regular employee (civil post holder) is placed under suspension or terminated from service. The applicant has also not prayed for regularisation of his service".

Ultimately in para 9 of the said OA this Tribunal passed the following order:

"for the discussion made above, while rejecting the prayer made in this OA, the Respondent No. 4 is hereby directed that if any such option/representation/appeal has been preferred in the meantime by the applicant and is still pending then the same may be considered as per Rules and communicate the decision to the applicant in a well reasoned order within a period of 45 days from the date of receipt of a copy of this order".

21. The citations as relied by learned counsel for the applicant are not applicable to the facts and circumstances of this case. The main relief as sought for by the applicant having been rejected in the said OA as seen from annexure A/10, the

applicant is not entitled to the reliefs in this case on the principle of resjudicata and constructive resjudicata. Besides that on merits also the applicant is not entitled to reliefs in this case, since he was working as part time casual worker and is no more in engagement under the respondent since 28.09.2012.

22. Accordingly the OA is dismissed being devoid of merit but in the circumstances without any order to cost.

(C. V. SANKAR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

K.B.