CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD

OA/020/859/2016

Reserved on : 26.08.2020
Pronounced on : 02. 09.2020

Hon'ble Mr.Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

Kandipilli Bangar Raju,
S/o. K. Abbulu,
Aged about 55 years,
Occ: Ty Status Working under
Base Vitualling Officer,
Base Victualling Yark,
Visakhapatnam,
Visakhapatnam District.

... Applicant

(By Advocate: Mr. K. Siva Reddy)

Vs.

1. The Union of India rep. by its
Secretary, Ministry of Defence,
Government of India,
South Block, New Delhi.

2. The Chief of the Naval Staff,
Integrated Head Quarters,
Ministry of Defence (Navy),
New Delhi.

3. The Flat Officer Commanding-in-Chief,
(for Command Civilian Personal Officer),
Eastern Naval Command, Naval Base,
Visakhapatnam – 14.

4. The Base Vitualling Officer,
Base Vitualling Yard,
Visakhapatnam.

... Respondents

(By Advocate: Mrs. K. Rajitha, Sr. CGSC)

O R D E R (ORAL)

Hon'ble Mr. B.V. Sudhakar, Admn. Member

Through Video Conferencing:

2. OA has been filed for regularisation of services of the applicant.

3. Brief facts of the case are that the applicant, on being sponsored by the concerned Employment Exchange, was engaged as a casual labour in the respondents organisation and granted temporary status in 1998. Respondents engaged 86 candidates through employment exchange as well as through direct recruitment. Among the 86 casual labourers who worked for the respondents organisation, 51 of them were regularised on 2.6.2001 and 9 on 8.12.2005. For not being regularised, applicant approached the Tribunal in OA 820/2008 on grounds of discrimination and on directions to dispose the representation made, respondents rejected it on 28.4.2009 citing Uma Devi judgment. Aggrieved, OA has been filed.

4. The contentions of the applicant are that the regularization of all the 86 casual labourers was taken up in 2001 and hence, the process of regularization deemed to have commenced in 2001 itself. Even in 2005 the name of the applicant was recommended when 9 Casual labourers were regularized. Thus, applicant is entitled for regularization as per the same circulars under which, 60 casual labourers were regularized on the dates specified. Those regularized were initially engaged either through employment exchange or by open notification. Vacancies were available in all the years from 2002 to 2010 as evidenced through the response to an

RTI query. There would be no financial burden on the respondents as respondents were disbursing emoluments and perks equivalent to regular group D post. The Uma Devi judgment, in fact, favours the applicant as he worked for more than 10 years and he was engaged as casual labour on being sponsored through employment exchange. Regularizing 60 casual labourers, who are similarly placed and rejecting the case of the applicant, tantamount to hostile discrimination. Impugned order dated 28.4.2009 rejecting regularization is devoid of valid reasons. It is trite to state that recruitment through Employment Exchange has been dispensed with. The applicant is the only one left out with temporary status, who has to be regularized among the 86 engaged initially and can be engaged as a one time measure as per Uma Devi Judgment as well in terms of O.M dated 12.11.2010. Claiming that there are no sanctioned vacancies is unjust.

5. In the reply statement, respondents state that the applicant was engaged on a casual basis and temporary status was conferred based on O.M dated 10.9.1993 and Tribunal orders in OA 256/99. Even after being conferred with temporary status on 3.10.2001, the services of the applicant continue to be casual. Their wages were paid subject to availability of funds. No appointment orders were issued to the applicant. It is against law to regularize the services of the applicant as observed by Hon'ble Apex Court in State of H.P. v Suresh Kumar Verma and Anr (1996 SCC (L&S) 645), E.Ramakrishna & Ors v State of Kerala & Ors (1997 SCC (L&S) 331); ICAR & Anr v Santosh [2007 (1) (L&S) 394] as well as in Uma Devi Judgment (2006 (4) scale 197). Respondents relied on different paras of the

Uma Devi judgment to support their contentions emphasizing that regularizing of similarly situated employees based on court orders would not create a right for others to seek similar relief for which they are not entitled and that appointments are to be made as per statutory rules. Besides, Article 21 of the Constitution of India has not been violated as alleged by the applicant and that orders contrary to Uma Devi judgment stand denuded. The rejection order of the respondents dated 28.4.2009 issued consequent to the direction of the Tribunal in OA 820/2008 has not been challenged attracting limitation clause. Applicant was not appointed against any regular post in terms of statutory rules as is required to be followed as per the legal principle laid down in ***UPSC v Gir Jayanti Lal Vaghela (2006 (2) SCALE 115)***. The O.M dated 10.9.93 cannot be relied upon by the applicant in view of the Uma Devi judgment. Further from 2001 to 2005, no action for regularization was initiated in view of O.M dated 16.5.2001 of DOPT. With the availability of regular vacancies, age relaxation in respect of some of the 9 casual labours referred to, was obtained from the competent authority and the services of all the 9 regularized after taking legal opinion that the Uma Devi judgment has prospective effect. Later, the case of the applicant was also taken up for regularization but rejected in view of Uma Devi judgment. Mere availability of vacancies does not bestow any right for regularization. From among the 89 casual labourers engaged, services of 80 were regularized by 2014. One casual labour died and for the remaining 4, proposals have been sent to the MOD for regularization on 1.12.2014.

6. Heard both the counsel and perused the pleadings on record.

7. I. The issue is about regularizing the services of the applicant with temporary status as casual labour. Applicant claims that the services of 60 other casual labour similarly situated were regularized but not of the applicant. Respondents claim that the case of the applicant was also taken up with the competent authority but was not agreed to in view of the law laid down in the Uma Devi judgment. Respondents heavily banked on the Uma Devi Judgment and in particular para 44, extracted hereunder, to reject the claim of the applicant.

> *"44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. 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 Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."*

Respondents state that the applicant was engaged as a casual labour on a casual basis for work of intermittent nature and that, wages were paid based on availability of funds. He was not engaged against regular post nor any statutory rule followed in engaging him. Therefore, no appointment order was issued to him. By acquiring temporary status, the applicant has not gained any right to be regularized. Other casual labourers, numbering 60

were regularized in accordance with O.M dtd. 10.9.1993 prior to Uma Devi judgment. However, when the turn of the applicant came, on applying the norms as laid in Uma Devi judgment, viz appointment against sanctioned/ regular posts following statutory rules of those who had rendered 10 years of service without intervention of courts, the applicant's services cannot be regularized. Seeking regularization for which one is not entitled on the basis of similarly situated employees having been granted the said benefit has been negated in Uma Devi. Therefore, there is no case for regularizing the services of the applicant. Respondents were emphatic that any order issued contravening the Uma Devi judgment would be null and void.

II. However, respondents admitted in para 11 of the reply that as per O.M dated 10.9.93, if sanctioned posts are available, then the temporary status casual labour will be regularized in order of their seniority. Accordingly, they have regularised services of 51 casual labour in 2001 and 9 casual labour against 2005 regular vacancies. The applicant was provided information under RTI Act in regard to regular vacancies available wherein it was mentioned that in 2005 the vacancies available were 211 (Annexure A-4). Respondents have not denied this aspect in their reply statement and therefore, it is an undeniable fact that vacancies were available to consider the case of the applicant. If this being so, it is not understood as to why the regularization of the services of the applicant was not taken up by the respondents in accordance with O.M dated 10.9.1993 along with 9 others referred to . Under cover of the referred O.M, services of many similarly situated casual labour were regularized over the years, before Uma Devi judgment, by the respondents. The casual labour whose

services got regularized were either engaged initially through Employment Exchange or by open notification. Therefore, turning around and selectively submitting that the applicant was not selected through open notification and thereby, he is ineligible for regularization, is incorrect. Similarly stating that applicant was engaged on being sponsored by the Employment Exchange and hence, disqualified for regularization is not in the realm of reason on grounds of discrimination. Undoubtedly, not regularizing the services of the applicant is thus invidious discrimination, which is impermissible under law. Respondents, here, it would mean, the entire managerial spectrum of the organization and not with reference to a particular hierarchical level. Either the Integrated Head quarters or those down below have failed to initiate appropriate action in time to fill up the available regular vacancies, which they ought to have since respondents did state in the reply statement that they were facing staff shortage. Had the competent authority acted promptly in 2005, the applicant would have been regularised along with the 9 others prior to the delivery of the judgment of the Uma Devi judgment. Respondents did take initiative in getting the 9 causal labour regularised by pursuing with the Branch Law Secretariat. The same initiative was lacking in getting other eligible casual labour regularised in 2005 before Uma Devi as per O.M dated 10.9.1993. We observe that the inaction of the respondents in not acting timely has placed the applicant to an inexplicable disadvantage which contravenes law, as observed by the Hon'ble Apex Court in the following verdicts:

(i) In ***Union of India vs. Sadhana Khanna,*** C.A. No. 8208/01, decided on 14.12.2007, it was held that the mistake of the department cannot recoiled on employees.

(ii) In yet another recent case of ***M.V. Thimmaiah vs. UPSC***, C.A. No. 5883-5991 of 2007 decided on 13.12.2007, it has been observed that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer.

(iii) In ***Nirmal Chandra Bhattacharjee v. Union of India, 1991 Supp (2) SCC 363*** the Apex Court has held "The mistake or delay on the part of the department should not be permitted to recoil on the appellants."

As seen from the facts of the case, it was the failure of the respondents which was the cause for the services of the applicant not getting regularised. Therefore, this failure should not be allowed to recoil on to the applicant and annihilate the opportunity of his services being regularized, in tune with the spirit of the judgments cited supra.

III. Besides, respondents have also stated that they have engaged 89 casual labour and that the services of 80 were regularised. 5 died and for the remaining 4 proposals for regularization were sent to I.H.Q Min. of Defence for regularization on 1.12.2014.

IV. Moreover, even in the absence of vacancies, after allowing the applicant to render 22 years of service after conferring temporary status, it may not be fair to reject regularization as observed by the Hon'ble Apex Court in 2013 in ***Nihal Singh & Ors vs State Of Punjab & Ors*** on 7 August, 2013 in Civil Appeal No.1059 of 2005, subsequent to Uma Devi judgment of 2006, as under:

> *"21. But we do not see any justification for the State to take a defence that after permitting the utilization of the services of large number of people like the appellants for decades to say that there are no sanctioned posts to absorb the appellants. Sanctioned posts do not fall from heaven. State has to create them by a conscious choice on the basis of some rational assessment of the need."*

Incidentally, in the instant case vacancies were available in 2005 as per the RTI information provided by the respondents themselves. Therefore, all the more the necessity to regularize the services of the applicant and that too, when the operating rules (O.M. dt. 10.9.1993) provided for the same and scrupulously followed by the respondents in other cases referred to.

V. Regarding limitation, objection raised by the respondents at this juncture of time would not hold good since they failed to raise any objection at the time of admission of the OA. In fact, Applicant filed MA for condonation of delay, in which, the Respondents were given sufficient opportunity to file reply. But, the respondents did not file reply in the MA and this Tribunal allowed the MA condoning the delay in filing the OA. The impugned order dated 28.4.2009 has been challenged seeking quashing of the same. Further, there was sufficient cause in taking up the OA for adjudication which is permitted as per the legal axiom laid down by the Hon'ble Apex Court in N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC 123 as under:

> ***12.*** *A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal*

Kumari 1 and State of W.B. v. Administrator, Howrah Municipality .

In order to further substantial justice, which prevails over procedural aspects of Justice, challenge made by the applicant in regard to the issue disputed has to be heard and decided, as per the above observation of the Hon'ble Apex Court.

VI. Lastly, the Hon'ble Apex Court Judgments cited by the respondents would not render any assistance to them, for the reason that, they failed to act before the Uma Devi judgment based on the O.M dated 10.9.93 in regularising the services of the applicant and as per law elaborated in the above paras. *De facto,* respondents in accordance with the cited memo have regularised similarly situated employees but not the applicant, who was eligible, in all respects, as per the OM under reference, thereby violating Art 14 of the Constitution of India. Further, penalizing the applicant for respondents' failure in taking timely action is forbidden under law. Moreover, respondents have taken up regularizing services of 4 casual labour, including the applicant, in 2014. Ld. Counsel submits that it is only the applicant's services, which have not been regularised for having continuously knocked the doors of the Tribunal to do justice over the years from 1999 onwards.

VII. Hence, in view of the aforesaid, we would like to draw curtains on the case by quashing the impugned order dated 28.4.2009. The OA succeeds. Consequently, respondents are directed to consider regularizing the services of the applicant against any of the available

vacancy from the year 2005 onwards. Applicant will not be paid any back wages from the date of regularization. Nevertheless, consequential benefit of notional seniority from the date of regularization shall be extended to the applicant.

VIII. With the above direction, the OA is allowed. No costs.

(B.V. SUDHAKAR) ***(ASHISH KALIA)***
ADMN.MEMBER ***JUDL. MEMBER***

/evr/