Central Administrative Tribunal
Jaipur Bench, Jaipur

T.A. No.07/2012

Reserved on :09.10.2020
Pronounced on :14.10.2020

Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs. Hina P. Shah, Member (J)

Suresh Kumar Meena S/o Shri Bajrang Lal Meena, agedabout 39 years, R/o Village & Post Khatehpura, Tehsil & District Jhunjhunu (Raj.).

…Applicant.

(By Advocate: Shri Prahlad Singh)

Versus

1. Bharat Sanchar Nigam Ltd. through its Principal General Manager (Telecommunication), Sardar Patel Marg, C-Scheme, Jaipur.

2. The General Manager, Telecommunications, Bharat Sanchar Nigam Ltd. Jhujhunu (Raj.)

…Respondents.

(By Advocate: Shri Kapil Sharma for Shri T.P.Sharma)

ORDER

Per: Dinesh Sharma, Member (A):

The present T.A. was originally filed as S.B. Civil Writ Petition No. 1907/2005, before the Hon'ble High Court of Rajasthan. It has been transferred to this Tribunal by the Hon'ble High Court videorder dated 03.04.2012, since the Respondent BSNL, which was not coming within the jurisdiction of the CAT at the time of the filing of Writ, now

falls within its jurisdiction. The petitioner has made the following prayers in the Writ Petition:-

> "i) This writ petition may kindly be allowed and by an appropriate writ, order or direction the respondents may be directed to consider the case of the petitioner for regular appointment on the post of Driver and pass necessary orders in this regard with all consequential benefits.
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> ii) Any other appropriate writ, order or direction which this Hon'ble Court may deem just and proper in the facts and circumsances of the case may also kindly be issue in favour of the petitioner.
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> iii) The Cost of this writ petition may also kindly be awarded in favour of the petitioner."

2. The petitioner claimed that he was appointed as Driver on temporary and daily rated basis since 15.4.85 by the Indian Posts and Telegraphs Department. His name was sponsored by the Employment Exchange. He has been continuing as such since then. He had made several requests for regularisation. Failing any response, he filed an OA (OA No.314/1996) before CAT Jaipur that was disposed of(on 09.12.1996) with a direction to the District Telecom Engineer to dispose of his representation on merits. Following rejection of his representation and a number of advertisements by the respondents to fill the post of Drivers, the petitioner filed another OA (563/1999) before CAT Jaipur. This was disposed of on 11.09.2003 giving a

direction to the respondents to give the applicant the benefit of age and qualification etc. in terms of their letter dated 12.06.2000 (which permitted consideration of departmental candidates other than Temporary Status Mazdoors, subject to certain conditions). The petitioner has stated that despite six posts of Drivers being vacant no vacancies were notified. The petitioner was neither regularised nor extended the benefit of regular pay scale, nor was he considered for appointment to the post of Driver on regular basis against the 6 posts vacant in the department, and hence the Writ Petition.

3. The respondents filed a reply denying the claims made by the applicant. It is stated that though the petitioner was appointed as Casual Driver w.e.f. 15.04.1985, it was after a ban imposed by the Government w.e.f. 31.03.1985. The Scheme of Casual Labour (Grant of Temporary Status and Regularization) Scheme, 1989, is not applicable to the Drivers. The case of the applicant was considered in the light of the DoT Circular dated 10.09.1991 (Annexure R/1). Under Clause (1) of the said Circular, only drivers who were already appointed in the department on casual basis before 01.04.1985 could be considered. He was also not entitled to be regularized under the Scheme contained in the order dated 17.12.1993 (Annexure-6), and this fact was also

informed to the applicant in compliance of the order of the CAT dated 09.12.1996. The respondents categorically denied stating that "merely because he has worked as Casual Driver for a long period, a legal right has accrued to the petitioner to get regularized on the said post" and that the schemes relied upon the petitioner are not at all applicable to him being a casual driver and not a casual labour. The respondents also stated that they have already replied to the notices received from the counsel of the applicant informing him that the "filling of the vacant posts depend on the Departmental policies and no vacancies have been notified by the Department".

4. The petitioner filed a rejoinder stating that following the judgment of the Tribunal dated 11.09.2003, to consider his case as and when a vacancy of a driver is filled, the respondent has waited for more than a year (before filing the Writ Petition before the Hon'ble High Court). He has been discharging his duties on the post of the Driver for the last 20 years. He reiterated that the Scheme of Casual Labour (Grant of Temporary Status and Regularization), Scheme 1989 is applicable to the petitioner, and the order passed by the CAT Jaipur cannot be construed to mean that the petitioner's case will not be considered for an unlimited period. The petitioner also stated that the stand of the

department that the regularisation is a matter of Departmental policy and not considering the case since no vacancy has been notified, despite there being 6 vacancies and the petitioner having been working against one of them for 20 years, is illegal. He has also argued that non-application of the order dated 17.12.1993 to those engaged after 30.03.1985 violates the provisions of the Articles 14, 21 and 38 of the Constitution of India.

5. The case could not be heard earlier because of non-availability of the Division Bench for a long time and due to it having been dismissed for default (twice). It was, however, allowed to be restored again, condoning the delay in filing the restoration petition. The case was finally heard, through video conferencing, on 09.10.2020. During the arguments, the learned counsel for the applicant cited the judgment of the Hon'ble Apex Court in **Secretary, State Of Karnataka and Others** vs **Umadevi and Others**, [(2006) (1)SCC 667] in support of his case. He also cited the judgment of the Apex Court in **Prem Singh** vs **State of Uttar Pradesh** (CIVIL APPEAL NOS.6798 of 2019 (@SLP(C) NOS.4371 of 2013 with connected cases) in support of the applicant's claim to treat a temporary appointee as regular. The learned counsel for the respondents reiterated the grounds mentioned in the written statement filed before the

Hon'ble High Court, and argued that since the applicant was appointed after 01.04.1985, the services of the applicant could not be regularised. He questioned the applicability of the decisions of the Hon'ble Supreme Court, cited by the learned counsel of the applicant during the course of the arguments, as there was no relief claimed by the applicant on these grounds in his original pleadings. The applicant is asking for regular appointment/regularisation of his services as Driver on ground that he has been engaged as casual driver since the year 1985. He has approached this Tribunal twice before and on both these occasions; his applications have been disposed of with a direction to the respondents, first to take decision on his representation, and later with a direction to consider his case in the light of the respondent's own letter. A specific query was put to the learned counsel of the applicant about whether this did not amount to *res judicata*, as this matter has already been decided by this Tribunal, summarily first, and later on merits. The learned counsel for the applicant argued that he had to approach the Hon'ble High Court when no action was taken by the respondents to fill the vacancies. He also argued that the decision of the Hon'ble Supreme Court in the case of Uma Devi (supra), which came in the year 2006, supports the grant of relief prayed by the applicant. It was not specifically pleaded as a ground since the judgment came after the filing

of the Writ Petition. The learned counsel for the applicant had no answer to the query about why no amendment in the pleadings was sought to bring an additional plea by way of filing a Miscellaneous Application. We also queried the learned counsel for the respondents about whether it was a fact that the applicant has been in continuous employment of the respondents as a casual driver on daily wage rate for the last 35 years. The learned counsel did not confirm or deny this and stated that he would not like to go beyond what is stated in the pleadings by the respondents.

6. After going through the pleadings and hearing the arguments of learned counsel of both the parties on video conference, we find that this case requires decision on the following three main issues:

a) Whether the Tribunal can look into this matter and decide again, though it has already decided before, by its judgment dated 11.09.2003.If yes,

b) whether the applicant can be appointed, or his services regularised as driver, as prayed by him, under any of the schemes claimed by the applicant to be applicable to him. If not,

c) whether, following the decisions of the Hon’be Supreme Court in subsequent cases, cited by the learned counsel for the applicant during the arguments,

the applicant can be granted the reliefs claimed by him, even when not covered by any specific scheme of the respondents and not specifically pleaded by him to grant relief as per these decisions.

7. On the first issue, regarding whether this matter is a res already decided by this Tribunal, we have gone through the decision of this Tribunal dated 11.09.2003. The Tribunal did decide the issue of giving appointment to the applicant by directing the respondents to follow their letter dated 12.06.2000. The applicant has alleged that the respondents did not do so despite there being vacancies. The direction of the CAT had left it to the discretion of the respondents to consider the case as and when they thought it necessary to fill the vacancies. The applicant had to approach the Hon'ble High Court (where the jurisdiction of matters relating to BSNL lay at that time) when the respondents did not do anything to consider appointing him against the available vacancies and took a stand that it was a matter of their policy to decide when to notify to fill a vacancy or not. This (the alleged unlimited freedom of the respondents to decide when to notify to fill a vacancy and to keep the matter of regularisation endlessly pending) was a new matter that was not already decided by the CAT. Applying the principle of *res judicata*, in this matter where the applicant's substantial

claim and the grievance has remain unsettled and he is neither regularised, nor removed, for close to three decades (including more than a decade after our earlier decision) would be too technical an approach. We, therefore, do not think this is a matter, where we are barred from deciding now, following the principle of *res judicata*.

8. To decide on the second issue, we have gone through the scheme, which the applicant states is applicable to him for regularisation of his services. The scheme, included in DoT order dated 17.12.1993 is at Annexure-6 of the Writ Petition. A plain reading of this scheme makes it clear that it is intended for Casual Mazdoors and the drivers are not mentioned in it. The applicant has pleaded that it is discriminatory and violates the equality principle laid down in the Constitution of India. However, he has nowhere claimed to strike this scheme down on these grounds and has, in fact, prayed to be given the benefit of the same scheme. No further proof or evidence is produced in support of claim of equality of drivers with casual mazdoors and therefore, we are not inclined to accept the argument of the applicant that his services should be regularised under a scheme, which is clearly not applicable to him. Our verdict on the second issue, therefore, goes against the applicant.

9. This brings us to the third issue which was most

vehemently argued by the learned counsel of the applicant. According to him, the facts of this case are squarely covered by the principles enshrined in the landmark judgment of the Apex Court in the case of Umadevi (supra). He also cited the case of Prem Singh (supra) and argued that work charge employees and an employee like the applicant were similarly placed. In Prem Singh case, the Hon'ble Supreme Court has found them to be eligible for regularisation and for counting the services for the purpose of pension, following the Uma Devi verdict. The applicant has been working like a regular employee in all respects and has been paid monthly salary at the bottom of the scale for the last close to 35 years. He was selected through employment exchange and thus his appointment cannot be said to be irregular. Though he has not been given increments, his salary has got revised with every pay revision. Thus, he has every right to get himself regularised, following the verdict of the Uma Devi. The learned counsel for the respondents argued that the applicant cannot go beyond his pleadings and seek reliefs which are not sought in his pleadings. The respondents have already responded to the claims of the applicant and found them not acceptable as he is not covered by any of the schemes. The counsel could not say whether the case of the applicant was covered by the Umadevi verdict or not and expressed inability to go beyond what has been expressly

pleaded in their reply. Following the rule of *stare decisis*, the decisions of the Hon'ble Supreme Court and the High Courts are unquestionably the laws of the land applicable on the subjects and facts of any case before any subordinate Court or Tribunal. The decisions can be taken judicial notice of even when neither party pleads or cites them at any stage. Thus, there is no need to cite any ruling(s) in the pleadings unless, perhaps, in situations when a case rests entirely on any such ruling(s) and there is no case without them.To decide the third issue, we have to see whether this case falls within this situation where an applicant would have no case for the relief sought without specifically pleading a court ruling that gives him/her the claim.On going through the pleadings, we find that the applicant's claim is for regularising his services, on the basis of the continuous long period (running up to 2 decades when the case was filed and 3 and a half decades now) and regular nature of engagement of his services and the alleged availability of vacancies. The applicant has been continuously litigating to have his job regularised and this was his third attempt at it, after the first two attempts with the CAT failed to get the desired result. In none of his earlier attempts, the Tribunal rejected his case on merits. The first one was disposed of with direction to the respondents to decide on the applicant's representation and the second one with a

direction to the respondents to apply one of their own letters, which the Tribunal felt was applicable to the applicant. The case before us, as stated by the applicant in his pleadings, arose because of indefinite inaction by the respondents in redressing what he claims as his legitimate right. The subsequent judgment in Umadevi's case did not create this right, it is claimed to already exist. The judgment only recognised such right and gave directions to the Government to solve this problem by doing a onetime exercise of regularising all more than 10 year old cases of irregularly(but not illegally) continuously employed persons, who were not continuing on the basis of any court orders, and to do regular recruitments in future. We, therefore, do not think that the applicant is precluded from seeking the benefit of the verdict of the Hon'ble Supreme Court in Uma Devi and subsequent cases, if those verdicts fit on the facts of this case.

10. It is nowhere categorically denied by the respondents that the applicant has been engaged as a driver since the year 1985. They have not denied the existence of vacancies and have only claimed that it is their policy prerogative to decide when to notify for filling any vacancies. The respondents have not found any fault with the services of the applicant and have not, apparently, taken any action to

discontinue him from their employment if his services were not required. The respondents have nowhere pleaded that the recruitment of the applicant was irregular (or illegal) *ab initio*. They have also not taken any effective steps to fill the vacancies in the last 3 decades, except for a few incomplete recruitment exercises, for which they cannot blame the applicant. All these undisputed facts prove the existence of vacancies, and the continuous engagement of the applicant on a regular job, for now close to 35 years. The respondents have failed to explain the reason behind the respondents neither filling the vacancies by regular recruitment, nor regularising the applicant, and have limited their argument to lack of a scheme to regularise such person. The most charitable explanation for these acts of the respondents, we feel, could be an intention to get pliable employees (driven by economic circumstances) at least cost to the government. There could be other, less charitable explanations too, including that it suits the users of a vehicle to have a permanently temporary employee as a driver who can be kept at a tight leash and who has no option but to suffer as a willing accomplice to any misuse of such vehicles. In such cases, the public or the consumers of the services of the respondents will be the ultimate loser.

11. Going by the facts and circumstances of this case, we find that this case is squarely covered by the decision of the Hon'ble Supreme Court in Uma Devi case. The case very extensively discusses the practices and principles involved in regularising cases of temporary, casual and even contractual workers. We are extracting para 43 and 44 of that judgment here, which all Governments and its instrumentalities(and this Tribunal) are bound to follow:

> "43. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in Dr. Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College [(1962) Supp. 2 SCR 144]. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.
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> 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 subjudice, 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."

12. We are aware that the subsequent decisions of the Hon'ble Supreme Court have extended the ambit of the one time exercise intended in the Uma Devi case. We quote here from a recent judgment in **Union of India** vs. **Sant Lal and others** (CIVIL APPEAL NOS.175-176 OF 2019 (@SLP(C) NOS.37798-37799 OF 2013) :-

> ".....The directions issued in Uma Devi have been considered by subsequent benches of this Court. In State of Karnataka v. M L Kesari9, a two-judge bench of this Court held that the "one-time measure" prescribed in Uma Devi must be considered as concluded only when all employees who were entitled for regularisation under Uma

Devi, had been considered. Justice R V Raveendran, who wrote the opinion of the Court, held:

"9. The term "one-time measure" has to be understood in its proper perspective. This would normally mean that after the decision in Umadevi, each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad hoc employees who have been working for more than ten years without the intervention of courts and tribunals and subject them to a process verification as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularise their services.

10. At the end of six months from the date of decision in Umadevi, cases of several daily-wage/ad hoc/casual employees were still pending before courts. Consequently, several departments and instrumentalities did not commence the one-time regularisation process. On the other hand, some government departments or instrumentalities undertook the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered in terms of para 53 of the decision in Umadevi, will not lose their right to be considered for regularisation, merely because the one-time exercise was completed without considering their cases, or because the six-month period mentioned in para 53 of Umadevi has expired. The one-time exercise should consider all daily-wage/ad hoc/casual 9 (2010) 9 SCC 247 10 employees who had put in 10 years of continuous service as on 10-4-2006 without availing the protection of any interim orders of courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of Umadevi, but did not consider the cases of some employees who were entitled to the benefit of para 53 of Umadevi, the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one-time exercise will be concluded only when all the employees who are entitled to

be considered in terms of para 53 of Umadevi, are so considered.

11. The object behind the said direction in para 53 of Umadevi is two-fold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi was rendered, are considered for regularisation in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on dailywage/ad hoc/casual basis for long periods and then periodically regularise them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10- 4-2006 [the date of decision in Umadevi] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation. The fact that the employer has not undertaken such exercise of regularisation within six months of the decision in Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularisation in terms of the above directions in Umadevi as a one-time measure." (Emphasis supplied)"

13. The fact remains that in the case before us, the respondents have not done anything either to regularize the services of the applicant or to fill the vacant post though regular appointment, and have thus definitely not been fair in their dealing with the applicant, forcing him to approach the Hon'ble High Court. In the absence of any scheme, and in the light of the clear dictum of the Hon'ble Supreme Court in the Uma Devi Case, in paragraph 43 of that judgment, we

are not able to mandate the respondents to appoint or regularize the applicant forthwith. However, we would be failing in our duty, if we do not direct the respondents to take immediate necessary action on the applicant's request to appoint him against a vacant post/ regularize his services, following the letter and spirit of the Uma Devi judgment, and we hereby direct them do so. This should be done in the light of the applicant's more than 3 decades long engagement as a casual driver (admitted by the respondents) against any of the regular vacancies (not denied by the respondents). Appropriate orders on this matter should be passed within 6 months from the date of receipt of a copy of this order.

14. The T.A. is disposed of accordingly. There would be no order as to the costs.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

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