

**CENTRAL ADMINISTRATIVE TRIBUNAL**

**AHMEDABAD BENCH**

**OA No.211 of 2014**

**Dated this the 28<sup>th</sup> day of June, 2021**

**CORAM:**

**Hon'ble Sh. Jayesh V. Bhairavia, Member (J)**

**Hon'ble Sh. A.K. Dubey, Member (A)**

1. Shri Pravinbhai,  
Son of Shri Kanaiyesing Rajput,  
Age:41 years,  
Residing at C/o.7/152, Vasant Rajabnagar,  
Municipal Slum Quarters,  
Behrampura, Ahmedabad – 380 022.
2. Shri Maheshbhai,  
Son of Shri Maganbhai Parmar,  
Age:34 years,  
Residing at C/o.7/152, Vasant Rajabnagar,  
Municipal Slum Quarters,  
Behrampura, Ahmedabad – 380 022.
3. Shri Krishnakant,  
Son of Shri Gogjibhai Mori,  
Age:54 years,  
Residing at C/o.7/152, Vasant Rajabnagar,  
Municipal Slum Quarters,  
Behrampura, Ahmedabad – 380 022.
4. Shir Bharatkumar,  
Son of Shri Purshottambhai Rathod,  
Age 43 years,  
Residing at C/o.7/152, Vasant Rajabnagar,  
Municipal Slum Quarters,  
Behrampura, Ahmedabad – 380 022.
5. Shri Triloksingh,  
Son of Shri Mulsingh Rajput,  
Age:32 years,  
Residing at C/o.7/152, Vasant Rajabnagar,  
Municipal Slum Quarters,  
Behrampura, Ahmedabad – 380 022.

6. Shri Mansingh,  
Son of Shri Rajusinh Rawat,  
Age:39 years,  
Residing at C/o.7/152, Vasant Rajabnagar,  
Municipal Slum Quarters,  
Behrampura, Ahmedabad – 380 022.

7. Shri Gordhan,  
Son of Shri Motilal Solanki,  
Age:38 years,  
Residing at C/o.7/152, Vasant Rajabnagar,  
Municipal Slum Quarters,  
Behrampura, Ahmedabad – 380 022.

... Applicants

(By Advocate: Shri M.S.Trivedi)

1. Union of India, through  
The Director General,  
National Institute of Fashion Technology,  
NIFT Campus, Kauz Khas,  
Nr.Gulmohar Park,  
New Delhi – 110 016.

2. The Registrar,  
National Institute of Fashion Technology,  
NIFT Campus, GH Road,  
Gandhinagar – 382 007.

.... Respondents

(By Advocate :Shri Joy Mathew)

**ORDER (ORAL)**

**Per Dr.A.K.Dubey, Member (A)**

1. The applicants have filed this OA seeking following reliefs:-
  - “(A) That, the Hon’ble Tribunal be pleased to allow this petition.*
  - (B) That, the Hon’ble Tribunal, further be pleased to hold/declare that inaction on the part of the respondents not taking decision on applicants’ representation dated 1.8.2013 in pursuant to directions of the Hon’ble Tribunal Court dated 23.7.2013 as well as communication dated 6.3.2014 of the respondents.*
  - (C) That, the Hon’ble Tribunal, further be pleased to quash and set aside action on the part of the respondents not giving equal pay/wages to the applicants at par with regular attendants of the respondents, on the basis of principle of equal pay for equal work.*
  - (D) Such other and further relief/s as may be deemed just and proper in view of the facts and circumstances of the case may be granted.”*
2. The applicants were initially engaged by the respondents on daily wage basis. Subsequently they were engaged through placement agency. Vide decision dated 14.10.2008, the Executive Council of respondents decided to consider regularization of the services of those employees who were on daily wages or engaged through placement agency and had rendered a minimum of 5 years’ service, after evaluation of their performance (minutes of EC at Annex.A/3). However, the applicants’ candidature was not accepted for regularization. They approached the Hon’ble High Court by filing SCA Nos.11695/2013 and 11700/2013, in which Hon’ble High Court passed common order dated 23.07.2013 and granted liberty to the applicants to file appropriate applications with respondents, and in the event of applicants filing their

representation, respondents would consider the same within four months from the date of receipt of the order. Accordingly, the preferred a detailed representation dated 01.08.2013. Advocate of one of the applicants herein (Trilok Singh) issued a letter to the respondent No.1 requesting him for regularization of his services in view of the Hon'ble Gujarat High Court's order in SCA No.11694/2013 and also requesting for an opportunity of personal hearing (Annexure A/2). Subsequent to it, the respondent No.2 communicated to the advocate for the applicant to furnish certain details in this matter ( letter dated 06.03.2014 Annex.A/1) however no decision was taken.

- 2.1. Vide letter dated 18.10.2010, the respondent No.2 furnished certain information to respondent No.1 (Annex.A/4) with regard to details of service of the applicants. The applicants' contentions that vide letter dated 03.10.2008 (Annex.A/5), the respondent No.2 had furnished certain information to the 1<sup>st</sup> respondent which happened to be before the decision of the executive council of the respondent No.1. This letter clearly stated that the attendants through placement agency were engaged against the sanctioned vacant posts.
- 2.2 In this background, the applicants contended that they were not regularised despite the fact that they had requisite length of service in view of the decision of the executive council, and they were denied their admissible right and hence the petition.
3. Respondents have furnished their reply in which they have contended that the applicants were engaged through the placement agency and there was no contract between the

applicants and the respondents and the placement agency is not a party in this application. The applicants being contract labourers engaged by a contractor for the specified period cannot be deemed to be holding civil posts and therefore, there is no “employer, employee relation” between the applicants and the respondents. The terms of this contract are at Annex.R-1. From this point of view, the respondents argued that this applicant is not maintainable.

4. The direction of Hon’ble High Court was to consider the representation of the applicants and the Hon’ble High Court had very clearly stated that it had not expressed any opinion on the merits of the case.
5. Respondents have argued in their reply that the executive council was only a recommending body and final decision had to be taken by the Board of Governors and Board of Governors in this case had decided to regularise the services of only those attendants who had been working for more than 10 years on contract basis (including daily wages) and it was a one time measure. The applicants had not rendered service for 10 years or more on the date of that order. Hence their regularization was out of question. The stipulation of minimum 10 years service is evident from the circular dated 22.10.2008 (Annex.R/2).
6. Heard the counsel for both the parties. Learned counsel for the applicants relied on the observation of Hon’ble Apex Court in Civil Appeal No.1007 of 2021 in the case of University of Delhi vs. Delhi University Contract Employees’ Union & Ors. decided on 25.03.2021. He also relied on the decision in Umadevi’s case to

differentiate between illegally appointed persons vs. irregularly appointed persons, to drive home the point that the applicants herein were not illegally appointed and therefore they were entitled to compete for regularization.

7. Learned counsel for the respondents Mr.Joy Mathew, argued that the representation of the applicants was not considered. The Hon'ble High Court's direction was to consider the representation, if the applicants had filed; it had not disposed the petition on merits. Pursuant to the direction of the Hon'ble High Court, the representation of the applicants was considered but not allowed. Further, respondents had communicated to the advocate of the applicants vide its letter dated 01.04.2014 (Annex.R-3) and this communication was never challenged by the applicants. Therefore, the prayer by the applicants that the respondents had not taken any decision on the applicants' representation dated 01.08.2013 was not maintainable in view of the fact that the representation was rejected vide communication at Annexure R/3. In this backdrop, the second prayer about equal pay for equal work was not maintainable at all. At any rate, the applicants were on contract through placement agency and this contract was with the agency and not with the individuals. Learned counsel for the respondents also raised the issue of jurisdiction over the matter involving the placement agency and the contract for supply of more power vide contract dated 21.09.2011 (Annex.R-1). There was a need to differentiate between the contract workers and contractors workers, he argued. In this case, the contractor was not a party. He relied on the decision of the Hon'ble Supreme

Court in Ram Singh & Ors vs. Union Territory of Chandigarh & Ors dated 7.11.2003 in Civil Appeal Nos.3166/2002, 3200/2002 and 3167/2002. It had dismissed the appeal against the order of this Tribunal's Chandigarh Bench, rejecting the plea for regularization.

8. After carefully listening to the arguments of the counsel for both the parties and having gone through the documents and papers presented before us, it is clear that although the executive council of the respondent No.1 had recommended for regularization of daily wages/contract workers with a service of 5 years after their evaluation, the governing body did not regularize the service of those attendants engaged on daily wages or through placement agency. The decision making body, i.e., Board of Governors had decided that those having more than 10 years of service alone could be considered for regularization. The applicants did not fulfil the criteria with regard to the length of the service that was being considered for regularization. Applicants' counsel has relied on Hon'ble Apex Court's order in Civil Appeal No.1007/2021 passed on 25.03.2021. We have respectfully gone through this order and find that in the facts and circumstances of this particular case, it is of little help. In fact, we have to keep in mind the judgment of Hon'ble Supreme Court in State of Karnataka vs. Uma Devi & Ors. (AIR 2006 SC 1806) where Hon'ble Apex Court has deprecated the practice of regularization. We also take guidance from the order of Hon'ble Principal Bench of this Tribunal in OA No.3919/2014. In the light of these judgments/orders, we find that

the OA lacks merits and the applicants have not been able to make out a case for themselves. OA is therefore dismissed.

**(A.K.Dubey)**  
**Administrative Member**

**(Jayesh V.Bhairavia)**  
**Judicial Member**

SKV