

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.886 of 2011

Cuttack this the 14th day of November, 2017

CORAM:

THE HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)
THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Rabindra Sahoo, aged about 33 years, S/o. Premananda Sahoo,
At-Rathijema (Charimania), PO-Balakati, PS-Baliana, District-
Khurda

...Applicant

By the Advocate(s)-M/s.B.S.Tripathy

M.K.Rath

J.Pati

M.Bhagat

-VERSUS-

Union of India represented through:

1. The Chief Post Master General, Orissa Circle,
Bhubaneswar, District-Khurda
2. The Superintendent, Postal Store Depot, Bhubaneswar,
At/PO-Satyanagar, District-Khurda
3. The Manager, Postal Stores Depot, Bhubaneswar, At/PO-
Satyanagar, District-Khurda

...Respondents

By the Advocate(s)-Mr.B.Swain

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant claims that he was engaged as a temporary daily rated labourer from 6.6.1999 under the Superintendent, Postal Store Depot, Bhubaneswar (Res.No.2) and was entrusted with the work of supplying drinking water, cleaning of office and gardening. His initial wage was Rs.35/- per day and was raised to Rs.40/- per day with effect from 1.6.2001 and

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Rs.50/- per day from 26.10.2004. On 28.6.2001, Superintendent, Postal Store Depot had issued a certificate stating that the applicant is taking up petty job like temporary daily labour in various places including Postal Department to earn his daily food and clothing and that he could not be allowed to work in a regular post due to administrative difficulties. The applicant claims that his services were discontinued from 7.1.2011 although there is work and there is also vacancy. He is aggrieved that instead of taking steps to regularize him, the Respondents have disengaged him without any reason and without issuing any order to that effect. The applicant had earlier filed O.A.No.58 of 2011 which was disposed off on 11.5.2011 by this Tribunal with a direction to Respondent Nos. 2 and 3 to dispose off any representation if filed by the applicant. Accordingly, the applicant submitted a representation on 26.5.2011 to Respondent No.2 with a copy to the Manager, Postal Store Depot, Bhubaneswar (Respondent No.3). The Respondent No.2 passed an order on 25.8.2011 rejecting the request of the applicant. The applicant has filed this O.A. challenging the said order and praying for the following reliefs:

- i) To pass appropriate orders quashing the order dated 25.08.2011 in Annexure-A/4,
- ii) To pass appropriate orders directing the Respondents to regularize the services of the applicant in any Group-D post.

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- iii) To pass appropriate orders directing the Respondents to grant all the service and consequential benefits in favour of the applicant.
- iv) To pass such further order/orders as are deemed just and proper in the facts and circumstances of the case and allow this O.A. with cost.

2. The applicant has based his prayer mainly on the grounds that although there were 10 vacancies in Group-D post under the Postal Store, Depot, Bhubaneswar with four vacancies under the O.C. category with effect from 1.1.2011, his case has not been considered. Moreover, the applicant has worked for more than 11 years and the law stipulates that services of an employee who has worked for more than 10 years should be regularized by framing an appropriate scheme. The applicant is aggrieved that he is earning only Rs.50/- per day which is quite low in comparison with regular employees. He is also aggrieved that his services have been terminated by an oral order earlier and the impugned order dated 25.8.2011 is illegal, arbitrary and contrary to the sound principles of law and violative of Articles 14 and 16 of the Constitution of India. He has become over aged/age barred for any other employment and therefore, he deserves to be regularized under the Respondent No.2.

3. The Respondents in their counter-reply filed on 1.3.2012 have contested the claim of the applicant that he is a temporary daily rated worker working under the Respondent No.2. On the other hand, the Respondents claim that the applicant was

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engaged purely as an outsider to perform the work of supplying water to the staff of Postal Store Department and for maintaining garden. No written order was issued to him by the Respondent No.2 or by any other officer engaging him as daily rated worker. His services were discontinued in view of the instructions contained in the Directorate O.M. No.20/2008-PCC dated 24.09.2010 in which it was stated that the work of cleaning of offices, gardening etc. are to be done by the present Multi Tasking Staff (MTS). Respondent No.2 has passed the impugned order dated 25.8.2011 in compliance of the orders of this Tribunal in O.A.No.58 of 2011 and informed the applicant about the Department's inability to regularize his services. The O.A. filed by the applicant is therefore devoid of merit and should be dismissed.

4. Applicant in his rejoinder dated 27.8.2012 submits that although no written order was issued for his engagement, he has served the Department for more than 11 years. The O.M. dated 24.9.2010 (A/4) is nothing but an instruction redesignating the erstwhile Group-D employees as MTS. There is no instruction to disengage the daily rated labourer, such as the applicant. Therefore, the O.A. should be allowed and his services should be regularized.

5. The applicant had filed M.A.No.30 of 2014 on 9.1.2014 in which he submitted that as per information received by him from the Department under the R.T.I. Act, four vacancies are

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lying vacant under the O.C. category. He has therefore, prayed for a direction to the Respondents to regularize him in one of those four vacancies due to his past experience in the Department. He has prayed for an amendment to the O.A. by inserting Para-4.10 in the O.A. and incorporating that he should be given a job in one of the four vacancies under the O.C. category out of the total number of 10 vacancies of MTC Group-C.

6. The Respondents have filed a revised counter on 4.8.2015 reiterating that there is no specific rule for regularization of services of any outsider engaged for doing work of petty nature for one hour or less in a day. On the other hand, the instructions issued in the Directorate O.M.No.1-20/2008-PCC dated 24.9.2010, petty works like cleaning of office and gardening are to be entrusted to MTS. Therefore, the Respondents have acted in a legal manner in discontinuing the service of the applicant.

7. Both the learned counsels were heard on 31.10.2017 and the matter was reserved for orders. During the argument, the learned counsel for the applicant pleaded that the applicant's case falls within the scope of the judgment of the Hon'ble Supreme Court in Secretary, State of Karnataka vs. Uma Devi [(2006) 4 SCC 1]. The issue to be adjudicated in the present O.A. is whether the applicant's services can be regularized as per law. Although the applicant claims that he was engaged as a

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temporary daily rated labour from 6.6.1999, there is no letter of appointment in that post. He has relied upon the certificate issued by the Superintendent, Postal Store Depot, Bhubaneswar dated 28.6.2001. However, the said certificate only states that the applicant had taken up petty job like temporary daily labour in various places including Postal Department to earn his daily food and clothing. He was engaged as an outsider daily labourer in the Postal Store Depot on various occasions. This certificate does not prove that the applicant has been engaged on continuous basis as a casual labourer. The Respondents have argued that the applicant was working as an outsider to serve water to the staff and doing other petty works in postal Store Depot, Bhubaneswar for one hour daily for some period from 6.6.1999 to 6.1.2011 as and when required and he worked only on verbal order. As per the instructions issued in O.M. dated 24.9.2010 of the Department of Posts, Ministry of Communications, among the duties prescribed for MTS, Group-C, clause(f) provides as under:

“(f) Watch and ward/caretaker duties, opening and closing of rooms, general cleanliness and upkeep of section/unit/office including dusting of furniture, cleaning of building, rooms, fixtures; upkeep of parks, lawns, potted plants, etc.”.

8. It is obvious that with the engagement of MTS the need for daily rated labourers for the cleaning of the office and upkeep of parks and lawns etc. is no longer sustainable. The

applicant therefore, cannot claim his continuation and regularization as a matter of right.

9. The applicant however, has relied upon the judgment of the Hon'ble Supreme Court in Secretary, State of Karnataka vs. Uma Devi (supra). Paragraph-44 of the judgment reads as follows:

"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 onetime 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.

10. It is quite clear from the judgment that only as a onetime measure those casual labourers who had been engaged against the sanctioned post are entitled for regularization. The

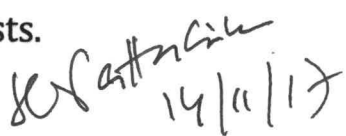
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applicant having been given work on oral order and without being selected through regular process of selection and having no proof of working against a sanctioned post, obviously, does not come under the dispensation granted by the judgment in Umadevi's case. The applicant therefore has no legal right to claim for regularization.

11. In view of the above, the O.A. filed by the applicant is dismissed as devoid of merit. No order as to costs.


(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

BKS


(S.K.PATTNAIK)
MEMBER(J)