

21

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION No. 249/2009

Date of Order 24.05.2012

(Reserved on 15.02.2012)

**HON'BLE MR. SUDHIR KUMAR, MEMBER (A)
HON'BLE MR. V. AJAY KUMAR, MEMBER (J)**

Shri Arun, S/o Late Shri Hans Raj,
Aged about 31 (14.01.78) years,
R/o House No. 55, Prathviopura,
Rasala Road Jodhpur,
Working as Peon (Casual Labour),
CIT II, Jodhpur.

.. Applicant

(By Advocate : Shri Kamal Dave)

Versus

1. Union of India,
Through the Secretary,
Ministry of Finance,
Department of Revenue,
Government of India,
New Delhi.
2. Chief Commissioner of Income Tax,
Central Revenue Building,
Bhagwan Das Road,
Jaipur.
3. Chief Commissioner of Income Tax,
Paota 'C' Road, Jodhpur. .. Respondents

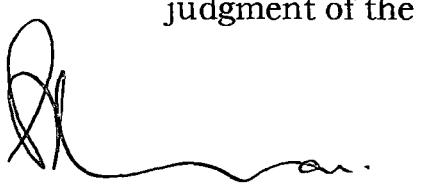
(By Advocate : Shri Varun Gupta)

O R D E R

Per Mr. Sudhir Kumar, Member (A)

The applicant before us is a Casual Labour employee of the Respondent Department, under Respondent No.2 and Respondent No.3, and has preferred this OA not assailing any specific order

pre-judicial to his interest, but on the grounds of hostile discrimination by the respondent department in delay in considering his case for regularization. His submission is that he has been working against a sanctioned Group D post of the respondent department from 15.5.1996, and has, therefore, spent more than 10 years of service continuously as a casual employee. He has further submitted that pursuant to the decision of the respondent department for regularization of casual workers, who have been serving for 10 years or more continuously, in the light of the implementation of the judgment of the Hon'ble Apex Court in the case of Secretary, State of Karnataka Vs. Uma Devi; 2006 (3) SCC (L&S) 753, the department has already undertaken an exercise in respect of other similarly situated persons. However, the respondent department has considered his case to be that of a part time employee, and not that of a full time Casual Labourer, and appears to have gone by the interpretation that part time workers do not fall within the category of Casual Labourers entitled for regularization under the Scheme of the Department. The applicant has submitted that he had entered the department initially on the emoluments of Rs.32/- per day, which subsequently underwent revision to Rs.44/-, Rs. 60/-, Rs. 68/-, Rs.84/-, Rs.164/-, and that presently the applicant is drawing Rs.222/- per day emoluments from 2008 onwards. He submitted that he has approached this Tribunal apprehending hostile discrimination, even though his case is fully covered under the judgment of the Honb'le Apex Court in Uma Devi's case (supra).



23

2. In support of his arguments that the law allows the part time workers also to be regularized in service, the applicant has cited the case of U.P. Gram Panchyat Adhikari Sangh v. Daya Ram Saroi and Others: (2007) 2 SCC 138, wherein the Hon'ble Apex Court has held the part time Tubewell Operators also being eligible for the purpose of regularization. He has taken the further ground that he is being paid wages regularly with bonus and other perquisites, and now when once a preference for regularization is extended to part time workers, his case would be covered within the Scheme of regularization. He had not filed any representation before the respondents and had directly approached the Tribunal, since he felt that the regularization process is going to be completed, and he may be left out of the process of regularization. In the result, he had prayed for directions upon the respondents to regularize his services as a Group D employee of the respondent department, in consonance with the Scheme framed for implementation of the Hon'ble Apex Court directions, since he has spent more than 10 years continuously, and further directions that the respondents may be directed not to terminate the services of the applicant in the meanwhile.

3. On the date of the admission of the case itself on 13.11.2009, interim orders were passed that if the applicant is still in service, status quo as on that date will be maintained, and the Interim Relief was thereafter continued from time to time.



724

4. The case was heard on 2.9.2011 and reserved for orders but was released, and kept for re-hearing, and was finally heard and reserved for orders on 15.02.2012.

5. In their reply written statements filed on 12.03.2010, the respondents had denied the contentions of the applicant and had stated that the decision of regularization of the part time employees is a policy decision, and this Tribunal may not like to interfere in such a policy decision. It was further submitted that the applicant cannot claim regularization as a matter of right, and while considering the cases of regularization of long standing Casual Labourer employees, the case of the applicant will also be considered as per the seniority and length of service.

6. Heard. The learned counsel for the applicant argued the case on the lines of the submissions in the pleadings as discussed above, and vehemently argued that the case of the applicant was fully covered within the directions of the Hon'ble Apex Court in the Uma Devi's case (supra). The learned counsel for the respondents reiterated the stand of the department, as cited above.

7. In this case, it is a fact that the applicant was appointed only as a Casual Labourer, and he has himself given the details of the gradual increases in his daily wage emoluments over the years. It is also admitted by the respondents that the Scheme for regularization of all eligible employees, whose cases fall within the directions of the Hon'ble Apex Court in Uma devi's case (supra),



23

are already under consideration by the respondent department for the purpose of regularization. The learned counsel for the respondents argued that no decision has yet been taken for the part time workers to be regularized, since such part time workers were not appointed on ad hoc basis against any newly sanctioned posts, and did not fall within the sanctioned scheme of regularization.

8. We have considered the facts of the case. The respondent department is already undertaking the process of regularization of all eligible Casual Labourer employees of long standing in their department as per Uma Devi's case (supra). The Hon'ble Apex Court had held in the case of Commissioner Corporation of Madras vs. Madras Corporation Teachers Mandram: 1977 1 SCC 253 that Courts cannot direct the Government to create posts or to change its policy. Further, in the case of Union of India v. T.P. Bombhate: (1991) 3 SCC 1, it was held by the Hon'ble Apex Court that Courts cannot compel the Government to change its policy which involves financial burden on it. Further, in the case of State of U.P. Vs. Ajay Kumar: (1977) 4 SCC 88, the Hon'ble Apex Court had held that there must exist a post, and either administrative instructions or statutory rules must be ⁱⁿ operation to appoint a person to the post working on a daily wage basis, otherwise the Courts cannot direct for regularization of his services.

9. In such circumstances, since the department itself is in the process of undertaking an exercise of regularization of all those



796

persons whose cases are covered within the ambit of the Hon'ble Apex Court directions in Uma Devi's case (supra), it does not appear necessary for this Tribunal to issue any directions at this stage, to frame a particular policy for a particular person, who may or may not be covered under the law as laid down by the Hon'ble Apex Court in Uma Devi's case.

10. Therefore, the OA is disposed of, but with directions to the respondents to examine the case of the applicant expeditiously, within the frame work of the Scheme drafted by the department for implementing the directions of the Hon'ble Apex Court in Uma Devi's case (supra). There shall be no order as to costs. If the applicant is still aggrieved thereafter on any account, he shall be at liberty to seek redressal of his grievance against the fresh cause of action that will accrue to him then.

V-2-aumon

(V. Ajay Kumar)
Member (J)



(Sudhir Kumar)
Member (A)

cc.

Received
7/10/12
2012

R/C
7/10/12
2012