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**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

Original Application No.78/2010

Date of decision:28.11.2011

**HON'BLE Dr. K.B. SURESH, JUDICIAL MEMBER,  
HON'BLE Mr. SUDHIR KUMAR, ADMINISTRATIVE MEMBER.**

Nena Ram S/o Shri Khanga ji, aged 39 years, Ex-part time Water Man, Head Post office Jalore; resident of 8, Shastri Nagar Colony, Jalore.

: Applicant

**Mr. Vijay Mehta, counsel for applicant.**

**Versus**

1. Union of India, through the Secretary, Ministry of Communication (Department of Post) Sanchar Bhawan, New Delhi.
2. Head Post Master, Head Post Office, Jalore
3. Senior Superintendent of Post Offices, Sirohi.

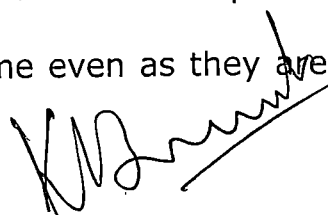
: Respondents

**Mr. M.S. Godara, proxy counsel for  
Mr. Vinit Mathur, counsel for respondents.**

**ORDER (ORAL)**

**Per Dr. K.B. Suresh, Judicial Member**

We have heard both the counsels in great detail and examined the pleadings. Going by the Additional Affidavit and documentations produced by the respondents, it would appear that infact the applicant had been working in the respondent department as a part time Water Man, but even though it is not clear as to whether he was working in the year 1986 onwards as has been claimed by him. We have earlier directed the respondents to produce the acquittance register and payment register from the year 1986 to 2010 in respect to the applicant, which would establish that infact payment has been made to him on a particular date onwards. But in spite of their efforts, they have not produced the same even as they are the custodians of it

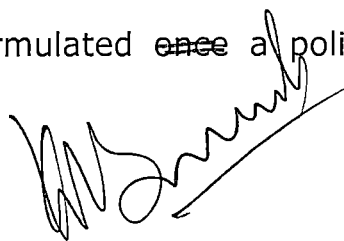




and have a bounden burden to produce the documents or <sup>suffer</sup> ~~super~~ adverse presumptions. he.

2. But now they would admit that the monthly payment had been given to the applicant, and through their reply they submit he. that the applicant himself voluntarily terminated his own service, and it is not possible for them to appoint a contingent paid employee on a regular basis, as he was engaged purely on a daily basis wages. We ~~have~~ <sup>have</sup> gone through all the connected documents, and heard both the counsels, and found that in fact according to the additional affidavit, the respondents submit he. that in fact the applicant had been working with them, and the earlier contentions may not be factually correct. Since the respondents now admit this position, we have decided to leave it at that.

3. The Article 39 of the Constitution of India stipulates that the policy of the State shall be formulated in accordance with the directive principles, and also that the citizens, men and women equally, have the right to an adequate means to livelihood, that the health and strength of workers are not abused, and that citizens are not forced by economic necessity to enter avocations unsuited to their strength. If the applicant was working with the respondents for a quarter of a century and more, as stated by him, then by virtue of that alone, he acquires a right to be considered for continued employment, unless other significant matters he. do not interdict it. The Articles 41, 42 and 43 of the Constitution of India are also significant in the present matrix. We are advised that the Hon'ble Apex Court, in Uma Devi's case and other connected cases, which formulated ~~once~~ <sup>once</sup> a policy that he. a person




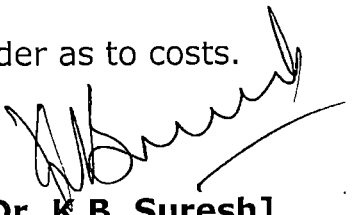
completes 10 years or more in service on daily wages, his case may be considered for continued employment. Therefore, in view of ~~directive~~ principles formulated by the Hon'ble Apex Court, the following orders are passed:-

- (i). The applicant shall be taken back in service as on 01<sup>st</sup> December, 2011, on the post which he was holding earlier.
- (ii) Since he was not working in the interregnum period, therefore, he would not be entitled for any wages for that period.
- (iii) The respondents shall consider whether it is possible under the Rules to regularize his services, and, after hearing him, pass an appropriate order.

4. At this juncture, the learned proxy counsel for the respondents submits that the applicant may be directed to submit a representation for him to be considered for his regularization. We think that it is a reasonable request, and therefore it is allowed. The applicant is directed to submit a representation to regularize his service before the respondents within one month from today, and on receipt of such representation, the respondents shall consider it within three months, and pass a reasoned order, keeping in mind the constitutional matrix. He shall be taken back on work from 1<sup>st</sup> of December, 2011 onwards as usual.

5. The O.A. is allowed as stated above. No order as to costs.

  
[Sudhir Kumar]  
Administrative Member

  
[Dr. K.B. Suresh]  
Judicial Member