CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Jodhpur, this the 20th day of March, 2015

CORAM

Hon'ble Mr. Justice K.C. Joshi, Judicial Member
Hon'ble Ms. Meenakshi Hooja, Administrative Member

Original Application No. 323/2012

Chain Singh s/o Shri Durg Singh, aged 43 years, Casual Labour in 5, FBSU, Air Force, Uttarlai, District Barmer, Resident of Village Laliyon Ki Dhani, Barmer Agore, District Barmer.

.....Applicant

By Advocate: Mr. Vijay Mehta

Versus

1. The Union of India through the Secretary, Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.

2. The Station Commander, 5, FBSU, Air force, Uttarlai, District Barmer

.....Respondents

By Advocate : Ms. K.Parveen

Original Application No. 324/2012

Pokar Ram s/o Shri Mala Ram, aged 43 years, Casual Labour in 5, FBSU, Air Force, Uttarlai, District Barmer, Resident of Village Laliyon Ki Dhani, Barmer Agore, District Barmer.

.....Applicant

By Advocate: Mr. Vijay Mehta

Versus

1. The Union of India through the Secretary, Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.

2. The Station Commander, 5, FBSU, Air force, Uttarlai, District Barmer

.....Respondents

By Advocate : Ms. K.Parveen

Original Application No. 325/2012

Hari Singh s/o Shri Bhool Singh, aged 36, Casual Labour in 5, FBSU, Air Force, Uttarlai, District Barmer, Resident of Village Laliyon Ki Dhani, Barmer Agore,

.....Applicant

By Advocate: Mr. Vijay Mehta

Versus

1. The Union of India through the Secretary, Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.

2. The Station Commander, 5, FBSU, Air force, Uttarlai, District Barmer

.....Respondents

By Advocate : Ms. K.Parveen

ORDER (ORAL)

Per Justice K.C.Joshi

The issues involved in these OAs are identical/similar, therefore, these are being decided by this common order.

2. For the sake of convenience, facts of OA No. 323/2012 are being taken. The applicant in this OA prays for the following reliefs:-

i) The applicant prays that impugned order Ann.A1 may kindly be quashed. It is further prayed that the respondents may kindly directed to grant temporary status to the applicant from the year 1993 with all consequential benefits including salary seniority and all related benefits. In alternate it is further prayed that the respondents may kindly be directed to regularize his services on completion of six months of service with all consequential benefits including salary seniority and all related benefits as per provisions contained in the Model Standing Orders. Any other order, giving relief to the applicant may also be awarded to the applicant with costs.

Similar relief has also been prayed by the applicants in other OAs.

3. Brief facts of the case, as stated by the applicant, are that the applicant was initially appointed as Casual Labour in January, 1991 after due selection and his name was sponsored by the Employment Exchange. His services

the applicant by filing OA no.254/1997 but the same was dismissed by this Tribunal vide order dated 17.8.2001. The applicant alongwith other applicants challenged the same by filing Writ Petition No.977/2002 and vide order dated 6.4.2010, the Division Bench of the Hon'ble High Court quashed the termination of the applicant and the respondents were directed to reinstate the applicant forthwith with continuity in service and payment of 50% of back wages w.e.f. 17.8.2001. The SLP filed by the respondents against the order of the Hon'ble High Court was dismissed vide order dated 20.9.2010. Pursuant to above, the applicant was reinstated and posted in Station Medicare Centre. Since the respondents neither granted temporary status nor his services were regularized alongwith similarly placed casual labours, therefore, he filed OA No.354/1996, which was dismissed vide order dated 17.8.2001. On filing writ petition before the Hon'ble High Court, the Court vide order dated 9.11.2010 while allowing the petition directed the respondents to examine the case of the applicant and other petitioners for grant temporary status and regularization. Thereafter, respondent No.2 vide order dated 20.4.2013 while holding that the applicant was working since 1992 but his continuous service is less than one year, therefore, he is not eligible for grant of temporary status. The applicant has stated that the respondent No.2 has deliberately not mentioned that the applicant was employed as a casual labour in January, 1992 whereas he was appointed in January, 1992 and had completed 240/206 days as required by the Scheme of Grant of Temporary Status. The respondent No.2 vide certificate dated 26.6.1992 (Ann.A/2) appreciated the services of the applicant rendered during the year 1992 wherein wrongly his name has been mentioned as

Model Standing Orders have been made applicable notwithstanding whether any unit organization is industry or not. It has no relevance with the definition of industry, Thus, the Model Standing Orders have been made applicable on the Casual Labour and they govern their service conditions. Para 15 of these orders lays down that a casual workman who has completed six months continuous service in the same establishment or under the same employer shall be brought to the regular strength and his pay shall be fixed in the time scale of pay applicable to the work he has been doing as a casual workman. Undoubtedly, the applicant has completed six months continuous service within the meaning of continuous service as defined in the Model Standing Orders. The applicant further submitted that the Hon'ble Apex Court as also Rajasthan High Court has time and again held that services of a person who has completed 10 years of service should be regularized, but the respondents have not considered the case of the applicant for grant of regularization in the light of these judgments. Therefore, aggrieved of the action of the respondents, the applicant has filed this OA praying for the relief as mentioned above.

4. By way of filing reply, the respondents have denied the claim of the applicant. The respondents have raised preliminary objection submitting the applicants have earlier agitated the matter by filing OA No.254/1997 and OA No.248/2012. According to the respondents, the applicant was employed at irregular intervals from December, 1992 and his continuous service rendered as on 10.9.1993 was less than one year and even less than 250/206 days. The respondents have stated that the applicant is working

Supreme Court while hearing the SLP on 20.9.2010 ordered and issued notice confined to the question of payment of back wages. As directed by the Hon'ble High Court, after due examination by the respondent No.2 in consultation with Air Head Quarters, the applicant was not found eligible for grant of temporary status and reasons of delay in issuing the speaking order after judgment of High Court was that SLP was pending before the Hon'ble Supreme Court . Further the applicant has never completed the period of six months continuously and neither he was under employment of the Air Force rather he was employed on daily wages and w.e.f. 1.4.2012 through Contractor. The question of applicability of Model Standing Order does not arise in the present case. The applicant was not employed on the basis of sponsoring by the Employment Exchange. He was recruited from amongst the local force available in the adjoining area of Air Force Station and no due selection process was adopted, therefore, the applicant is not entitled to any relief.

5. In rejoinder to the reply, the applicant has denied that the OA suffers from res-judicata and also reiterated the submissions made in the OA.

6. In the additional affidavit, the respondents have reiterated their stand about res-judicata and submitted that in view of the law laid down by the Hon'ble Constitution Bench of the Supreme Court in the case of Secretary, State of Karnataka and others vs. Umedevi [(2006) 4, SCC 1], the regularization is grossly illegal and unconstitutional. The respondents have complied with the order of the Hon'ble High Court and since the applicant

conditions laid down in 'Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1993, his service cannot be regularized. Therefore, the action of the respondents is perfectly legal.

7. The applicant has also filed additional affidavit to the additional affidavit filed by the respondents. The applicant has stated that OA no.254/1997 was filed challenging the termination of the applicant and his other colleagues which was dismissed and Hon'ble High Court vide order dated 6.4.2010 passed in DB CWP No.977/2002 quashed the order passed by this Hon'ble Tribunal in OA no.254/1997 and directed the respondents to forthwith reinstate the applicant and others with continuity of service with 50% back wages w.e.f. 17.8.2001. So far as averment regarding certificate Ann.A/2 it is submitted that the applicant has filed a typed copy of the certificate and without seeing the original of the same, the respondents have submitted that the same is false and fabricated and does not have any valid signature of the concerned authority. The applicant has denied that the he has not completed six months continuously and has not been under employment of Air Force and was not working under the terms and conditions of the Air Force. The applicant has also denied that he has filed many cases before this Tribunal and Hon'ble High Court and submitted that he has filed the present OA challenging the order dated 20.4.2012 and no other OA has been filed challenging this order. Therefore, the OA deserves to be allowed.

8. The respondents have further filed additional affidavit to the

9. Thereafter the applicant has further filed additional affidavit to the additional affidavit.

10. Thereafter the respondents have further filed additional affidavit to the further additional affidavit filed by the applicant.

11. Heard both the parties. During the course of arguments, the counsel for applicant has produced before the Tribunal, order dated 9.11.2010 passed in DB Civil Writ Petition No. 2336/2003 by the Hon'ble High Court and submitted that the Hon'ble Division Bench of the High Court has in the above writ petition in para 7(1) and 7(2) has directed as under:-

"7.....

(1) the respondent No.2 i.e. Base commander 5 FBSU Barmer would examine the cases of each writ petitioner as to whether each of any of them (five in number) is entitled to claim any benefit of the Scheme and if so how and on what basis ?

(2) In case if it is found on verification of their service record that they or any of them is eligible to get the benefit of the scheme then in such event, he will be accordingly so granted the benefit as may be permissible to him under the scheme as per law."

12. Counsel for the respondents submitted that pursuant to the aforesaid order of the Hon'ble High Court, the case of the applicants was considered but since the scheme was notified vide DOP&T OM dated 10th September, 1993 and the temporary status would be conferred to those casual labourers who were in employment on the date of issue of the OM and who have rendered a continuous service of at least one years, which means that they must have engaged for a period of at least 240 days (206) days in the case of

considered as they have less than one year service/not employed as on 10th September, 1993.

13. Counsel for the applicants has drawn our attention to the letter of appreciation Ann.A/2 in OA No.323/2012 and submitted that applicant in this OA has been working in the respondent department since January, 1992 and he is entitled for regularization as per the scheme of 10th September, 1993, but the respondents are denying the fact, therefore, the applicant has to again approach this Tribunal.

14. It would be relevant to mention here that the Hon'ble Supreme Court in the case of State of Karnataka and ors. Vs. M.L.Kesari and ors. (2010) 9 SCC 247 has observed as under:-

> "4. The decision in State of Karnataka v. Umadevi was rendered on 10.4.2006 (reported in 2006 (4) SCC 1). In that case, a Constitution Bench of this Court held that appointments made without following the due process or the rules relating to appointment did not confer any right on the appointees and courts cannot direct their absorption, regularization or re-engagement nor make their service permanent, and the High Court in exercise of jurisdiction under Article 226 of the Constitution should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment had been done in a regular manner, in terms of the constitutional scheme; and that the courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities, nor lend themselves to be instruments to facilitate the bypassing of the constitutional and statutory mandates. This Court further held that a temporary, contractual, casual or a daily-wage employee does not have a legal right to be made permanent unless he had been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution. This Court however made one exception to the above position and the same is extracted below :
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> "53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in

para 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 the 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 abovereferred 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 the 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. ...."

5. It is evident from the above that there is an exception to the general principles against `regularization' enunciated in Umadevi, if the following conditions are fulfilled :

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

Umadevi casts a duty upon the concerned Government or instrumentality, to take steps to regularize the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of courts or tribunals, as a one-time measure. Umadevi, directed that such one-time measure must be set in motion within six months from the date of its decision (rendered on 10.4.2006).

6. 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

working against vacant posts and possess the requisite qualification for the post and if so, regularize their services.

7. 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 regularization 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 regularization, 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/adhoc/those 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.

8. 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 regularization in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad-hoc/casual for long periods and then periodically regularize 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 regularization. The fact that the employer has not undertaken such exercise of regularization 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 regularization in terms of the above directions in Umadevi as a one-time measure."

15. Considered the rival contentions of the parties and perused the record. The Hon'ble Division Bench of the High Court vide order dated 9.11.2010 has held that in case if on verification of their service records the applicant are found eligible to get the benefit of the scheme then they will accordingly be granted the benefit as may be permissible to him, but on the face of Ann.A/2 letter in OA no.323/2012, it appears that the respondents have not considered the cases of the applicants properly. The Hon'ble Apex Court in the case of State of Karnataka vs. Uma Devi and in the case of State of Karnataka vs. M.L.Kesari (supra) has already settled the controversy in issue. Accordingly, the respondents are directed to verify their record again and pass appropriate orders in the light of the ratio decided by the Hon'ble Apex Court (supra) and in case the applicants are found eligible for the benefits as prayed in this OA, the same may be granted to them within a period of four months from the date of receipt of a copy of this order.

16. All the OAs stand disposed of accordingly with no order as to costs.

(MEENAKSHI HOOJA)
Administrative Member

(JUSTICE K.C.JOSHI)
Judicial Member

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