

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

Original Application No.397/2013

Jodhpur this the 04th day of March, 2014

CORAM :

Hon'ble Mr. Justice Kailash Chandra Joshi, Member (J)

1. Mahesh Vyas S/o Somdutt Vyas, by caste Brahmin, aged 39 years, R/o Vyasji Ki Pole, Rakhi House, Jodhpur.
2. Sanjay Das S/o Ramchander Das, by caste Tamta, aged 39 years, R/o 9/26 DDP Nagar, Madhuban Colony, Jodhpur.
3. Ghanshyam Yadav S/o Shri Ranglalji, by caste Yadav, aged 36 years, R/o Plot No.134, K.K. Colony, Basni, Jodhpur.
4. Balbir Singh S/o Shri Gordhan Singh, by caste Rajput, aged 38 years, R/o 4-I-4, Kudi Bhagtasni, Jodhpur.
5. Manoj Sharma S/o Shri Jawaharlal Sharma, by caste Brahmin, aged 34 years, R/o 7/190, K.K. Colony, Basni, Jodhpur.
6. Arjun Singh S/o Shri Achal Singh Solanki, by caste Rajput, aged 29 years, R/o House No.36, Imratia Bera, Paota C Road, Jodhpur.
7. Jitendra Vaishnav S/o Shri Laldas Vaishnav, by caste Brahmin, aged 22 years, R/o Village Khari Kalla, Post Palasni, District Jodhpur.
8. Satish Singh S/o Shri Avdesh Narayan Singh, by caste Rajput, aged 39 years, R/o 5-C, 123 Kudi Bhagtasni Housing Board, Jodhpur.

Presently all are working in DMRC, Jodhpur.

.....Applicant

(Through Adv. Mr. K.K. Vyas)

Versus

1. Union of India through Secretary, Ministry of Health and Family Welfare, Government of India, New Delhi.
2. Indian Council of Medical Research, B Ramlingswamy Bhawan, Ansari Nagar, Post Box 4911, New Delhi-110029.
3. Director, Desert Medicine Research Centre, New Pali Road, Jodhpur.
4. Project Manager, National Project Construction Co-operation Limited Unit Office, DMRC Campus, New Pali Road, Jodhpur.

.....Respondents

(Through Adv.Mr. D.P.Dhaka, proxy counsel for Mr. Vinit Mathur)

ORDER (Oral)

In the instant OA, the applicants allege non-observance of the mandatory provisions of Rules and not affording and fulfilling minimal requirement of principles of natural justice, and, therefore, challenge the order dated 20th August, 2013 (Annex.A/2) passed by the Director General, ICMR, New Delhi with the following reliefs:-

- “(i) *It is, therefore, prayed that record of the case may kindly be called for and after examining the same this Hon'ble Court by an appropriate order or direction direct the respondents not to terminate the services of the applicants till regularly selected candidates are being appointed. It is further prayed that a declaration may kindly be given that the applicants are adhoc/temporary employees and as such their services can't be replaced by another adhoc employees. In the alternative it is further prayed that if the order dated 20.08.2013 comes in the way of continuing services of the applicants then order dated 20.08.2013 (Annexure-A/2) may kindly be quashed and set aside.*
- (ii) *Any other favourable order which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.*
- (iii) *Original Application filed by the applicants may kindly be allowed with costs.”*

2. The facts giving rise to this application are that the applicants were initially appointed in the years 2010 as Daily Wager and their services were shown qua the contractor i.e. “Phirzo India Ltd. In the year 2011, they have been shown under the Contractor viz. Shiv Shakti Facility. It has been averred that after completion of the contract, the services of the applicants were continued due to availability of regular work. Applicants have further averred that they are in continuous employment since 2010. The respondents have informed the applicants about their utilization by the Contractor consequent to the contract made with respondent No. 4 for

a period of one year. The respondents have said the applicants about termination of their services from 01.10.2013 i.e. the date of completion of contract and if the Contractor is willing then their services can be utilized through Contractor. It has been further stated that vide order dated 20.08.2013 the respondent department has approved the work of maintenance of electrical installation, civil and horticulture works in the DMRC Campus on 12% consultancy charges and it is clear from this order that this tender has only been issued for consultancy and, therefore, by any stretch of imagination, it cannot be said that the applicants who are in service of the respondent department can be shifted from the department to the Contractor. It is further averred that the issuance of tender and the order dated 20.08.2013 is writ large as the services of the applicants are to be shifted under the Contractor i.e. M/s NPCC Limited and their services as daily wager, which are being continued by the Central Government Department, cannot be transferred to Contractor. Further, after completion of contract with the concerned agency, they cannot be compelled to work with the respondent department. This act of the respondents is an unfair labour practice being violative of articles 14, 16 and 21 of the Constitution of India.

3. The applicants have also submitted in their application that ad hoc person cannot be replaced by another ad hoc in view of the law propounded by different High Courts and the Hon'ble Supreme Court. But respondents now engineered a device to oust the applicants and to

give the work to a Contractor and the Contractor will appoint fresh incumbents to carry out the given work. It is averred that the applicants are daily wagers for last 3 years and the work in the department is of permanent nature. As per the constitutional mandate under the directive principles, the action of the State should be such so as to make the policy and take action in a manner so that exploitation should be avoided. But, vide order dated 20.08.2013 the respondents have been trying to give contract of the same work i.e. "annual operation and maintenance services for the DMRC, Jodhpur" to M/s NPCC Limited despite the fact that it is the settled preposition of law that a thing which cannot be done directly then the same cannot be done indirectly. The applicants have therefore prayed that they should be continued for the work of annual operation and maintenance services in the DMRC, Jodhpur and they can only be replaced by the regularly selected candidates.

4. The respondents have filed their reply stating that applicants were neither appointed by them nor they are directly working under them. Not only this, neither any kind of decision of their discontinuance was taken by the respondents nor any such conversation or information or order was issued by the Director, DMRC, Jodhpur. The respondents have specifically averred in their reply that applicants have no remedy before this Tribunal for their disengagement by the Contractor and rather the applicants are comparatively more interested about termination of the contract by the respondent department with the Contractor than

termination of their services by the Contractor. The applicants cannot be aggrieved with the order of 20.08.2013 relating to contract and if it is so, they can very well approach the competent court to agitate the same.

5. Counsel for the applicants does not want to file rejoinder.

6. Heard. Counsel for the applicants submits that the applicants are working since 2010 as Casual Labours and now the officers of the respondent department are stressing the applicants to sign the documents to provide the services through Contractor or service provider and they are ready to terminate the services of the applicants. Counsel for the applicant further contended that in the light of the judgment passed by the Hon'ble Apex Court in the case of *Secretary, State of Karnataka & others v. Umadevi & Ors*, the respondent department cannot substitute an adhoc employee by another adhoc employee and, therefore, the applicants are entitled to continue in service in the respondent department.

7. Per contra, counsel for the respondents contended that the facts of the present case are different from the facts in the case of *Umadevi* (supra) because the applicants are serving the respondent department through the Contractor or the service provider, and further the applicants filed Annexure-A/2, a document which shows that the Director General of the Indian Council of Medical Research sanctioned certain amount to the Director-in-Charge of Desert Medicines Research Centre, for certain work to be done through the Contractor or service provider. Therefore, even

from the document submitted by the applicants themselves, it is evident that the applicants are working through the Contractor or service provider.

8. It appears that the applicants, who are 8 in number, have not moved and prayed for joining together. The respondents have specifically objected the OA being not maintainable under CAT (Procedure) Rules for the reason that OA can be preferred by the delinquent/members of any service or by civil servants for adjudication of their service matters but the applicants are not holding any civil post, therefore, respondents have prayed to dismiss the OA being not covered under Section 14 (1) (B) of the said rules. Any how, to impart justice, liberty is given them to pursue their claim in one OA. Therefore, the request made in this regard during the course of arguments, is accepted.

9. I have considered the rival contentions of both the parties and also perused Annexure-A/1 & A/2 as also the facts averred in the reply and the judgment cited. From perusal of the judgment of the Hon'ble Apex Court in the case of *Secretary, State of Karnataka & Ors v. Umadevi & Ors.*, it appears that the facts of the present case are entirely different from the facts of that case. Although, the applicants have filed a copy of the attendance register of August 2013 as at Annexure-A/1, in which it has been mentioned that it is the attendance of Service Block Staff, but from bare perusal of the said document, it cannot be said that the applicants are working as adhoc employees in the respondent department because there is no document available to show that the applicants are working against

regular posts by giving the appointment to the applicants on a particular post, therefore, the contention raised by the applicants that they are working as adhoc employees carries no force. However, in view of the fact that the applicants have filed a document at Annexure-A/1, I propose to dispose of this application with certain directions.

- (i) Applicants are directed to file a detailed representation to the respondent department regarding their grievances within one month from the date of receipt of a copy of this order.
- (ii) Respondent department shall decide the representation within four months from the date of receipt of the same.
- (iii) Respondent department is also directed that the OA itself shall also be treated as an additional representation.
- (iv) Respondent department is further directed not to discontinue the services of the applicants in whatever means done by them in the respondent department till the disposal of the representation to be filed by the applicants.

10. Accordingly, the OA is disposed off as stated above with no order as to costs.


(Justice K.C. Joshi)
MEMBER (J)

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