

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.451 of 2013

Wednesday this the 26th day of March 2014

C O R A M :

HON'BLE Mr.JUSTICE A.K.BASHEER, JUDICIAL MEMBER

Kunjumol.A.K.,
Ambuttanparambil,
Kulayettikkara P.O., Kanjiramattom,
Ernakulam District – 682 315.

...Applicant

(By Advocate Mr.K.U.Vijayan)

V e r s u s

1. Union of India,
represented by the Secretary to Government of India,
Ministry of Finance, New Delhi – 110 011.
2. Chief Commissioner of Income Tax,
I.S.Press Road, Emakulam – 682 018.
3. Commissioner of Income Tax (Appeals),
Kera Bhavan – 682 011.
4. V.K.Gopinathan,
Formerly Administrative Officer,
O/o.the Commissioner of Income Tax (Appeals),
Kera Bhavan, Kochi – 682 011.
Now working in the O/o.the Chief Commissioner of Income Tax,
I.S.Press Road, Kochi – 682 018. ...Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC)

This application having been heard on 26th March 2014 this Tribunal on the same day delivered the following :-

ORDER


HON'BLE Mr.JUSTICE A.K.BASHEER, JUDICIAL MEMBER

The applicant was admittedly engaged as a casual worker in the office of Respondent No.3 in August, 2006. She continued in the service of the said respondent till December, 2012 when she was

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unceremoniously sent out. It appears that Respondent No.2 had engaged M/s.SR Agencies to provide manpower to carry out day to day jobs like cleaning, sweeping etc. in the offices under his jurisdiction. Applicant contends that as soon as the said agency was engaged by Respondent No.2, she was compelled to execute Annexure A-5 undertaking containing 13 so called conditions for her continuance in service. In spite of the said undertaking given by the applicant she was denied employment by the said agency. It is in the above circumstances the applicant has filed this Original Application with a prayer to issue a direction to the respondents to ignore Annexure A-5 and allow the applicant to continue in service as a casual worker. She has made a further prayer for conferment of temporary status as a casual worker and also to regularize her service with all consequential benefits.

2. In the written statement filed by the respondents it is fairly conceded that the applicant had been working in the office of Respondent No.3 ever since August 2006. It is also admitted by the respondents that in November, 2012 SR Agencies was engaged to supply manpower for the daily requirement of personnel like sweeper, driver etc. in the office. Respondents contend that the agency was engaged in view of the direction issued by the Central Board of Direct Taxes under the Ministry of Finance in its letter dated August 31, 2012 which had referred to Office Memorandum dated February 26, 1990 and instructions dated June 7, 1988 issued by the Department of Personnel and Training banning engagement of casual labourers for duties of Group C posts. The respondents have also referred to the one time measure that was in vogue pursuant to Annexure A-7 scheme issued by the Ministry of Public



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Grievances and Pension (Department of Personnel and Training) for grant of temporary status and regularization to casual labourers who were in service as on September 10, 1993. According to the respondents the said scheme did not apply in the case of the applicant since she was engaged for the first time in August 2006. Reference has also been made to the decision of the Apex Court in Uma Devi (2006 4 SCC 1) to contend for the position that the applicant will not get the benefit of regularization as directed in the said judgment. In short, the contention of the respondents is that the applicant is not entitled to get any relief in this Original Application as prayed for.

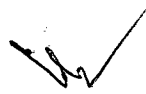
3. It is fairly conceded by the learned counsel for the applicant that the Annexure A-7 scheme may not come to the rescue of the applicant nor can she aspire to get the benefit of the judgment in Umadevi. But, according to the learned counsel, the stand taken by the respondents is patently illegal and it is "nothing but exploitative labour". Respondents had utilized the service of the applicant for nearly 6 ½ years right from August 2006 as a full time casual labourer. In November, 2012 Annexure A-5 undertaking was obtained by an agency which was brought to the scene by the respondents department in a fraudulent manner. It is pointed out by the learned counsel that the applicant was asked to put her signature on the dotted line in the so called document of undertaking which contained 13 clauses in English. Applicant who has studied only up to SSLC does not know how to read and write English. Therefore, obviously she was not in a position to understand what the said document stood for. She was also not aware that an outside agency was extracting the said undertaking from her. This fraudulent act was done by the department in



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connivance with the said agency in order to defeat her valuable legal right. Shortly after one month from the date of the so called execution of Annexure A-5 undertaking, the agency sent the applicant out of service unceremoniously. Learned counsel submits that this is nothing but sheer exploitation of labour and it smacks of arbitrariness. He contends that the applicant being a member of the Scheduled Caste community, she would have been eligible to get the benefits of relaxation in educational qualification, age etc. if only the respondents had not resorted to this unethical method of throwing the applicant out of employment by dubious means.

4. In this context, it is pertinent to note that in January, 2009 Respondent No.3, Commissioner of Income Tax (Appeals) III & Administration, Kochi, under whom the applicant had been working since August, 2006 had sent Annexure A-3 communication to Respondent No.2 referring to the name of the applicant and two other casual employees who were being paid from "OE-contingent expenses" by his office. In this communication Respondent No.3 had requested the Chief Commissioner to consider the case of the above casual employees for regularization "under humanitarian considerations". A perusal of Annexure A-3 would further show that the applicant had in fact registered in the Employment Exchange and she was assigned a number for such registration also, though it appears that she was not recruited through the Employment Exchange at the time of her engagement. I have referred to the above communication only to indicate that the department had been making payment to the applicant out of the contingent fund right from her engagement obviously till the date of her termination or till the date of

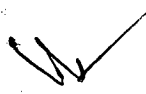


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engagement of the agency. The above communication will also indicate that the department was very well aware of the plight of the applicant and two other similarly placed casual employees. However, the department had not taken any steps to alleviate the grievance of the applicant.

5. The limited prayer made by the applicant in this Original Application is to allow her to continue at least on casual basis as was being done till December 2012. She contends, and rightly so, that it will be impossible for her to get any other employment elsewhere considering her advance age and educational qualification. Learned counsel for the applicant has invited my attention to the decision of their Lordships of the Supreme Court in Nihal Singh and others Vs. State of Punjab and others (2013) 10 Scale 162 in support of his argument that Umadevi cannot be a license for exploitation by the State and its instrumentalities and the respondents ought to have taken a realistic and pragmatic view in the matter especially since the vacancies of sweeper, safaiwala, typist in Group D were available in the office of the respondents in 2006 and thereafter and also as on today as well.

6. However, learned counsel for the respondents has invited my attention to Annexure R-1 letter dated August 31, 2012 issued by the Ministry of Finance. She contends that the respondents herein had to necessarily abide by the direction issued in the above letter and appoint an agency for outsourcing the services like data entry, typing, cleaning and security on contract basis without employing casual workers individually for this purpose.



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7. Having regard to the peculiar facts and circumstances of the case, I am of the view that the respondents have to be directed to consider the case of the applicant with utmost compassion and sympathy and take a decision on Annexure A-6 representation submitted by her, particularly, keeping in view Annexure A-3 communication in which the case of the applicant was strongly recommended for grant of temporary status/regularization as early as in 2009. Ordered accordingly. It will be only just and proper if the applicant is considered for recruitment to a suitable Group C post by giving relaxation in age, educational qualification etc.

8. A decision in the matter as directed above shall be taken by Respondent No.2 as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this order.

9. The Original Application is disposed of in the above terms.

(Dated this the 26th day of March 2014)


JUSTICE A.K. BASHEER
JUDICIAL MEMBER

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