

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 455 of 2013
&
Miscellaneous Application No. 718 of 2013
in
Original Application No. 455 of 2013

WEDNESDAY, this the 12th day of November, 2014

CORAM:

Hon'ble Mr. U. Sarathchandran, Judicial Member

P.J. Sebastian, S/o. P.T. John,
aged 48 years, Temporary Status Mazdoor,
Telephone Exchange, Sultanbathery,
residing at Puthenparambil House,
Moolankavu PO, Sulthanbathery-673 592.

..... **Applicant**

(By Advocate – Mr. M.R. Hariraj)

V e r s u s

1. Bharath Sanchar Nigam Ltd., represented by its Chairman and Managing Director,
Sanchar Bhavan, New delhi – 110 001.
2. Chief General Manager, Bharath Sanchar Nigam Ltd., Kerala Circle, Thiruvananthapuram – 695 033.
3. General Manager, BSNL, Calicut SSA, Calicut – 673 001.
4. Union of India, represented by the Secretary to Government of India, Department of Telecommunications,
New Delhi – 110 001. **Respondents**

**[By Advocates – Mr. T.C. Krishna (R1-3) &
Mr. A.D. Raveendraprasad, ACGSC (R4)]**

This Original Application having been heard on 04.11.2014, the Tribunal on 12, 11.2014 delivered the following:

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ORDER

It appears that this is the third round of litigation by the applicant, a Mazdoor who was granted temporary status with effect from 1.2.1990. Later he was sent for training as Phone Mechanic and he has successfully completed the training. He among six others were included in Annexure A1 communication for being regularized as regular Mazdoor with effect from 1.10.2000. In the meantime as he was involved in a criminal case his regularization was put off until the disposal of the criminal case. After he was released on bail he was informed that he would be considered after the outcome of the criminal case registered as 182/2000 of Ambalavayal Police Station and he was allowed to be re-engaged as Mazdoor with temporary status. Thereafter, he filed OA No. 919 of 2001 before this Tribunal seeking a regularization. This Tribunal vide Annexure A2 judgment dismissed the OA with the following observations:-

"6. In view of the discussion above, I hold that there is no room for entertaining this application at this stage. The applicant would be free to approach the higher authorities and the respondents, on the basis of the clear submissions made and discussed above, would be obliged to consider the entire facts and take appropriate decision regarding the applicant's regularization in accordance with the rules, regulations and the extant orders and instructions. The Original Application is dismissed under Section 19(3) of the Administrative Tribunals Act. No costs."

2. Thereafter the criminal case which was taken up by the Assistant Sessions Judge, Sulthanbathery as SC No. 62/2003 after a full trial acquitted the accused vide Annexure A3 judgment finding that the prosecution has not succeeded in proving the case against him beyond reasonable doubt. Thereafter, applicant sent representation for his regularization pointing out that he was acquitted by the criminal court. As there was no response

applicant again came before this Tribunal in OA No. 239 of 2013 which was disposed of at the admission stage itself vide Annexure A5 order dated 21.3.2013 directing the respondents to consider the case of the applicant and arrive at a judicious decision. Accordingly, the respondents passed Annexure A6 order dated 15.3.2013 rejecting his claim for regularisation. Hence, he has approached this Tribunal with the following prayers:-

- “i. To quash Annexure A6,
- ii. To direct the respondents to consider the applicant for regularisation with effect from 1.10.2000 as proposed in Annexure A1 with all consequential benefits including arrears of pay and allowances,
- iii. grant such other reliefs as may be prayed for and the Court may deem fit to grant, and
- iv. Grant the costs of this Original Application.”

3. Respondents contested this OA mainly on the ground that the case of regularisation of temporary Mazdoor cannot be granted in the light of the law laid down by the Apex Court in *Teja Singh v. B.S.N.L. and Secretary and State of Karnataka & Ors. v. Uma Devi (3) & Ors.* - 2006 (4) SCC 1. According to respondents as per the law as exists at present, regularisation of temporary mazdoors is not allowable. Respondents pray for dismissing the OA.

4. In MA No. 718 of 2013 learned Additional Central Government Standing counsel prays for deleting respondent No. 4 i.e. Secretary to Government of India, Department of Telecommunications (DOT), New Delhi on the ground that there is no employer - employee relationship between the applicant and DOT. It is contended that the BSNL is the present

employer of the applicant and hence respondent No. 4 is an unnecessary party.

5. Heard both sides. Mr. M.R. Hariraj, learned counsel for the applicant, Mr. T.C. Krishna, learned counsel for respondents 1 to 3 and Mr. A.D. Raveendraprasad, learned Additional Central Government Standing Counsel appearing for respondent No. 4 were heard.

6. Since respondent No. 4 was the employer of the applicant at the time of granting him temporary status which is a stepping stone for regularisation, it appears that applicant still has some nexus with respondent No. 4 in the matter of regularisation. Therefore, this Tribunal is of the view that the request in MA No. 718 of 2013 is only to be dismissed. In the result MA No. 718 of 2013 is dismissed.

7. BSNL is a Company having operations concerned with providing Telecom Services in the Country and maintaining the Telecom Network/Telecom Factories which were separated and carved out of the Department of Telecommunications, started functioning with the new business with effect from 1.10.2000. Obviously, till then, Department of Telecommunications were discharging the functions relating to Telecommunications. It is not disputed that applicant started his service under respondent No.4 as a casual mazdoor from 1983 and that he was conferred a temporary status with effect from 1.2.1990, both events have occurred while operations of telecommunications remained with respondent

No. 4 Department of Telecommunications. It was subsequent to the event of BSNL taking over the Telecom operations, Annexure A1 communication was issued informing that the applicant and others were "being regularized as regular mazdoors with effect from 1.10.2000". But the applicant's regularization as contemplated in Annexure A1 did not take place on account of a criminal case instituted against the applicant. According to him after obtaining bail he rejoined the service of the BSNL as a Mazdoor with temporary status and even now he is continuing so without any demur from the respondents. This fact also is not disputed by the respondents.

8. Now the question to be considered is whether applicant is entitled for regularization after acquittal in the criminal case which stood as a road block for his regularisation as regular mazdoor? Respondents refused to grant regularisation even after considering his representation in furtherance of the Annexure A5 direction issued by this Tribunal in OA No. 239 of 2013. Shri Hariraj learned counsel for applicant submitted that applicant has been cleared of all blemishes attached to the criminal case which stood as an impediment against his regularisation and there is no justification for the respondents to reject his representation.

9. Mr. T.C. Krishna learned counsel for the respondents Nos. 1 to 3 submitted that the law laid down by the Apex Court in *Uma Devi (supra)* prohibited regularisation and absorption of casual and temporary workers. Mr. Hariraj referred to paragraph 53 of *Uma Devi* judgment and submitted it is permitted to regularise certain categories of temporary workers who have

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worked for 10 years or more in duly sanctioned post as a one time measure.

The relevant portion in the *Uma Devi* judgment reads as follows:

"One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 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 courts or of tribunals. The question of regularisation 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 above referred 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 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. We also clarify that regularization, if any already made, but not *subjudice*, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

10. This would show that *Uma Devi* is not laying down any law totally prohibiting the absorption or regularisation of temporary workers who have put in continuous service of 10 years or more.

11. This Tribunal is of the view that *Uma Devi* judgment will have no application in the instant case because regularisation of the applicant was in the pipeline in 2001 vide Annexure A1, even prior to the law laid down by the Apex Court in *Uma Devi*. By invoking the doctrine of prospective overruling, the enforcement of the law laid down by *Uma Devi* can take place only in matters subsequent to the judgment whereas in the case of the applicant in this case the decision for his regularisation was already taken in Annexure A1. When the applicant was released on bail and reported for work

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and requested for regularisation, respondents stated that his case for regularisation would be taken up once the outcome of the criminal case is known. One can see that there is a clear promise by the authorities for regularising the applicant once the outcome of the criminal case was known.

12. Annexure A1 was holding out a promise to the applicant which like in any other public employment was preconditioned by the good conduct character of the prospective employee. Applicant he had to face a criminal charge which ultimately ended up in acquittal. That means when he was honorably acquitted by the criminal court after a full trial, he comes out like a phoenix from the trial and tribulations of the criminal case. Respondents have not raised any other ground in refusing to regularise him.

13. Therefore, the Tribunal is of the view that the reasons stated in Annexure A6 are not justifiable in the eyes of law and that since Annexure A1 confers him a promise the principle of promissory estoppel becomes applicable in his favour. Taking into consideration the totality of the circumstances, this Tribunal is inclined to allow the OA.

14. In the result, the Annexure A6 order is quashed and set aside. Respondents are directed to consider the applicant for regularisation with effect from 1.10.2000 as proposed in Annexure A1, with all consequential benefits. However, the actual payment of the arrears of pay and allowances will be restricted to the period prior to three years from today. It is however, made clear that this order will entitle the applicant to count his service as a

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regular Mazdoor from 1.10.2000 for the purpose of his pensionary benefits along with the admissible period of his service as casual labour with temporary status, as per rules and administrative instructions. Respondents shall complete the exercise as directed above within a period of three months from the date of receipt of a copy of this order. Ordered accordingly.

U. Sarathchandran
(U. SARATHCHANDRAN)
JUDICIAL MEMBER

“SA”