

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A. No.596/12**

Monday, this the 24<sup>th</sup> day of June, 2013

**CORAM:**

**HON'BLE Dr. K.B.S. RAJAN , JUDICIAL MEMBER**

Syamala Raveendran  
Aiswarya. H.No.32/2825A  
Labour Colony Road  
Thammanam, Cochin - 32

..... Applicant

(By Advocate Mr.S.M Prasanth)

**Versus**

1. Union of India  
Represented by its Secretary to the Ministry of Agriculture  
Ministry of Agriculture & Cooperation  
Krishi Bhavan  
New Delhi – 110 001

2. Coconut Development Board  
represented by its Secretary  
Kera Bhavan, SRVHS Road  
Kochi – 682 011

- Respondents

(By Advocate Mr.Sunil Jacob Jose, SCGSC)

The application having been heard on 24.6.2013, the Tribunal on the same day delivered the following:

**ORDER**

**HON'BLE MEMBER DR.K.B.S RAJAN, JUDICIAL MEMBER**

1. The applicant is the wife of Late K.K. Raveendran, who was engaged by the respondents (under Respondent No. 2) as a casual labourer in 1991 when his age was 40 years and who had been granted temporary status in September, 1994 and who had expired on 13-05-2009. At the time of his demise his services were not regularized.

2. Respondents have regularized the services of all those who had been

granted temporary status save three individuals, including the applicant's husband, on account of the fact that at the time of their initial engagement, these three individuals had crossed the maximum age limit prescribed (which is 30 with a latitude of five years for Government servants).

3. Provision exists for grant of relaxation of any of the terms of recruitment, vide Rule 6 of the Recruitment Rules, which reads as under:-

" Rule 6: Power to relax. Where the Board is of the opinion that it is necessary or expedient to do, it may, by order and for reasons to be recorded in writing, to relax any of the provisions of these Rules with respect to any class or category of persons"

4. Respondent Board have taken up the case of the three individuals as a class or group and on thorough consideration had been satisfied about the justification in granting relaxation. However, a minor doubt persisting in their mind, they had referred the matter to the Government. The Government has reservation to grant the said relaxation and thus the respondents have dropped the proposal of grant of relaxation.

5. When the applicant requested for grant of family pension, her request stood rejected on the ground that the DOPT and the Integrated Finance have rejected the proposal for grant of relaxation to the class of persons, as proposed by the Board. Hence, this OA seeking the following reliefs:-

" 8.a) To declare that the applicant is entitled to family pension, death cum retirement gratuity and other retiral benefits available to her late husband K.K Raveendran;

b) To call for the records leading up to Annexure A-7 and A-8 and quash the same;

c) To direct the respondents to grant the applicant family pension, death cum retirement gratuity and other retiral benefits consequent to the death of her husband K.K.Raveendran and



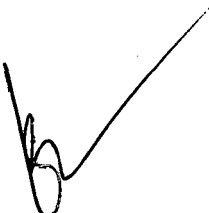
d) To grant such other reliefs as this Hon'ble Tribunal deems fit and proper in the circumstances of the case."

6. Respondents have contested the O.A. They have inter-alia in their reply, stated as under:-

5. In order to regularize these three Group D ad hoc employees relaxing their upper age limit, a proposal was placed in the 78<sup>th</sup> Board Meeting held on 26.12.2003 at Bangalore. This was placed before the Board as the power to relax the provisions contained in the Coconut Development Board Recruitment Regulations vests with the Board in terms of Regulation 6 which provides that "where the Board is of opinion that it is necessary or expedient so to do, it may, by order and for reasons, to be recorded in writing, relax any of the provisions of these regulations with respect to any class or category of persons". True copy of the Minutes of the Board Meeting held on 26/12/2003 is produced herewith and marked as Annexure R1. Though Board agreed with the above mentioned proposal, a doubt arose as to whether the Honourable Supreme Court had passed any orders against giving such relaxation to the casual employees for their regularization. So the Board referred the matter to the office of Secretary with directions to clarify the same. Subsequently, the then Secretary of the Board referred the matter to the Board's Legal Counsel for his advice. The Counsel opined that the Honourable Supreme Court had not in any judgment stated that there could not be relaxation of age of the casual employees for regularization of their services. Keeping this advice, the Board in its 80<sup>th</sup> Meeting held on 26.06.2004 directed the office of Secretary to take further action in the matter.


6. Accordingly, the deferred proposal for relaxation of age of the above named ad hoc Group D employees was again placed before the Board in its 81<sup>st</sup> Meeting held on 07.10.2004. The Board then observed that the proposal did not give any details of the employees in whose case the power of relaxation was to be exercised by the Board. So the office of Secretary was again directed to come up with a detailed proposal along with the agenda notes and decision of the Board in its earlier Meetings on the subject. A fresh proposal was placed before the Board in its next Meeting, i.e. 82<sup>nd</sup> Meeting held on 6.1.2005 along with the required details for regularization of the aforementioned Group 'D' ad hoc employees in relaxation of upper age limit. However, the Board decided to refer the matter to the Ministry of Agriculture, Department of Agriculture and Cooperation for appropriate action in the matter.

7. Accordingly, the matter was referred to the Department of Agriculture and Cooperation (DoAC) vide letter No.599/93/Admn., dated 23.2.2005. A copy of the said letter is submitted herewith and marked as Annexure R2. It was requested therein to permit the Board to exercise the powers contained in Regulation 6 of the Coconut Development Board Recruitment Regulations which provides that "where the Board is of opinion that it is necessary or expedient so to do, it may, by order and for



reasons, to be recorded in writing, relax any of the provisions of these regulations with respect to any class or category of persons". This was proposed for the regularization of the above mentioned ad hoc employees relaxing the provisions contained in the Recruitment Regulations with respect to upper age limit. In response to the above, Department of Agriculture and Cooperation asked for the documents/materials related to decisions of the Board taken in this regard in its 78<sup>th</sup>, 80<sup>th</sup> and 82<sup>nd</sup> Meetings along with details of casual employees, copies of RR etc. vide the letter dated 16.8.2005. The same were furnished to DoAC as desired vide the letter dated 29.8.2005. This was followed by several communications between the Board and DoAC on various aspects of age relaxation in respect of the aforesaid employees. In the meantime, DoAC vide the letter F.No.4-26/2005-Hort. IV, dated 2.7.2007 asked this Board to pass a resolution containing specific reasons for relaxation of age in respect of the above mentioned three employees. A true copy of the letter dated 2.7.2007 is marked as Annexure R3. Accordingly, the Board in its 94<sup>th</sup> Meeting held on 4.1.2008 passed a resolution recommending the relaxation of age and regularization of appointment in respect of the above mentioned three ad hoc employees. The same was furnished to the Ministry requesting to convey their concurrence in the matter vide the letter dated 24.1.2008. A copy of the letter is submitted herewith and marked as Annexure R4.

8. As no reply was received from the Ministry, reminders were sent to them vide the letters dated 3.6.2008, 14.7.2008 and 10.10.2008. Subsequently, DoAC asked the Board vide the letter dated 4.3.2009 as to whether regularization of the above mentioned 3 employees was against vacant posts or would involve creation of new posts. Board clarified the same stating that regularization of the above mentioned 3 ad hoc employees is against the existing vacant posts of the Board and would not involve creation of any new posts vide the letter dated 11.3.2009. In the meantime, Shri.K.K.Raveendran nair expired on 13.5.2009. Subsequently, a DO letter was sent by the then Chairman of the Board to the Joint Secretary to the Govt. of India, Ministry of Agriculture, Department of Agriculture & Cooperation requesting to expedite the matter so that family pension and other retirement benefits could be extended to Smt.Syamala Raveendran, widow of late Shri.KI.K Raveendran Nair. A copy of the said letter dated 10.09.2009 is submitted herewith and marked as Annexure R5. Another DO letter dated 18.1.2010 was also sent by the then Chairman to the Additional Secretary to the Govt. of India reminding to expedite the matter. A copy of the letter is submitted herewith and marked as Annexure R6. Reminders were again sent to the Ministry in this regard vide the letters dated 7.5.2010 and 8.6.2010. Then as required by the Ministry vide the letter dated 30.7.2010, details of these ad hoc employees were furnished to the Ministry vide the letter dated 25.8.2010. Subsequent to this letter, reminders were sent to the Ministry vide the letters dated 10.11.2010, 10.12.2010, 6.5.2011 and 3.8.2011. In the meantime, Annexure A8 issued stating that the matter of age relaxation in respect of the above named Group D ad hoc employees was examined many times in consultation with the Integrated Finance Division of the Ministry and also with the Department of Personnel and Training and that it cannot be acceded to and aggrieved O.A filed. "



7. Counsel for the applicant argued that the power to relax is vested with the Coconut Development Board as is seen from the very provisions. Not once, but as many as five times, the Board had passed resolution giving justification for such relaxation. For such relaxation, it is the satisfaction of the authority enjoying the power to relax that is required and the same is available in this case. It is not exactly clear as to, under which authority, the approval of the Administrative Ministry has been sought. In fact, the necessity to move the matter to DOPT is also not understood. This amounts to abrogation of power by the Board. Had the Board taken the decision and implemented the same, by this time, the applicant would have been granted the family pension also.

8. The counsel further stated that, vide Annexure R-6, the regularization of the three Group D employees is against existing vacant posts and will not involve creation of new posts.

9. Thus, according to the counsel for the applicant vacancies being available and the Board being fully satisfied for grant of relaxation, there is no reason whatsoever to proceed further.

10. Counsel for the respondents submitted that Rule 6, no doubt vests the power to relax with the Board and the Board is indeed fully satisfied with the need for relaxation of the Rule. However, the matter was referred to the Ministry to ensure that such a relaxation does not go against the judgment of the Apex Court on similar issue. And it is on the advice of the Administrative Ministry that the case for regularization was rejected.

11.

Arguments were heard and documents perused. The Rule of relaxation as

extracted above would go to show that it is the Board which has been vested with the power. The justification for relaxation has been indicated in the minutes of the 94<sup>th</sup> meeting (Annexure R-4) and the Board is fully satisfied of the same. In respect of strict following of the procedure prescribed, the Apex Court has held in the case of **Mohammadia Coop. Building Society Ltd., vs Lakshmi Srinivasa Coop. Building Society Ltd. (2008) 7 SCC 310** as under:-

*when a procedure is laid down for performance of a statutory function, the same must be done in the manner laid down therein.*

12. Thus, the relaxation has to be considered only by the Board. Reference to the Ministry, thus, is not essential. However, it is understandable that when the Board had certain doubt whether the regularization proposed to be made would be against the judgment of the Apex Court, for clarification, the case was referred to the Ministry. Presumably, the Board may have in their mind the decision of the Apex Court in the case of **State of Karnataka vs Umadevi (2006) 4 SCC 1**. Therein, the Apex Court has in the case of **State of Karnataka vs Umadevi (3) (2006) 4 SCC 1**, in para 53 has held as under:-

*53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to 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 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 regularise 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.*

13.

The object of the above direction has again been explained by the very

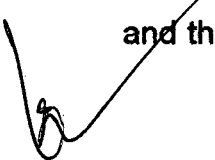
Apex Court in the case of State of Karnataka vs M.L. Kesari (2010) 9 SCC 247, wherein, the Apex Court has stated as under:-

*"11. The object behind the said direction in para 53 of Umadevi (3) is twofold. 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 (3) was rendered, are considered for regularisation 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 basis for long periods and then periodically regularise 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 (3)] 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 regularisation. The fact that the employer has not undertaken such exercise of regularisation within six months of the decision in Umadevi (3) or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularisation in terms of the above directions in Umadevi (3) as a one-time measure.*

12. x x x x

*13. x x x x If the employees who have completed ten years' service do not possess the educational qualifications prescribed for the post, at the time of their appointment, they may be considered for regularisation in suitable lower posts."*

14. The above would go to show that regularization of the services of even even who did not possess the requisite qualifications had been permitted, albeit in a lower post. In the instant cases, the Board has confirmed that the qualification requirement is fulfilled by the three individuals whose case for regularization was considered by the Board. The Board is prepared to relax the age limit of their own. And the three individuals had been on temporary status for nearly a score of years. The powers are with the Board and as per the decision of the Apex Court in the case reported in (2008) 7 SCC 310, it is the Board which has the power, alone has to do the same. The relaxation is for a class of persons and not with reference to only one and there, thus, does not appear to be any discrimination or arbitrariness if the Board



invokes its power to relax.

15. In view of the above, the OA is disposed of with a direction to Respondent No. 2 to proceed further with the process of regularization of the services of those who have/had been functioning on temporary status for the past two decades, the benefit thereof be made available to them. In the case of the spouse of the applicant, the regularization with retrospective effect prior to the demise of the individual would entail entitlement of family pension to the applicant. Action for the same be taken on priority basis and necessary orders issued within a period of three months from the date of receipt of a copy of this order.

16. No order as to cost.

(Dated this the 24<sup>th</sup> day of June 2013)



**Dr.K.B.S.RAJAN**  
**JUDICIAL MEMBER**

SV