

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 109/2004

WEDNESDAY THIS THE 19th DAY OF JULY, 2006

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. K.B.S. RAJAN, JUDICIAL MEMBER**

K.S. Radhakrishnan
Part-time Sweeper
Office of the Official Liquidator
High Court of Kerala
Carmel Building
Ernakulam, Kochi-682 018.

Applicant

By Advocate Mr. T.V. Ajayakumar

Vs

- 1 Official Liquidator
 High Court of Kerala
 Carmel Building
 Ernakulam, Kochi-682 018
- 2 Regional Director
 Department of Company Affairs
 Chennai
- 3 Union of India represented by
 Secretary, Deptt. Of Company Affairs
 New Delhi.

Respondents

:By Advocate MR.TPM Ibrahim Khan, SCSGC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

This Application has been filed by the applicant apprehending that his services would be terminated and for a declaration that he is

entitled to be conferred with temporary status with all consequential benefits including regularisation. He has sought the following reliefs:

1 To call for the order/memo issued by the 1st respondent terminating the services of the applicant and to set aside the same.

2. To declare that the applicant is entitled to be conferred with temporary status under Annexure A-2 Scheme and to direct the respondents to confer temporary status on him w.e.f. 10.9.1993 and to grant all consequential service benefits including regularisation.

3 To issue appropriate direction or order directing the respondents to absorb the applicant and to regularise his service w.e.f. 10.9.1992

4 Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.

5 Award the cost of these proceedings.

6 To call for Annexure A-4 letter and Annexure A-5 Memo terminating the service of the applicant w.e.f. 11.2.2004 and to set aside the same.

After filing of the OA, Annexure A-5 order terminating the services of the applicant w.e.f. 11.2.2004 was issued and the applicant amended the OA including the relief portion. By an interim order of this Tribunal on 12.2.2004 the applicant has been continuing in service.

2 The facts averred are that the applicant was appointed as a part-time Sweeper as per Annexure A-1 order dated 8.8.1988 in the office of the first respondent and has been continuously working in the post for the past 14 years. The above appointment was purely temporary and on adhoc basis and the services were liable to be

terminated at any time without notice on a fixed monthly remuneration of Rs. 175/- revised from time to time and his present salary is Rs. 1,000/- per month. The work of the applicant included sweeping the entire office premise every day except on holidays, cleaning the closets and wash basins every day, etc. and such other work as has been assigned by the Superintendent. While so, the second respondent issued a letter dated 27.1.2004 directing the first respondent to terminate the service of the applicant and appoint any other person as part-time Sweeper for a period not exceeding 89 days in a year. This according to the applicant shows that the work he was doing is still available and his services were not liable to be terminated by appointing another part-time Sweeper which is illegal and violative of the fundamental rights guaranteed under Articles 14, 16 and 21 of the Constitution of India. He has also relied in this regard on the law laid down by Hon'ble Supreme Court in State of Haryana Vs. Piara Sing (AIR 1992 SC.2130) holding that an adhoc or temporary employee should not be replaced by another adhoc or temporary employee. It is also averred that the Government of India, DOPT has formulated a scheme by OM dated 10.9.1993 in pursuance of an order of the CAT, Principal Bench, New Delhi for grant of temporary status to Casual Labourers and the above scheme is applicable to the applicant since the applicant has worked for 14 years uninterruptedly, he is entitled to get temporary status and all other benefits including regularisation. It is further averred that the reasons submitted by the respondents namely that the office of the

respondents was shifted to a new building purchased by the Government of India on February, 2003 and has also entered into an agreement with the Kerala State Housing Board for annual maintenance of the building for a period of one year from 1.9.2004 and thereafter the no part-time Sweeper was required for sweeping and cleaning the common areas specified in the AMC, are inconsistent and contrary to the reason stated for termination of service of the applicant in the orders of the respondents which has prejudicially affected the legal and constitutional rights of the applicant guaranteed under Article 14, 16 and 21 of the Constitution of India.

3 The respondents have denied the averments contained in the O.A. According to them the applicant was appointed as a part-time Sweeper for a particular purpose and there was no permanent need for the work. It is open to the Government to terminate the appointment of the applicant when need ceases since no vested right is created by a part-time/temporary employment as has been held by Hon'ble Supreme Court in State of Himachal Pradesh vs. Nodha Ram (1996(1) SLR 646), the appointment as Part-time/Daily Wages basis cannot be continued for regular appointment which would amount to back door entry and it is detrimental to the efficiency of service and also it is an act of nepotism and corruption. The DOPT by OM dated 18.5.1998 have issued instructions to the effect "all vacancies under Central Government offices/establishments

(including quasi-Government institutions and statutory organisation) irrespective of the nature and duration (other than those filled through UPSC) are not only to be notified to, but also to be filled through the Employment Exchanges alone and other permissible sources of recruitment can be tapped only if the Employment Exchange concerned issues a Non-availability Certificate. There can be no departure from this recruitment procedure unless a different arrangement in this regard has been previously agreed to in consultation with this department and the Ministry of Labour." After carefully considering the above directions the Directorate arrived at a conclusion that the services of the Casual Labour should not be for more than 89 days and therefore this decision was communicated to the applicant through the first respondent by Annexure A-4 letter. As per DOPT instructions only 1% of the total sanctioned strength can be filled up by direct recruitment in any department and that too only after obtaining approval of the Screening Committee. The meeting of the Screening Committee of the Ministry of Company Affairs held recently had not recommended any post to be filled through direct recruitment or posts falling vacant during 2001-02 to 2003-04. Further, the Ministry has agreed to enter into a contract with M/s Monitor Services, Kochi-16 placing conditions in the existing AMC and to include the sweeping and cleaning of the office of the Registrar of Company Affairs and Official Liquidator of Kerala. The charges payable to the Contractor will include the sweeping and cleaning charges of the office areas also and therefore an additional

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expenditure for the very same purpose by way of monthly remuneration to the applicant could not be sanctioned. Hence the services of the part-time sweeper are no longer required. The hours of work discharged by the applicant in the office of the respondents is only half an hour that too on five days a week. The contentions of the applicant that the new agreement proposed to be executed is violative of the section 23 of the Contract Act is also denied as it is well within the executive power of the Ministry and does not violate any rights of the applicant who is appointed purely on adhoc and part-time basis. For the above reasons, the respondents have denied the averments of the applicant in the O.A and sought for dismissal of the O.A.

4 The applicant has filed a rejoinder contending that it is settled law that if for any reason an adhoc or temporary employee is continued for a fairly long spell he should be considered for regularisation provided he is eligible and qualified according to the rules. The sweeping work assigned to him was a regular work and if any artificial break was created it was only to deny him regularisation.

5 The respondents have filed an additional reply statement in which they have submitted that the office of the first respondent is situated at the third floor of the building known as Company Law Bhavan having a total number of four floors and there are other

offices in the remaining floors of the building and the averment of the applicant that he is doing the cleaning work of the entire office is not correct.

6 We have heard Shri T.V. Ajayakumar appearing for the applicant and Shri TPM Ibrahim Khan, SCGSC for the respondents. The learned counsel for the applicant relied on the following judgments of the Apex Court on the subject of regularisation of adhoc and temporary employees:

- 1 Secretary, State of Karnataka & Ors. Vs Umadevi & Ors. (AIR 2006 SC 1806)
- 2 R. K. Sabharwal and Others Vs. State of Punjab and Others (AIR 1995 SC 1371)
- 3 Delhi Transport Corporation V. DTC Mazdoor congress and others (AIR 1991 SC 101)
- 4 AIR 1992 SC 677,2130
- 5 Gujarat Agricultural University Vs. Rathod Labhu Bechar and Others 2001 (3)SC 574
- 6 (2002 (6) SCC 431
- 7 Chandra Singh and Others Vs. State of Rajasthan and another (2003)6 SCC 545
- 8 State of Kerala Vs. Balakrishnan (1992 KLT 420)
- 9 Union of India and another Vs. Mohan Pal and Others (2002 (4)SCC 573)

7 The counsel for the applicant has argued that apart from the above, the applicant is entitled for regularisation even on the basis of the recent judgment of the Constitution Bench of the Hon'ble

Supreme Court reported in AIR 2006 SC 1806. In terms of para 44 of the above judgment it was argued that the Hon'ble Supreme Court had found that "... there may be cases where irregular appointments (not illegal appointments) 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 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....". According to the learned counsel for the applicant there is no substantive difference between the appointments on daily wages and appointment on monthly remuneration. Therefore it can be considered that a regular post of Sweeper has been in existence in the office of the first respondent since long. The termination orders were issued when the first respondent's office was functioning in Carmel Building and that at that time it was necessary to have the services of a part-time Sweeper. The Government had decided to shift the office to Kakkanad and the office of the first respondent was shifted in the month of February, 2004 only and a composite annual maintenance contract entered into by the Ministry for the entire building which include sweeping of the office of the Registrar of Company Affairs and the office of the Official Liquidator cannot take away the legal and constitutional rights of the applicant.

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8 The learned SCGSC contended that any amount of length of service would not entitle the applicant to regularisation in a post which does not exist as he was appointed on purely temporary and adhoc basis for part-time work, for sweeping and cleaning the office the need for which has ceased, as the office has entered into a contract for annual maintenance of the entire building consisting of the respondents' office also.

9 We have heard the arguments and perused the pleadings on record. Though elaborate arguments were advanced by the learned counsel for the applicant and he has taken us through the Apex Court pronouncements during the period 1995 to 2006 from R.K.Sabharwal's case to Secretary to the State of Karnataka Vs. Umadevi, the short question arising for consideration in this O.A. is whether the action of the respondents in terminating the services of the applicant who was employed as a part-time sweeper is justified or not. The main prayer of the applicant is for a direction to respondents to confer temporary status on him w.e.f. 10.9.1993 and also to regularise his services w.e.f. 10.9.1992 while setting aside the termination. First we shall deal with his claim for temporary status. It is clear from the appointment order of the applicant in Annexure A1 that he was appointed as a part-time Sweeper on a fixed monthly wage, as there is no post of Sweeper in the office of the Official Liquidator and the work of sweeping has to be executed and there was no alternative arrangement to sweep and clean the

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office premises, a part-time appointment was made and the expenses were being met from the head "office expenses". If the applicant had been a Casual Labourer on daily wages and eligible for grant of temporary status under the Government of India scheme formulated by the DOPT OM dated 10.9.1993 he should have approached the respondents at that time when the scheme was ~~not~~ put into effect. Not having done so, and after continuing as a part-time worker for more than 15 years, he cannot now stake a claim for grant of temporary status. Part-time workers and Casual Labourers are to be treated as distinct and different. Casual Labourers are those who are generally appointed for carrying out work of a seasonal and intermittent nature. Being a part-time employee under the respondents, he is entitled for regularisation if only a regular post exists. It is clear from the record that there is no post of Sweeper under the respondents. The respondents have also submitted that there are no vacancies of Group-D post⁵ing their office against which the applicant can be considered. The question of regularisation would arise only if there is any continued need for sweeping and cleaning work in the office in which the applicant was employed and there is a regular post sanctioned for that purpose. None of these conditions being fulfilled, the applicant's claim for regularisation has no basis.

10 Next we come to the question of the right of the applicant to continue. In the changed circumstances the present office of the

respondents, the need for sweeping work itself has ceased due to the shifting of the office to a new building. It was decided by the Ministry of Company Affairs to house all their offices in one building. The Ministry has also entered into an agreement with the M/s Monitor Services, Cochin for AMC of the building and the said agency is now attending to the sweeping and cleaning work. Therefore the respondents cannot incur double expenditure on the same work which has been handed over to an agency by retaining the applicant. The termination is an incident of the applicant's part-time service and the respondents cannot be faulted on that count.

11 Whereas the above is the rule position, the settled legal position is not different. The learned counsel for the applicant has relied on number of judgments of Hon'ble Supreme Court from 1991 onwards. They do not have any application in this case, since the facts and circumstances in these cases are different. The general principle that can be discerned in these judgments is that a temporary employee cannot be replaced by another temporary employee. In the case of the applicant herein, it has been clarified that it is not the intention of the respondents to appoint another temporary employee. But his service has been terminated on account of cessation of work and the work is now being carried out by an agency and not by engaging another temporary/adhoc employee. The learned counsel also relied on the latest judgment of the Hon'ble Supreme Court in Secretary, State of Karnataka Vs. Umadevi (AIR

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2006 SC 1806). Paragraph 44 thereof has been relied on by the learned counsel for the applicant which deals with the cases in which the appointments have been made to a duly sanctioned vacant post and the question of their regularisation is being protracted for years. It is not applicable in this case as there is no sanctioned post of vacancy. The issue of part-time appointments like that of the applicant has been dealt with in the above judgment at para 34 in the following manner:

".....unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued.. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment as not made by following a due process of selection as envisaged by the relevant rules."

12 In short, it is the law now laid down by the Constitutional Bench of the Apex Court in the above judgment that Union or State Governments have the right to engage a person on daily wages purely on temporary basis for a duration until the work in that particular project is completed. But it is not proper for High Courts acting under Article 226 of the Constitution of India to ordinarily issue direction-s for absorption, regularisation, or permanent continuance of an employee who have been engaged without following the due process of selection. Such an employee will have no right to be absorbed and made permanent in service.

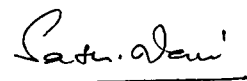
13 In the light of the above settled legal position and on the factual circumstances of the case that the termination of the service of the applicant was necessitated by cessation of the work which he was doing, we do not find any grounds to interfere with the action of the respondents. The only relief that we can consider keeping in view the long service of more than 15 years put in by the applicant, is to observe that, should there be a need to engage casual labour/sweeper in the near future, preference may be given to the applicant.

14 The O.A. is dismissed and the Interim Order dated 12.2.2004 is vacated. However, since the applicant has continued in service on the basis of our interim order we direct that he shall be paid wages for that period as per the terms and conditions till his services are dispensed with in accordance with this judgment. No costs.

Dated 19.7.2006.



K.B.S. RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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