

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 539 of 2007

w i t h

Original Application No. 197 of 2008

wednesday, this the ..05th... day of January, 2011.

CORAM:

HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

O.A. No. 539/2007

- 1 D. Ravi,
Graphic Artist (Casual),
Doordarshan Kendra,
Kudappanakunnu,
Thiruvananthapuram.
- 2 K.S. Saju,
Graphic Artist (Casual),
Doordarshan Kendra,
Kudappanakkunnu,
Thiruvananthapuram.
- 3 C.T. Vijayan,
Graphic Artist (Casual),
Doordarshan Kendra,
Kudappanakkunnu,
Thiruvananthapuram.

..... Applicants

(By Advocate Mr. P. Santhosh Kumar)

Versus

- 1 Union of India
represented by the Secretary,
Ministry of Information & Broadcasting,
New Delhi
- 2 Prasara Bharathy (Broadcasting Corporation
of India), New Delhi, represented by the
Chief Executive Officer.

3 The Director General,
Prasar Bharathy,
(Broadcasting Corporation of India)
Doordarshan Kendra, New Delhi.

4 The Director, Doordarshan Kendra,
Kudappanakkunnu,
Thiruvananthapuram.

..... Respondents

(By Advocate Mr.P.A Aziz for Respondent No. 1 and
Mr. N.N. Sugunapalan (Senior) with Mr. Sujin, for
Respondents No. 2-4)

O.A. No. 197 of 2008

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Chief Executive Officer.

3 The Director General,
Prasar Bharathy,
(Broadcasting Corporation of India),
Doordarshan Kendra, New Delhi.

(By Advocate Mr. Sunil Jacob Jose, SCGSC for Respondent No.1
and Mr. N.N. Sugunapalan (Senior) with Mr. S.Sujin, for
Respondents No. 2-4)

ORDER

The applicants in both the O.As were engaged in 1986 to 1988 as Casual Graphic Artists under the 4th respondent, namely the Director, Doordarshan Kendra, Kudappanakkunnu, Thiruvananthapuram. From 2006 onwards, they are working as Graphic Artists / Post Production Assistants. When the administration went about to recruit a new set of Casual Graphic Artists, the applicants approached this Tribunal by filing O.A. No. 539/2007 for regularisation of their service and for a direction not to terminate their service. By virtue of O.M. dated 17.03.1994 at Annexure A-13 and 05.07.1994 at Annexure A-14 in OA No. 197/2008 on the subject of regularisation of casual artists in Doordarshan, the applicants claim that they are entitled for regularisation in service. Their representations for regularisation with effect from 17.03.1994 were disposed of informing them that the implication of a judgement of the Apex Court in a case relating to regularisation of casual employees on the regularisation scheme of Doordarshan is under examination, pending which all proposals for regularisation are kept in

abeyance until further orders. Both the O.As No. 539/2007 and 197/2008 filed by the same applicants being identical, were heard together and are disposed of by this common order.

2. The applicants claim that they come under the scheme made by the Government of India as per O.M. Dated 17.03.1994. So they are entitled for absorption from the date of the said Office Memorandum.

3. The respondents resisted the O.A. In the reply statement they stated that the applicants cannot be inducted in the regular service as they were engaged on contract / assignment basis. In **Secretary, State of Karnataka and Others vs. Umadevi and 3 Others**, AIR 2006 SC 1806, the Hon'ble Supreme Court held that absorption, regularisation, permanent continuance of temporary, contractual, casual, daily wage or adhoc employees appointed/recruited and continued for long in public employment is illegal and unconstitutional. Further, it was submitted that the respondent department, Doordarshan, has formulated a scheme for regularisation of casual artists as on 09.06.1992. Later on a liberalised scheme was introduced in March, 1994. However, all proposals for regularisation are kept in abeyance till a final decision is taken in consultation with the Ministry of Information and Broadcasting in the wake of the above judgement of the Apex Court.

4. In the rejoinder filed by the applicants, they submitted that as per O.M. dated 12.05.1993 at Annexure A-18, there is a specific direction to all Doordarshan Kendras to complete the process of regularisation by

30.06.1993. As the case of the applicants is based on a scheme made on the basis of the directions of the Principal Bench of C.A.T. and the Hon'ble Supreme Court, their accrued right cannot be affected by the decision in Umadevi's case, which was decided many years after the scheme was formulated in 1992. The applicant has further produced a copy of O.M. No. 1/3/2000-SI dated 02.06.2000 (Annexure A-18) of the 3rd respondent, namely the Director (Admn.), Prasar Bharati (BCI), Directorate General Doordarshan, New Delhi, directing the DDK, Delhi, to regularise the services of similarly placed casual artists, like the applicants, in fulfilment of the conditions stipulated in the regularisation schemes dated 09.06.1993 and 17.03.1994.

5. We have heard Mr. P. Santhosh Kumar, learned counsel for the applicant, Mr. Sunil Jacob Jose, SCGSC and Mr. P.A. Aziz, ACGSC, for respondent No. 1 and Mr. N.N. Sugunapalan (Senior) with Mr. S. Sujin, learned counsel for respondents 2 to 4 and perused the records.

6. On a careful consideration of the documents and the contentions of parties, we find that the Doordarshan has existing schemes for regularisation introduced in the year 1992 and 1994. It is also found that as per the existing schemes, 19 casual production assistants have been directed to be regularised as per Annexure A-18 in O.A No. 197/2008 office memorandum dated 02.06.2000. In O.A. No. 612/2008 before the Principal Bench of C.A.T., the respondents in their counter affidavit had stated that the applicant therein does not have any legal right to seek regularisation and as per decision in **Secretary, State of Karnataka and**

Others vs. Umadevi and 3 Others, AIR 2006 SC 1806, the persons who are not appointed after following the prescribed procedure are not entitled to regularisation. Even then, the respondents had taken a lenient and sympathetic view and the applicant therein was granted appointment to which he was considered to be eligible. The respondents formulated two schemes for regularisation in the year 1992 and 1994 pursuant to the directions of the C.A.T creating legitimate expectation in favour of the Casual Artists. These schemes formulated 12 to 14 years prior to the judgement in Umadevi's case cannot be said to be contrary to the then prevailing law. These schemes continue to be in force even today with some modifications introduced over the years. More than one thousand Casual Artists have been regularised during the years 1992-2006. The regularisation of the applicants is put on hold on account of the judgement of the Hon'ble Supreme Court in Umadevi's case. But, the Casual Artists of Doordarshan who were engaged like the applicants in the 80's who would have been regularised in due course as per schemes formulated on the directions of the C.A.T but for the judgement in Umadevi's case, fall into a distinct category eligible for the exemption provided in Para 53 of the judgment in Uma Devi's case, which is reproduced below:-

"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. Nanjudappa 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 the tribunals and should further ensure that regular requirements 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 regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

7. The appointment of the Casual Artists by Doordarshan was not illegal. Though they were engaged on casual basis for a few days every month, in actual practice they were working throughout the month. Out of the Casual Artists appointed in the 80's only a few, like the applicants, remain to be regularised. As per the clarification of the Apex Court above, the respondents can take steps to regularise such artists as one time measure and thereby complete the process of regularisation which started long before the judgement in Uma Devi's case.

8. Further, it would be advantageous to refer to certain observations on Umadevi's case and the decision of the Honorable Apex Court in U.P. State Electricity Board Vs. Pooran Chandra Pandey – 2007 (4) KLT 513 (SC). The relevant paras are reproduced below:-

"16. We are constrained to refer to the above decisions and principles contained therein because we find that often Uma Devi's case (*supra*) is being applied by Courts mechanically as if it were a Euclid's formula without seeing the facts of a particular case. As

observed by this Court in Bhavnagar University (supra) and Bharat Petroleum Corporation Ltd. (supra), a little difference in facts or even one additional fact may make a lot of difference in the precedential value of a decision. Hence, in our opinion, Uma Devi's case (supra) cannot be applied mechanically without seeing the facts of a particular case, as a little difference in facts can make Uma Devi's case (supra) inapplicable to the facts of that case.

17. In the present case the writ petitioners (respondents herein) only wish that they should not be discriminated against vis-a-vis the original employees of the Electricity Board since they have been taken over by the Electricity Board in the same manner and position. Thus, the writ petitioners have to be deemed to have been appointed in the service of the Electricity Board from the date of their original appointments in the Society. Since they were all appointed in the society before 4.5.1990 they cannot be denied the benefit of the decision of the Electricity Board dated 28.11.1996 permitting regularization of the employees of the Electricity Board who were working from before 4.5.1990. To take a contrary view would violate Article 14 of the Constitution. We have to read Uma Devi's case (supra) in conformity with Article 14 of the Constitution, and we cannot read it in a manner which will make it in conflict with Article 14. The Constitution is the supreme law of the land, and any judgment, not even of the Supreme Court, can violate the Constitution.

18. We may further point out that a seven-Judge Bench decision of this Court in Maneka Gandhi vs. Union of India & Anr. AIR 1978 SC 597 has held that reasonableness and non-arbitrariness is part of Article 14 of the Constitution. It follows that the government must act in a reasonable and non-arbitrary manner otherwise Article 14 of the Constitution would be violated. Maneka Gandhi's case (supra) is a decision of a seven-Judge Bench, whereas Uma Devi's case (supra) is a decision of a five-Judge Bench of this Court. It is well settled that a smaller bench decision cannot override a larger bench decision of the Court. No doubt, Maneka Gandhi's case (supra) does not specifically deal with the question of regularization of government employees, but the principle of reasonableness in executive action and the law which it has laid down, in our opinion, is of general application.

19. In the present case many of the writ petitioners have been working from 1985 i.e. they have put in about 22 years service and it will surely not be reasonable if their claim for regularization is denied even after such a long period of service. Hence apart from discrimination, Article 14 of the Constitution will also be violated on the ground of arbitrariness and unreasonableness if employees who have put in such a long service are denied the benefit of

regularization and are made to face the same selection which fresh recruits have to face."

The decision of the Hon'ble Supreme Court in Uma Devi's case should not be applied mechanically to regularization of govt. employees. Reasonableness is part of Article 14 of the Constitution. The principle of reasonableness in executive action in the facts of a particular case can override the decision of the Supreme Court in Uma Devi's case as held by the seven judge Bench of the Supreme Court in U.P. State Electricity Board's case (supra). The applicants in the instant OAs have put in a long period of service, just as the employees of the U.P. State Electricity Board in the cited case. It will not be reasonable if their claim for regularization is denied or delayed by Prasar Bharthi citing the decision of the Apex Court in Uma Devi's case. In fact, the decision of the Apex Court in Uma Devi's case does not stand in the way of regularization of the service of the applicants in the light of the decision of the Apex Court in U.P. State Electricity Board's case (supra).

9. Accordingly, the respondents are directed to consider regularisation of the applicants under the existing scheme of regularisation introduced as per O.M. dated 17.03.1994 at Annexure A-13 in OA No. 197/2008 within 4 months from the date of receipt of a copy of this order. The interim stay on the termination of the service of the applicants granted on 24.08.2007 in O.A. No. 539 of 2007 will continue till their regularisation is considered as directed.

10. Both the O.As are allowed to the extent indicated above. No order as to costs.

(Dated, the 05th January, 2011)

(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

cvr.
