

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 23/2013

Wednesday, this the 22nd day of June, 2016
CORAM

Hon'ble Mr.U.Sarathchandran , Judicial Member

Hon'ble Mr. Prasanna Kumar Pradhan, Administrative Member

1. Mohammed Faizal K.C. Aged 37,
 S/o Sayed Ismail A.P.K.
 Cook, MGSS, Androth Island,
 Residing at Kannichetta House, Androth Island,
 U.T. Of Lakshadweep.
2. Attakidave, Aged 39,
 s/o Muzammil A.C. (Late),
 Cook, JNSS Hostel, Kadmat Island,
 Residing at Bankil House,
 Kadamat Island.
3. B.P. Hamzakoya Aged 35,
 S/o Kidav S.C. (Late)
 Cook, JNSS Hostel, Kadmat Island,
 Residing at Belippura House,
 Kadmat Island.
4. N. Muthukoya, Aged 32,
 S/o Andari B.C. (late)
 Cook, JNSS Hostel, Kadmat Island,
 Residing at Belippura House, ✓
 Kadmat Island.
5. T.P. Hamzakoya, Aged 41,
 S/o Basha B.P.
 Cook, JNSS Hostel, Kadmat Island,
 Residing at Belippura House, ✓
 Kadmat Island.
6. Abdul Muthalif P.P. Aged 32,
 S/o Abdurahman T (Late)
 Cook, JNSS Hostel, Kadmat Island,
 Residing at Belippura House,
 Kadmat Island.
7. Mohasin P.P. Aged 37,
 S/o Abdul Hameed Haji (late),
 Cook, JNSS Hostel, Kadmat Island,
 Residing at Belippura House,
 Kadmat Island.
8. Abdul Kareem S.P. Aged 35,
 S/o Abdul Rahiman M.C.
 Cook, JNSS Hostel, Kadmat Island,
 Residing at Belippura House,
 Kadmat Island.
9. Mohammed Nisar, A.C. Aged 46,



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S/o Kidave S.C. (late)
 Cook, GHS Kadmat,
 Residing at Ahyyechetta House,
 Kadmat Island.

10. Beebi Kadeeja K. Aged 38,
 D/o Mohammed |A.C.
 Cook, Government Nursery School, Kadmat
 Residing at Kunhippura House,
 Kadmat Island.

11. K.P. Badar, Aged 45,
 S/o Kasmi S.K. (Late)
 Cook, SB School, Kadmat,
 Residing at Kunhippura House,
 Kadmat Island.

[Applicant by Mr. P.V.Mohanan, Advocate]

... Applicants

Versus

1. The Administrator,
 Lakshadweep Administration,
 Union Territory of Lakshadweep,
 Kavarathhi 682555.

2. The Director of Education,\
 Administration of the Union Territory of
 Lakshadweep,
 Kavaratti 682 555.

3. The Union of India Represented by
 the Secretary,
 Department of Personnel and Training,
 Ministry of Home Affairs,
 New Delhi 110 011.

... Respondents

(By Mr.S.Radhakrishnan, Advocate for Respondents)

This application having been finally heard on 15.06.2016 and Reserved for Orders, the Tribunal on 20.06.2016 delivered the following.

ORDER

Per: Mr. P.K.Pradhan, Administrative Member:

The applicants have filed the present O.A., seeking the following reliefs:

- A. To call for the records leading to Annexure A/10 O.M. F.No.36/31 2009-Edn dated 24.9.2012 and set aside the same.
- B. To declare that the applicants are deemed absorbed as Cook/Helper in the Time scale of pay of Rs. 2550-3200/- (pre-revised) with all consequential benefits.
- C. Any other appropriate order or direction as this Tribunal deem fit in the interest of justice.

2. According to the applicants, they were working as Skilled NMR laborers



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(Cook/Helpers) in Government Jawaharlal Nehru College/Jawaharlal Nehru Senior Secondary School, Kadamath for more than 12 to 13 years uninterrupted. They were selected for engagement as Cook after an interview by a selection Committee consisting of Vice Chairman, Village Dweep Panchayat, Agricultural Officer, Kadamath and Sub Divisional Officer, Kadamath. They started working as Skilled NMR labourers (Cook/Helpers) during the period between February 1997 and August 2000. The Department has prepared a Seniority List (Annexure A1) of Cooks working in various Islands in the Education Department for absorption as Multi Skilled Employees (Common Cadre). Applicants are listed in the said Seniority List between Sr. No.11 and 26.

3. According to the applicants, the Department had been following the procedure of absorption of contingent casual labourers as Cooks against regular vacancies. Those casual labourers who have been working for a period of two years after registering their name in the Employment Exchange will be absorbed, failing which, the posts will be filled by direct recruitment. Following this procedure, the Department has absorbed contingent casual labourers (cook) as cooks and Sr. No.1 to 8 and 10 in Annexure A/1 Seniority List have been absorbed as Cook in the time scale of pay of Rs. 2550-3200/- in 2007 vide orders at Annexure A/2 and A/3. Even though there were substantial vacancies of Multi Skilled employees (Common Cadre) that remained unfilled in the Department and the applicants are eligible for absorption in the regular cadre, this was not done by the respondent authority. The applicants had submitted representations to the authorities but the same remained unconsidered.

4. Following the Sixth Central Pay Commission recommendation, a minimum qualification of 10th standard for direct recruitment to the post of Multi Skilled Labourers (Common Cadre) was prescribed. However, the Administrator, by a proceeding dated 22.4.2010 (Annexure A/4) informed that the Department is following the criteria adopted before the implementation of the Sixth Central Pay Commission



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and that the direction from the Secretariat is absorption of contingent casual labourers working as Cook and recruited through Employment Exchange or those casual labourers who have worked for a period of two years after registering their names in the Employment Exchange failing which by direct recruitment.

5. Thereafter the first respondent by Notification dated 29.1.2011 framed Lakshadweep Administration Education Department Cook (Group C) Non Ministerial post recruitment Rules 2010 (Annexure A/5). The Recruitment Rules prescribed that minimum educational qualification for direct recruitment is Matriculation or its equivalent. Thereafter the 1st respondent vide Notification dated 21.2.2011 (Annexure A/6) invited application for 18 posts of cook through direct recruitment. The qualification fixed for the post is Matriculation or its equivalent. Though the applicants had applied pursuant to the notification, their applications had not been considered as they did not have the minimum qualification of SSLC/Matriculation. Seeking absorption as Cook in the time scale of pay, the first applicant filed O.A. No.631/2011 and applicant No.2 to 11 filed O.A. 87/2011 before this Tribunal. These Original Applications were allowed vide orders dated 9.1.2012 (Annexure A/7 and A/8) directing the respondents to consider the case of applicants for regularization against any appropriate vacant posts of cook that had occurred after the last regularization of 2007 but prior to the introduction of new Recruitment Rules and also based on the qualification stipulated prior to the introduction of new Recruitment Rule.

6. In the meantime the Lakshadweep Administration by Annexure A/9 Notification dated 10.7.2012 ordered that in the matter of absorption of casual labourers, the minimum education qualification of Xth standard is relaxed. Pursuant to the Annexure A/7 and A/8 orders of this Tribunal in O.A. 631/2011 and 87/2011, the Secretary, Administration has passed Annexure A/10 order rejecting the claim of the applicant for regularization stating that the engagement of the applicants were not against sanctioned vacant posts, that they were not appointed in accordance with Recruitment



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Rules and that the continuous uninterrupted service of the applicants for more than ten years will not entitle them for appointment against the regular vacancies of sanctioned post of Cook.

7. Applicants had further contended that the persons who were absorbed in the year 2007 and 2008 were similarly placed and they were engaged as casual labourers in an identical manner and were discharging the same duties and responsibilities . 14 substantive vacancies admittedly remained unfilled in December 2010. Recruitment Rule was framed only in 15.2.2011. Therefore, denial of the same benefit to the applicant would amount to hostile discrimination and violative of Article 14 of the Constitution of India.

8. The Respondents have filed their reply statement in which it is admitted that the applicants have been working as Skilled NMR labourers (Cook)/Helpers in Government Jawaharlal Nehru College/Jawaharlal Nehru Senior Secondary School, Kiadamath for more than 12 to 13 years. They were engaged for the work of Cook under the Department of Education from the labour rosters of Village (Dweep) Panchayats of the respective islands. They were no sanctioned vacant posts of Cook under the Department. The applicants were never engaged for a period of more than 89 days without break and hence they do not come within the norms for regularization or award of Temporary Status. They do not have more than 240 days of continuous service as on 10.9.1993. Therefore, the applicants are not covered under the 1993 Temporary Status conferment scheme.

9. The Respondents further submitted that the recruitment to the regular posts under various department of the Lakshadweep Administration is carried out at UT level only and no recruitment against any regular post is done at island level. Such UT level recruitments are done on the basis of notified Recruitment Rules and by issuing Employment Notice inviting application from eligible candidate from all islands after giving sufficient time for submission of application. The applicants themselves have



admitted that they were engaged at the island level. As per the old recruitment rules, the method of recruitment to the post of Cook was through absorption of the contingent labourers working as Cooks and recruited through the Employment Exchange or those casual labourers who have worked for a period of two years after registering their name in the Employment Exchange failing which by direct recruitment. In the year 2007, nine posts of Cooks in various schools fell vacant due to retirement and death and therefore the Department prepared a seniority list as per the details furnished by the Principals/Headmasters of various islands. Nine senior most casual labourers who were found qualified as per the then existing Recruitment Rules and whose name were included in the seniority list maintained by the Department for the above purpose were appointed as Cooks. The applicants could not be appointed on regular basis during that time due to their lower position in the seniority list.

10. Regarding the order passed by the Hon'ble Tribunal in O.A. No.780/2009, 87/2011 and 631/2011 they have contended that the respondent appealed against the Annexure A/11 order before the Hon'ble High Court in O.P. (CAT) No.4276/2011. The Hon'ble High Court disposed of the case vide Annexure A/12 order dated 02.01.2012 in which it was clarified that the Administration is granted liberty to decide the matter in the light of *Umadevi's case*. Accordingly, the respondents herein considered the case of the applicants in accordance with direction of the Supreme Court of India in *The Secretary, State of Karnataka v. Umadevi 2006 SCC (L&S) 753.*, where the Apex Court stated that regularization arises only if the labourer fulfills the following conditions:-

- (i) The Applicants were duly qualified.
- (ii) Their appointments were in duly sanctioned vacant post,
- (iii) It ought to have been in accordance with Recruitment Rules,

(iv) They had a minimum period of 10 years service without the intervention of a Court or Tribunal.

11. According to the respondents, the applicants had to satisfy above stated conditions. Those who have fulfilled above stated conditions, were only entitled to regularization. On the basis of the above aspect, Lakshadweep Administration had considered the case of the applicants. After verification of the entire details, Department found that applicants were not fully qualified according to the Recruitment Rules notified for the post. They were not engaged against any duly sanctioned vacant post of the Cooks, but they were engaged to assist the regular cooks in preparation and serving of food to the students as strength of the students in the School/Hostel were more. They were directly engaged by the Principal of the School from the labour roster maintained by the Village (Dweep) Panchayath without any selection process and not against any regular vacancy of sanctioned posts. The applicants were engaged on daily wages by Principal, Jawaharlal Nehru Senior Secondary School, Kadamath and Mahathma Gandhi Senior Secondary School, Androth. They were not engaged as casual labourers against any duly sanctioned vacant posts of Cooks. Applicants were only engaged for some temporary works to help the regular cook in the School/Hostel. Hence the observation of the Hon'ble Supreme Court is not matching to the background of the applicants and therefore the Department cannot regularise the applicants in the post of Cooks and accordingly, Department intimated the position to applicants by issuing a speaking order (Annexure A/10) in which Department clarified the factual position on the matter and decided accordingly.

12. The Respondents further submitted that the educational qualification prescribed for the post of Cook is Matriculation or its equivalent as per the new recruitment rules. None of the candidates in this O.A. fulfills the educational qualification prescribed in the RR. The department followed the procedure of absorption of contingent casual



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labourers as Cooks who have worked more than two years after registering their names in the Employment Exchange before amending the RR. Hence the applicants are not entitled to get regularization in the post of Cook . |In the earlier recruitment, they could not be accommodated due to their lower position in the list. Therefore the respondents prays that O.A. is devoid of merit and is liable to be dismissed.

13. Heard the learned counsel for the parties.

14. Learned counsel for the applicant while reiterating the submission made in the O.A., highlighted the fact that the orders passed in OA 631/2011 and OA 87/2011 were quite clear and directed the respondents to consider the case of the applicants for regularisation against any appropriate post that had occurred after regularisation of 2007 but prior to introduction of new Recruitment Rules. These orders were not challenged before the Hon'ble High Court of Kerala and therefore had attained finality. There was a separate O.A. 890/2009 filed by different persons and against the order of which the respondents approached the Hon'ble High Court of Kerala in O.P. (CAT) No. 4276/2011. The order of Hon'ble High Court in that case has absolutely no bearing in the orders passed by this Tribunal in OA87/2011 and OA 631/2011. But the respondents have mixed all the cases in their O.M. dated 24.09.2012 which is grossly incorrect. Nevertheless, the fact remains that the applicants have been working from 1997 onwards and all the persons have been included in the Seniority List of the Cooks working in the various islands and educational departments who were engaged by various island schools/colleges in an identical manner. Persons listed at Sr.1 to 8 and 10 in the Seniority List were appointed on a regular basis by the respondents in 2007. Therefore, having considered persons who were engaged in a similar process and performing similar duties for regularization, the respondent authorities cannot take a stand that the engagement of the applicants were irregular as they were not against the duly sanctioned post. Further, the engagement of the person at that point of time cannot be judged in terms of the Recruitment Rules framed in 2011. All the applicants



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had completed more than period 10 years of service and hence they are entitled to be absorbed against regular vacancies. He further referred to the information obtained from the respondents on 15.12.2010 (A/13) in which the department had clearly indicated that at that time 14 posts of Cooks were lying vacant. Therefore, in December, 2010 which is prior to introduction of new Recruitment Rules, 14 posts of Cooks were available and hence the applicants are entitled to be absorbed against those vacant posts. Therefore, he prayed for a direction on the respondents for appointment of the applicants on a regular basis.

15. Learned counsel for the respondents, while admitting the fact that the respondents had not preferred any appeal against the order dated 9.1.2012 passed by this Tribunal in OA 631/2011 and OA. 87/2011 submitted that against the order passed in OA 780/2009 earlier i.e. on 4th May 2011 which covered ~~an~~ exactly similar issue an appeal was preferred in the Hon'ble High Court of Kerala and the Hon'ble High Court vide order dated 2.1.2012 in OP (CAT) No.4276/2011 directed the Administration to decide the matter applying the law laid down by the Hon'ble Supreme Court in different cases touching the aspects of regularisation with particular reference to the Umadevi's case. Since the direction in the O.A. 87/2011 and O.A. 631/2011 wherein the order was passed on 9.1.2012 was to consider the case of the applicants therein for regularization, the authorities in their Annexure A/10 Office Memorandum dated 24th September 2012 passed a common order covering all the applicants in the three O.As. who were similarly placed. The learned counsel however admitted that the case of present applicants could have been dealt with separately instead of linking it to the order passed in O.A. No. 780/2009. The learned counsel reiterated the submissions made in the reply statement and therefore, referring to the speaking order passed by the authority submitted that the applicants do not fulfill the requisite qualifications, and were not engaged against regular vacancies on account of which they could not be considered for regular appointment. The learned counsel



also mentioned that as of now there is no regular vacancy of Cook as all the posts have been filled up. Referring to the case of absorption all persons at Sr. No.1 to 9 of the Seniority List, the learned counsel argued that they were absorbed at that point of time as they fulfilled the requirements of the Recruitment Rules at that point of time. The learned counsel contended that the speaking order covers all the aspects and was issued following the principle laid down in *Umadevi's* case and therefore the same cannot be faulted. In view of the above there is no justification in the contention made by the applicants.

16. We have carefully considered the facts of the case and also the submissions made by either side. It is an admitted fact that the applicants as well as other persons who figured in the Seniority List of Cooks working in various islands in the Education Department placed at Annexure A/1 of the O.A were engaged by High Schools/Colleges including Jawaharlal Nehru College/Jawaharlal Nehru Senior Secondary School. All these persons were engaged after 1993 i.e. subsequent to issuance of Government order of 1993 relating to the grant of temporary status to the casual employees, who were then employed and have rendered one year of continuous service in Central Government offices. It is also quite clear that there is absolutely no difference in the manner of engagement as well as requisite qualifications amongst all the persons who figure in that Seniority List. Therefore, all the persons who figured in that Seniority List can be taken as similarly placed. Out of the persons in the said Seniority List Sr. No.1 to 8 and 10 were absorbed by the respondents against regular vacancy in the year 2007. Others were not considered even though as reported by the respondents there were as many as 14 vacancy of cook in December 2010.

17. In the order passed by the respondent Authority at Annexure A/10 they have referred to paragraph 53 of the judgement in *Umadevi's* case (supra) which reads as follows:

“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 (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 regularization 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 sub-judice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme. "

18. The order dated 24.9.2012 considered the case of the applicants vis-a-vis their qualification, engagement against duly sanctioned posts and in accordance with the rules and the minimum period of 10 years of service. As far as the minimum period of 10 years service is concerned, there is no dispute in the fact that all the applicants have completed more than 10 years service without the intervention of the Court/Tribunal. That leaves two other aspects i.e. engagement against the sanctioned post and their qualification in terms of the recruitment rules.

19. With regard to the engagement of the applicants the respondent authority has taken a stand that they were not engaged against any regular vacant posts of Cooks and were engaged by schools in the islands without proper sanction of the competent authority and hence are not entitled for regularization.

20. It is evident from records that all those persons who are figuring in the Seniority List prepared by the respondents and placed at Annexure A/1 that all of them were engaged by various schools as casual workers from 1994 onwards and were working as such. If the respondents are of the view that they were not engaged against regular vacancies and were engaged by the schools without proper authority then no one is eligible for regularization and their service should have been terminated. In that



case they ought not to have absorbed the casual workers at Sr.No. 1 to 8 and 10 in the Seniority List in 2007. Since these absorbed persons have been engaged by the schools in the islands in an exactly identical manner, engagement of the applicants cannot be held otherwise. Hence the contention of the authority and making a distinction between the applicants and persons who have already absorbed by them saying that they were not engaged against regular vacancies and hence are not entitled for regularization does not appear justified.

21. The other aspect relates to the requirement of the Recruitment Rules. The revised Recruitment Rules were notified on 29.1.2011 and prescribes a minimum educational qualification of Matriculation. Prior to that there was no such stipulation in the Recruitment Rules relating to educational qualification for the post of Cook. Therefore when the persons are engaged by the schools in different islands between 1997 and 2000, the educational qualification stipulated in the recruitment rules of 2011 was not in existence. Had the minimum educational qualification of Matriculation was also at that point of time then it would have been a valid ground. But to apply the norms prescribed in 2011 to an engagement made in 1997 would hardly be proper and justified. The casual workers who were similarly engaged in that point of time and were absorbed by the respondents had also educational qualification as the same level as that all applicants. Since there were 14 vacancies of Cook in December 2010 as indicated by respondents themselves, which was prior to the coming into existence of new recruitment rules, the authorities could have easily filled up the available vacant posts at that point of time by casual workers as per their position in the Seniority List since they had been working for more than 10 years as in the case of other nine persons in the list who were absorbed in 2007. In that event the issue now being raised regarding fulfillment of the educational qualification in terms of revised recruitment rules would not have arisen. It further appears that pursuant to a direction of this Tribunal in the case of casual labourers who have been conferred temporary



status, the respondent authority by Notification dated 10.7.2012 ordered relaxation in the required minimum educational qualification of 10 standard pass in favour of casual labourer conferred temporary status absorbed against regular vacancies. This was done in exercise of the powers conferred on him under Rule 5. The new Recruitment Rules for Cook vide Rule 5 also empowers the Administrator to exempt any person from the operation of the rules wherever necessary. Therefore, raising this issue as a an argument to reject the case of the applicant also does not appear justified.

22. In O.A. No. 87/2011 and 631/2011, this Tribunal clearly gave a direction to the respondent to consider the case of the applicant for regularisation against any appropriate post that would occurred for regularization after 2007 but prior to introduction of new Rules. Since 14 posts of Cooks were available at that point of time, the respondent authorities ought to have considered the case of the applicants who were on a similar footing as that of casual labourers who were absorbed in the year 2007. It is also a fact that the respondent authorities did not choose to prefer any appeal against the order of the Tribunal in the aforesaid O.As before any higher forum.

23. In the context of the discussions, in the preceding paragraphs, we are of the view that the order passed by respondent dated 24.9.2012 at Annexure A/10 is not justified and hence the same is quashed. We declare that the applicants who have been working as casual workers for more than 15 years are entitled for regularisation. Therefore, we direct the respondents to consider the case of the applicants for regularization in the same manner as was done in 2007 for other casual labourers in the Seniority List in the available vacancies as well as all future vacancies that may arise in due course. The O.A. is accordingly allowed.

24. A Misc. Appln. No. 181/103/2015 filed by the applicants to keep the operation of the Annexure A/13 Notification dated 6.7.2015 in abeyance. In view of the final order passed in the O.A. there is no need for any further direction in the present M.A.

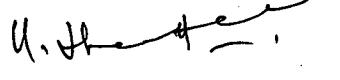


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The M.A. is accordingly stands disposed of.

25. No order as to costs.


(Prasanna Kumar Pradhan)
Administrative Member


(U. Sarathchandran)
Judicial Member

SJ*