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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 234 of 2013

Friday, this the 10th day of April, 2015

CORAM:

Hon'ble Mr. U. Sarathchandran, Judicial Member

V.P. George, S/o. Sri V.G. Paul,
aged 36 years, Casual Labourer
Working as Driver, Port Health Organization,
Kochi, residing at Vakappadath House,
Kallenchery, Kumblangi PO, Kochi-682 007. **Applicant**

(By Advocate – Mr. M.R. Hariraj)

V e r s u s

1. Union of India, represented by the
Secretary to Government,
Ministry of Health and Family Welfare,
New Delhi – 110 011.
2. Director General of Health Services,
PH(IH) Section, Nirman Bhavan,
New Delhi – 110 011.
3. Port Health Officer, Government of India,
Port Health Organization,
Kochi – 682 009. **Respondents**

(By Advocate – Mr. Sunil Jacob Jose, SCGSC)

This Original Application having been heard on 06.03.2015, the
Tribunal on 10.04.2015 delivered the following:

O R D E R

Applicant has approached this Tribunal on refusal by the respondents
to consider him for regular appointment under respondent No. 3 as a Driver
despite his continuous casual engagement for 16 years. He was initially



engaged as a Driver on daily wages on 2.9.1996 for 89 days. Thereafter another office order was issued to him vide Annexure A2 dated 1.12.1999 again engaging him for 89 days with effect from 1.12.1999. According to applicant there after he was continuing as daily waged driver and currently he is getting wages at the rate of Rs. 340/- per day without any paid holidays. He states that while conducting the audit, the Accounts Officer of IAHQ had recommended that since respondent No. 3 is having a Government Jeep since 1983 the present daily rated labour engaged as driver for the last 12 years without any break can be regularised to the existing vacancy of the post of a Field Worker. Respondent No. 3 duly recommended it to respondent No. 2 vide Annexure A4 communication. In Annexure A4 it was also recommended that the applicant who is presently working as Driver on daily wages can be considered for permanent absorption to the vacant post of a Peon so that the office vehicle can be manned by him without posting a driver. Applicant further states that vide Annexure A5 communication respondent No. 3 recommended for filling up the post of Field Workers by absorbing the applicant who is doing the work of a Driver and also doing all routine activities of Group-D staff since all the sanctioned group-D posts are lying vacant for the last few years. According to applicant since he has been working as a Driver under the respondents for more than 16 years without the intervention of any Court orders the inaction on the part of the respondents to regularize him in the post of Driver is unjust, unfair and illegal. He further states that he is not being paid wages at the rate of 1/30th of the minimum pay of the Driver though this Tribunal had held in OA No.

634 of 2009 that such casual labourers with a length of service of about 20 years is entitled to the emoluments available to a Group-D employee. He prays for the following reliefs:-

- “i. To direct the respondents to consider the applicant for regularization as Driver/Field Worker in the office of the 3rd respondent;
- ii. To direct the respondents to grant the applicant 1/30th of the minimum of the basic pay and allowances due to a Driver as daily wages with all consequential benefits including arrears of pay and allowances with interest @ 12% per annum;
- 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.”

2. The respondents contend that there is no sanctioned post of Driver for respondent No. 3 and that as per the recruitment rules the post of Field Worker has to be filled in by direct recruitment. The respondents pray for rejecting the OA.

3. A rejoinder was filed by the applicant reiterating his contentions in the OA.

4. An additional reply statement was filed by respondents stating that it is not correct to say that the applicant was engaged continuously on daily wages because he was terminated on 31.12.1999.

5. Heard Mr. Hariraj, learned counsel for the applicant and Mr. Sunil Jacob Jose, SCGSC learned counsel for the respondents.



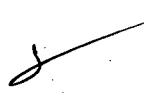
6. Mr. Hariraj pointed out that there are vacancies of Chowkidar and Safaiwala as can be seen from Annexures A4 and A5 and that posts of Field Worker are vacant. Yet the respondents 1 & 2 are not inclined to consider him to be regularized against any one of that post despite the fact that he has been working for about 16 years on daily rated basis and has been driving the vehicle allotted to the office of respondent No. 3.

7. Mr. Sunil Jacob Jose submitted that there is a conscious decision on the part of the respondents Nos. 1 & 2 not to post a Driver in the office of respondent No.3. He submitted that the applicant has no right to be considered for any of the post especially for the post of Field worker as the same has to be filled up by direct recruitment in accordance with the recruitment rules.

8. During the pendency of the OA applicant produced Annexure A6 copy of the notification published in the newspaper inviting applications for the two posts of Field Workers. The age prescribed as per Annexure A6 notification is 18 to 25 years (relaxable as per rules). Obviously the applicant being 36 years old as on the date of this OA he is *prima facie* outside the eligibility prescribed in Annexure A6 notification. Mr. Hariraj learned counsel for the applicant referred to Annexure A7 judgment of the Hon'ble High Court of Kerala in WP(C) No. 15765 of 2014 in ***M.T. Joshy v. Port Health Organization & Ors.*** decided on 20.9.2014. In that case the petitioner was working on temporary service as Chowkidar in the 1st respondent office

(respondent No. 3 herein), posted on compassionate grounds in the place of his father who died while working as Chowkidar in that office. When he approached the respondents for regularisation the same was rejected on the ground that the post of Chowkidar was notified for filling up only by direct recruitment and the petitioner's case being appointment on compassionate grounds the same cannot be brought within the purview of filling it by direct recruitment. The court negatived that contention and directed the respondents to consider the case of the petitioner for regularisation before proceeding further with the filling up of the post by direct recruitment. This Tribunal is unable to draw a parallel between the aforesaid Annexure A7 case and the case of the applicant in this OA. In Annexure A7 case the petitioner was already posted on temporary basis on compassionate grounds and yet he was not considered for regularisation. In the instant case the applicant was appointed on daily wage basis which gave no right to him for regularisation. Only the merciful approach shown by the officials of the respondent No. 3 office resulted in Annexures A3, A4 and A5 communications recommending his case for regularisation in the existing vacancy of Field Worker or Group-D so that his skill as a Driver of motor vehicle could be made use of for running the vehicle allotted to the office of respondent No. 3.

9. Shri Sunil Jacob Jose, submitted that there is no post of Driver sanctioned to the 3rd respondent office. This Tribunal is surprised to note that though the vehicle has been provided to the office of the respondent No. 3 the post of Driver has not been sanctioned. As pointed out by Shri Sunil



Jacob Jose, learned SCGSC there was a conscious decision on the part of the respondents Nos. 1 & 2 not to create the post of a Driver but to have the aforesaid vehicle driven by a daily rated employee. True, it is a policy decision of the Government where this Tribunal cannot interfere.

10. The only option available to the applicant and respondent No. 3 was to make a request to respondents Nos. 1 & 2 to consider the applicant for being absorbed in any of the existing posts. However, there was a hurdle for considering him in the post of Field Worker because the recruitment rule demands direct recruitment for filling up that post.

11. Mr. Hariraj, referring to *State of Karnataka & Ors. v. M.L. Kesari & Ors.* – AIR 2010 SC 2587 submitted that though the decision of the Constitution Bench of the Apex Court in *State of Karnataka v. Umadevi* – AIR 2006 SC 1806 is aimed at to put an end to the practice of employing person on daily wages/ad hoc/casual for long period and then regularizing them on the ground that they have served for more than 10 years, the true effect of the direction in *Umadevi* was that all persons who have worked for more than 10 years as on 10.4.2006 (the date of decision of *Umadevi*) without obtaining of any interim order of any Court or Tribunal in a vacant post possessing the requisite qualification are entitled to be considered for regularization. According to Mr. Hariraj applicant in the instant case also having worked for more than 10 years as on the aforesaid date is entitled to be considered for filling up the vacant post.



12. However this Tribunal is not impressed by that argument because firstly, there is no vacant and regular post of Driver in the office of respondent No. 3. Secondly, applicant was not working as a Driver continuously for more than 10 years in a regular vacancy. Therefore, the reliance on *M.L. Kesari*'s case will not come to the assistance of the applicant. It is not clear whether the applicant has applied for the post of Field Worker in response to Annexure A6 public advertisement. It is also not clear whether the two posts of Field Workers as notified in Annexure A6 were filled up or not. It appears from Annexure A6 that the age prescribed i.e. 18-25 years is relaxable as per rules. In the event the applicant had applied for the post of Field Worker post, this Tribunal hopes that necessary relaxation permissible as per rules could be granted to the applicant if the respondents Nos. 1-3 consider the same in order.

13. Respondents are directed to consider increasing the wages of the applicant as per the extant government orders and administrative instructions.

14. In the circumstances the Original Application is disposed of as above. No order as to costs.


(U. SARATHCHANDRAN)
JUDICIAL MEMBER

“SA”