

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 243 of 2010

Thursday, this the 9th day of June, 2011

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
 Hon'ble Mr. K. George Joseph, Administrative Member

Jolly P.G., Driver (NMR), Department of Education,
 Lakshadweep Office, Willingdon Island,
 Cochin-3.

Applicant

(By Advocate – Mr. P.K. Madhusoodhanan)

V e r s u s

1. Union of India, represented by the Secretary,
 Department of Personnel and Training,
 Ministry of Home Affairs, New Delhi.
2. The Administrator, Union Territory of Lakshadweep,
 Kavaratti.
3. Director of Education,
 Union Territory of Lakshadweep, Kavaratti.
4. Education Officer, Education Department, Lakshadweep
 Administration, Cochin.

..... **Respondents**

**[By Advocates – Mr. P. Parameswaran Nair – R1 – Not present &
 Mr. S. Radhakrishnan (R2-4)]**

These applications having been heard on 19.5.2011, the Tribunal on
09.06.2011 delivered the following:

O R D E R

By Hon'ble Mr. K. George Joseph, Administrative Member -

This OA has been filed by the applicant for a direction to the
 respondents to regularize his service as Driver, to declare that he is eligible

and entitled for grant of temporary status and regularization in service as Driver and to consider and pass orders in Annexure A-6 representation in accordance with law without any discrimination.

2. The applicant was initially engaged in leave vacancy as Driver in 1992 and 1993-94 in the PWD Office, Kochi; UTL Administration. Since 15.3.1995 he has been working under the 4th respondent as NMR Driver. He has been working continuously above 240 days from 1995 onwards. His representation dated 19.12.2008 to the 2nd respondent to absorb and regularize his service as permanent Driver has not resulted in any positive action. Hence, the OA.

3. The applicant claims regularization of his service in the light of the direction of the Apex Court in Umadevi case. He has long, continuous, uninterrupted service for more than 240 days in each year of his service since 1995. He is working even now under the respondents. Therefore, he is entitled to be considered for regularization in service as Driver like Shri P. Balakrishna Warrier and Shri P.V. Babu. Not doing so amounts to clear discrimination. Non-consideration of Annexure A-6 representation amounts to non-exercise of statutorily vested jurisdiction by the second respondent.

4. The respondents in their reply statement submitted that the applicant was engaged from 1995 onwards and was paid on the basis of work done by him and was not enrolled in muster roll. He was engaged as Driver but not on full time basis to maintain a Jeep when it was allotted to the Education

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Department in 1995. His name was entered in the muster roll from 11.11.2008. He was engaged long after the cut off date of 10.9.1993. The temporary status conferment scheme is not applicable to him. The Administrator, Lakshadweep has accorded post facto approval for engagement of the applicant as NMR Driver as casual labourer by diary No. 774 dated 24.2.2009. As the case of the applicant does not come within the norms for regularization or granting of temporary status, there is no case for regularization of him.

5. We have heard the learned counsel for the parties and perused the records.

6. The applicant's claim for regularization solely rests on the direction of the Hon'ble Supreme Court in Uma Devi's case. The Apex Court in Civil Appeal No. 3595-2412 of 1999 in the case of Secretary, State of Karnataka & Ors. Vs. Uma Devi & Ors., after reiterating that any public appointment has to be in terms of the constitutional scheme, directed the Union of India, the State Governments and their instrumentalities to regularize as a one time measure the services of such irregularly appointed who are duly qualified persons in terms of recruitment rules for the post and who have worked for ten years or more in duty sanctioned posts. As submitted by the respondents the cut off date for such regularization was 10.9.1993. The regularization directed by the Apex Court was a one time measure, not as an ongoing scheme. As per the say of the applicant, he has long continuous, uninterrupted service for more than 240 days in each year of his service

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since 1995 only. He is not covered by the one time measure of regularization directed by the Apex Court, as he was engaged subsequent to 10.9.1993. Therefore, the question of regularising the applicant on the basis of the direction of the Apex Court in Uma Devi case does not arise at all and the OA fails.

7. Before parting we would make the following observations.

8. The Apex Court also had directed in the Uma Devi's case that it should be ensured that regular recruitment is undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wages are being now employed. It is not clear from the records or submissions whether the applicant is engaged at present against a sanctioned post of Driver or not. If he is engaged against a sanctioned post of Driver, the respondents are bound to fill up the post as directed by the Hon'ble Supreme Court.

9. The respondents have not responded to the representation made by the applicant on 19.12.2008 at Annexure A-6. The prayer of the applicant is to issue necessary direction to the 2nd respondent to consider it and pass orders in a time frame. The said prayer is time barred. Therefore, we do not adjudicate it. However, we would observe that not replying to the representation is not acceptable in good administration. It is expected of the respondents to give a speaking order which should inter alia clear the position regarding regularization of Shri P. Balakrishna Warrier and Shri

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P.V. Babu as Drivers while disposing of his representation.

10. The Original Application is dismissed with no order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

“SA”