

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.758/07 & O.A.No.32/08

Thursday this the 15th day of January 2009

C O R A M :

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

O.A.758/07

1. K.G.Ramesh, Lower Division Clerk, Passport Office, Thiruvananthapuram.	Applicants
2. K.S.Sindhu, Lower Division Clerk, Passport Office, Thiruvananthapuram.	

(By Advocate Mr.P.Santhosh Kumar)

Versus

1. Union of India represented by Secretary, Ministry of External Affairs, Government of India, New Delhi.	...Respondents
2. Joint Secretary (C.P.V.) and Chief Passport Officer, Ministry of External Affairs, New Delhi.	
3. Regional Passport Officer, Thiruvananthapuram.	

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

O.A.No.32/08

1. K.P.Prabhavathi, W/o.Ramachandran, U.D.Clerk, Passport Office, Kozhikode. Residing at Passport Office Quarters, Room No.5, Post Elanji Palam, Calicut.	...Respondents
2. V.P.Gireesh, S/o.V.P.Kolukutty, U.D.Clerk, Passport Office, Kozhikode. Residing at Valiaparambil, KSHB Colony, Post Malaparamba, Calicut.	

3. H.Heera Bai,
W/o.S.N.Naik,
U.D.Clerk, Passport Office, Kozhikode.
Residing at H.No.34/436, Vignesh,
Muthukudiparmba, Post Civil Station, Calicut.
4. K.E.Muraleedharan,
S/o.Chathukurup,
U.D.Clerk, Passport Office, Kozhikode.
Residing at B20, Passport Office
Residential Quarters, Post Elanjpalam, Calicut.
5. M.Shyamala,
W/o.K.P.Sunny,
U.D.Clerk, Passport Office, Kozhikode.
Residing at Kairali, Post Bepure (North), Calicut.
6. P.Rajan,
S/o.P.Dhamodaran Nair,
U.D.Clerk, Passport Office, Kozhikode.
Residing at Chappookandy House,
Nanminda Post, Kozhikode.
7. N.P.Valsarajan,
S/o.Kanaran,
U.D.Clerk, Passport Office, Kozhikode.
Residing at A/2-Flat, Passport Office
Residential Quarters, Post Elanjpalam, Calicut.
8. P.Rugmini,
S/o.Babu.U,
U.D.Clerk, Passport Office, Kozhikode.
Residing at Abiruchi, Post Kolathara,
Kundiyathodu, Feroke, Kozhikode.
9. M.A.Snehaprabha,
W/o.Udayakumar,
U.D.Clerk, Passport Office, Kozhikode.
Residing at Adarsh, Post Kuruvasseri,
Krishnan Nair Road, Kozhikode.
10. M.Sulaikha,
W/o.K.Prakasan,
U.D.Clerk, Passport Office, Kozhikode.
Residing at Kidaraparamba,
Post Karaparamba, Kozhikode.
11. P.Sarada,
W/o.Ayyappan,
U.D.Clerk, Passport Office, Kozhikode.
Residing at Ashanikathan, Post Kolakkattuchalil,
Chelembra, Malappuram Dist.

12. A.E.Kanchana Lakshmi,
W/o.K.V.Bhavandas,
U.D.Clerk, Passport Office, Kozhikode.
Residing at 34/411-A, Chaithanya,
Post Civil Station, Calicut.
13. P.C.Shobanakumari,
W/o.P.M.Sivasankaran,
U.D.Clerk, Passport Office, Kozhikode.
Residing at Ayodhya, Post Chelannur,
Kozhikode.
14. T.G.Rajendrakumar,
S/o.P Gangadharan,
U.D.Clerk, Passport Office, Kozhikode.
Residing at 2/608, Ragam,
Post Elanhipalam, Calicut.
15. V.Pankajakumari,
W/o.Krishnan Nambiar,
B-15, Passport Office Residential Quarters,
Post Elanipalam, Calicut – 16.
16. Aliene Pushpalatha,
W/o.John Balamithran,
U.D.Clerk, Passport Office, Kozhikode.
6/416, Sharon, Post North Bepur, Calicut.
17. V.Malathy,
W/o.E.N.Gopinathan,
U.D.Clerk, Passport Office, Kozhikode.
Deepam, Adunad, Post Mavoor, Calicut.
18. K.K.Jalajakumari,
S/o.Biju N.P.,
U.D.Clerk, Passport Office, Kozhikode.
B-12, Passport Office Quarters,
Post Elanipalam, Kozhikode.
19. A.Sudheera,
W/o.Aravind Babu M,
U.D.Clerk, Passport Office, Kozhikode.
39/10, Athulya, Post West Hill, Calicut.
20. P.M.Shyamala,
W/o.Jayadasan,
U.D.Clerk, Passport Office, Kozhikode.
Residing at Swathi, Variyamveedparamba,
Post Kottamparamba, Kozhikode – 8.

21. K.P.Sugatha,
W/o.V.Karthikeyan,
U.D.Clerk, Passport Office, Kozhikode.
Yavanika, Post Karuvanthiruthy, Kozhikode.

22. P.Devadas,
Panchamy, P.H.E.D Pump House Road,
Kavunnkal, Malappuram.

23. K.P.Viswarajan,
S/o.K.P.Krishnan,
Krishna Sadanam, Thiruthiyad,
Post Puthiyara, Calicut.

24. V.K.Radha,
W/o.E.Vijayan,
Harinandanam, Post Vengari,
Kozhikode.

25. K.Smitha,
W/o.Devadas P,
Panchamy, PHED Pump House Road,
Malappuram. ...Applicants

(By Advocate Mr.P.V.Mohanan)

Versus

1. Union of India represented by the Secretary to
Government, Ministry of External Affairs,
Patiala House, Annexe, Thilak Marg, New Delhi.

2. The Regional Passport Officer,
Regional Passport Office,
Kozhikode.

3. The Joint Secretary (CPV),
Chief Passport Officer, Ministry of External Affairs,
Patiala House, Annexe, Thilak Marg, New Delhi. ...Respondents

(By Advocate Mr.George Joseph,ACGSC)

These applications having been heard on 15th January 2009 the
Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

These O.As are identical in nature and, therefore, we dispose of
them by this common order.

2. Pursuant to this Tribunal's orders dated 14.7.2003 and 13.6.2005 in O.A.1557/98 and O.A.436/05 respectively, the respondents have issued identical orders (Annexure A-5 dated 5.12.2006 and Annexure A-6 dated 6.9.2006) in O.A.758/07 and (Annexure A-6 to Annexure A-26) in O.A.32/08 by which the applicants have been appointed as L.D.Cs in their respective Passport Offices under the Ministry of External Affairs in the pay scale of Rs.950-20-1150-EB-25-1500 in a temporary capacity from their respective dates of their initial engagement as casual labourers. The respondents have also granted consequential benefits such as notional fixation of pay, eligibility to appear in any test or examination if held for their promotion to the next higher grade, counting of qualifying service for terminal benefits from their respective dates of initial engagement as casual labourer. However, their seniority in the grade of L.D.C will be counted only from their respective dates of regularisation. The Annexure A-5 order dated 5.12.2006 issued to the 1st applicant, Shri.K.G.Ramesh, in O.A.758/07 is reproduced as under :-

V.IV/578/11/97
Government of India
Ministry of External Affairs
(CPV Division)

New Delhi, the December 5, 2006

ORDER

In pursuance of CAT (Ernakulam Bench's) judgment dated 14.7.2003 in O.A.1557/98 & O.A.436/05 dated 13.6.2005 and in partial modification of this Ministry's order of even number dated 18.1.1996 Shri.K.G.Ramesh is appointed as a Lower Division Clerk in the Passport Office, Trivandrum in the Central Passport Organisation of the Ministry of External Affairs in the pay scale of Rs.950-20-1150-EB-25-1500 in a temporary capacity with effect from 25.9.1989 i.e from the date of his initial engagement as casual labourer.

.6.

Shri.K.G.Ramesh will be entitled to all consequential benefits such as notional fixation of pay, eligibility to appear in any test or examination if held for his promotion to the next higher grade, counting of qualifying service for terminal benefits from 25.9.1989 except seniority in the grade of L.D.C which will be counted from 22.4.1997 only.

This supercedes earlier order of even number dated 6th September, 2006.

(Guru Sharan Singh)
Administrative Officer (PV-IV)

1. Shri.K.G.Ramesh, L.D.C, PO, Trivandrum
2. Passport Office, Trivandrum.
3. The CCA, MEA, New Delhi.
4. Budget/Fin.III Section, MEA, New Delhi.
5. Office Order Register.
6. Spare copy.

3. In the case of similarly placed persons and juniors to the applicants also, the respondents had passed orders of regularisation and granted consequential fixation of pay. The applicants have filed copies of the pay fixation order passed in respect of Smt.P.K.Sudharma, LDC and one Smt.N.M.Suhara Beevi, LDC as Annexure A-7 and Annexure A-8 in O.A.758/07. Annexure A-7 order dated 7.3.2006 is extracted as under :-

GOVERNMENT OF INDIA
MINISTRY OF EXTERNAL AFFAIRS
REGIONAL PASSPORT OFFICE
Passport Office Buildings,
Panampilly Nagar P.O.
COCHIN – 682 036

Telephone : 0484-2315152, 2312607,
2310921, 2310920
Fax : 0484-2310915
E-mail : rpo.cochin@mea.gov.in
Website : <http://rpococ.kar.nic.in>

CHN/682/1/2001

7.3.2006

OFFICE MEMORANDUM

In terms of Ministry's order No.V.IV/578/15/97 dated 6.10.2005 in pursuance of CAT (Ernakulam Bench) judgment dated 14.7.2003 in OA No.1557/98 & OA No.436/05 dtd. 13.6.2005, read with Ministry's letter No.V.IV/578/80/2005 dtd. 10.2.2006, the pay of Smt.P.K.Sudharma, LDC has been notionally refixed at Rs.3425/- in the scale of pay Rs.3050-75-3950-80-4590 w.e.f. 22.4.1997.

Date of appointment 25.9.1989

Scale of pay : 950-20-1150-EB-25-1500

Pay as on 25.9.1989	950
Pay as on 1.9.1990	970
Pay as on 1.9.1991	990
Pay as on 1.9.1992	1010
Pay as on 1.9.1993	1030
Pay as on 1.9.1994	1050
Pay as on 1.9.1995	1070

Corresponding revised pay scale w.e.f 1.1.1996 consequent to the implementation of Vth Pay Commission Rs.3050-75-3950-80-4590.

Pay as on 1.1.1996	1070
DA	1584
IR I	100 (fixed)
IR II	107 (10% of BP)
40% of BP	428
	3289

Pay fixed at Rs.3350/- w.e.f 1.1.1996

	1.9.1996	3425
Pay as on	22.4.1997	3425
	1.9.1997	3500
	1.9.1998	3575
Pay as on	3.5.1999	3575
	1.9.1999	3650
	1.9.2000	3725
	1.9.2001	3800
	1.9.2002	3875
	1.9.2003	3950
	1.9.2004	4030* (Financial benefit w.e.f. 4.9.04 EL from 1.9.04 – 3.9.04)
	1.9.2005	4110

Date of next increment 1.9.2006 raising the pay to Rs.4190/-

Smt.P.K.Sudharma, LDC will not be eligible to draw the arrears for the period from 25.9.1989 to 22.4.1997 and up to 2.5.1999 as she has not qualified the typewriting test. However, the arrears will be payable with effect from 3.5.1999, the date on which she passed the typewriting test.

(M.Velukutty)
Ag. Regional Passport Officer

To
Smt.P.K.Sudharma, LDC

Copy to

- 1 The Under Secretary (PV), M.E.A., New Delhi.
- 2 The Pay & Accounts Officer, M.E.A, New Delhi.
- 3 Cash Section (2 copie)
- 4 Service Book/Personal file.

4. The operative part of the order dated 14.7.2003 in O.A.1557/98 (Annexure A-4 in O.A.32/08) referred to in the aforesaid order of the respondents' department is as under :-

" In the light of what is stated above, we allow the application in part. The claim of the applicants for seniority above respondents 4 to 43 with effect from the date of their initial engagement as casual labourers is rejected. Declaring that the applicants are entitled to have their service regularised as L.D.Cs with effect from the dates of their initial appointment as casual labourers in view of the judgment of this Tribunal in O.A.1037/91 and we direct the respondents to grant the applicants benefit of regularisation with effect from the initial date of their engagement for all purposes other than seniority namely eligibility to appear in the promotion tests or examination, and for terminal benefits etc. We also direct the respondents to issue appropriate orders notionally fixing their pay and date of regularisation accordingly. Annexure A-8 order is set aside finding that the orders issued hitherto did not amount to full implementation of the judgment of the Tribunal (Annexure A-1). There is no order as to costs."

5. The operative part of O.A.436/05 dated 13.6.2005 (Annexure A-5 in O.A.32/08) contains the following orders of this Tribunal :-

"3. Learned counsel for applicant submits that these applicants are also entitled to the same benefits as granted by the Tribunal in O.A.1557/98. We also agree with the submission made by the counsel for the applicants as these applicants are also on the same footing.

4. In the light of the above facts and circumstances and on the basis of the submission made by the counsel on both sides, we direct the 2nd respondent to consider and dispose of the representation made by the applicants and communicate the decision taken to the applicants within a period of three months from the date of receipt of a copy of this order. In the circumstances, no order as to costs."

6. In spite of the aforesaid orders of this Tribunal, the respondents did not grant ACP benefits to such L.D.Cs. Some of the aggrieved persons approached this Tribunal vide O.A.523/04 and the same was allowed vide order dated 2.5.2006 (Annexure A-27 in O.A.32/08) and its operative part is as under :-

"15. In the result we allow the application with the following orders/directions :

- (i) For the purpose of ACP benefit, the services of the applicants from the initial date of engagement should be considered.
- (ii) The applicants are entitled to back wages likewise from the initial date of engagement and
- (iii) Their breaks in services should be duly reconsidered under the CCS Leave Rules for appropriate treatment for working out the dates of increments and arrears.

16. No costs."

7. The respondents have challenged the aforesaid order of this Tribunal before the Hon'ble High Court of Kerala in W.P.(C) No.8271/07 but the same was dismissed on 9.4.2008 (Annexure A-28 in O.A.32/08) with the following observations :-

"5. We heard the learned counsel for the respondents also. Going by the earlier decisions of the C.A.T, the view taken by the Tribunal in Ext.P3 judgment that the respondents are entitled to get the arrears of salary is perfectly legal and valid. The direction to fix the salary notionally with retrospective effect cannot be read in isolation. The Tribunal held that the notionality referred to is the date and not the flow of benefits and therefore the back wages from the date of regularisation should flow into the hands of the applicants. The arrears of salary being one of the components of the benefits flowing from Annexure A-6 order of the C.A.T, if the Tribunal wanted to exclude it, the same could have been specifically excluded. Therefore, we agree with the reasoning of the Tribunal for upholding the claim of the respondents for back wages. For the very same reason, they are entitled to count their

.10.

service for promotion under the ACP scheme also. Annexure A-6 specifically provides that their service can be counted for promotion. A.C.P is also a form of promotion for persons stagnating without regular promotion. Regarding how broken periods of absence during casual service should be treated, the writ petitioners took the view that the respondents should be granted leave not due which will be adjusted towards leave that may accrue in future. Such leave can be granted, if only the circumstances mentioned in Rule 31(1) of the CCS Leave Rules are satisfied. The Tribunal set aside the stand taken by the writ petitioners on the ground that leave not due can be granted only on medical grounds. So, the Tribunal rightly interfered with that. The present stand of the writ petitioners in this writ petition is that Rule 31(1) will not apply to the respondents. Therefore, it is unnecessary for them to challenge the direction of the C.A.T.

6. In the result, we find that no ground has been made out warranting interference with Ext.P3. Accordingly, this writ petition is dismissed."

8. Even after the issuance of the aforesaid Annexure A-5 and Annexure A-6 orders in O.A.758/07 and Annexure A-6 to Annexure A-26 in O.A.32/08, the respondents have not implemented them. Therefore, the applicants in these O.As have made separate representations. The Respondent Ministry has, however, issued a general circular dated 23.10.2007 (Annexure A-27 in O.A.32/08) directing all the Passport Offices to withhold the payment of arrears and notional fixation of pay from the date of initial engagement as casual worker in view of the judgment of the Apex Court in Uma Devi Vs. State of Karnataka dated 10.4.2006. The said circular reads as under :-

Government of India
Ministry of External Affairs
(CPV Divisions)

No.V.IV/441/Mis/07

October 23, 2007

CIRCULAR

We have been receiving requests/representations of officials in the Passport Offices regarding payment of consequential benefits from the date of initial engagement as a Casual Worker/Daily Rated Clerk referring the Central Administrative

.11

Tribunal, Ernakulam Bench's judgment dated 14.7.2003 in O.A.No.1557/98 and dated 13.6.2005 in O.A.No.436/05 with the plea that they are similarly placed as that of petitioners in the above cases.

In compliance of the Learned CAT's judgment, the Ministry was processing for implementation of the order in respect of similarly placed persons. Meanwhile, the Supreme Court's judgment dated 10.4.2006 in Uma Devi Vs. State of Karnataka was pronounced, according to which, Casual Workers cannot claim any benefit as applicable for regularly recruited employees. The Apex Court authoritatively stated that any appointment on casual basis de hors the rules is illegal which itself is a violation of Article 14 and 16 of the Constitution. The Court specifically stated that all previous Court decisions which are not in line with the directions given in this judgment will get devoid of their validity as any precedent.

Accordingly, Ministry vide its Circular Fax Message instructed all the Passport Offices to withhold the payment of arrears and notional fixation of pay from the date of initial engagement as casual worker. All the Passport Offices are advised to deal such representations of the officials at their own level in the light of the above and no need to forward the same to the Ministry.

KJS Sodhi
Joint Secretary (CPV-II)

9. Thereafter, the respondents have issued individual communications to the applicants stating that in view of the judgment of the Apex Court in Uma Devi's case (supra) the benefits as envisaged in their earlier orders cannot be granted to them. A copy of the order dated 12.11.2007 (Annexure A-10 in O.A.758/07) issued to one of the applicant Shri.K.G.Ramesh is reproduced as under :-

GOVERNMENT OF INDIA
MINISTRY OF EXTERNAL AFFAIRS
REGIONAL PASSPORT OFFICE
SNSM Building, Karalkada
Junction, Kaithamukku
Trivandrum - 695 024

Telegram (PASSEM)
Telephone 2460132, 2470225,
Fax 0471 2461132
E-mail rpo.trivandrum@mea.gov.in

No.5(77)AD/TVM/93

12.11.2007

MEMORANDUM

With reference to his representation regarding payment of consequential benefits from the date of initial engagement as a Casual Worker/Daily Rated Clerk, the Ministry in their circular No.V.IV/441/Mis/07 dated 23.10.2007 has clarified that in view of the Honourable Supreme Court's judgment dated 10.4.2006 in Uma Devi Vs. State of Karnataka, the Casual Workers cannot claim any benefit as applicable for regularly recruited employees. As such, the Ministry will not consider any representation of the officials for payment of arrears and notional fixation of pay from the date of initial engagement as Casual Labourers.

(BALACHANDRAN NAIR)
Passport Officer

To
Shri.Ramesh K.G.,LDC

10. The applicants challenged the aforesaid General Circular dated 23.10.2007 and the memorandum dated 12.11.2007 in these O.As. They have raised various grounds in these O.As and it is not necessary for us to go into all those grounds as the issue has already been settled by the earlier two orders of this Tribunal. The objections raised by the respondents in implementing their own orders in favour of the applicants herein is in view of the judgment of the Apex Court in Uma Devi's case cannot be sustained any further after the order of this Tribunal dated 23.10.2008 in O.A.82/08 – P.Lathi Kumari & Ors Vs. Union of India & Ors and its operative part reads as under :-

"7. Arguments were heard and documents perused.

8. In so far as reliance placed on order dated 29-02-2008 in OA No. 675/2007 by the respondents is concerned, the same has to be held as unsustainable as the said order underwent review and the claim of the applicant of Leelamani allowed vide order dated 16th June, 2008 relied upon by the applicant.

9. Admittedly the case of the applicants is identical to those of Shri Reghu Prasad and Leelamani. In the said case the decision is as under: -

"Arguments were heard and the case in RA 12/2008 had also been gone through. The decision in that OA, vide order dated 16th June 2008 (as slightly modified by a subsequent order correcting some errors in respect of certain dates) squarely applies to this case as well. Similarly situated persons are all to be granted regularization from the date of their initial appointment on daily rated basis."

The Apex Court as early as in 1975 in the case of *Amrit Lal Berry v. CCE*, (1975) 4 SCC 714, held as under: -

"We may, however, observe that when a citizen aggrieved by the action of a government department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to court."

10. The V Central Pay Commission in its recommendation, in regard to extension of benefit of court judgment to similarly situated, held as under: -

"126.5 – Extending judicial decisions in matters of a general nature to all similarly placed employees. - We have observed that frequently, in cases of service litigation involving many similarly placed employees, the benefit of judgment is only extended to those employees who had agitated the matter before the Tribunal/Court. This generates a lot of needless litigation. It also runs contrary to the judgment given by the Full Bench of Central Administrative Tribunal, Bangalore in the case of C.S. Elias Ahmed and others v. UOI & others (O.A. Nos. 451 and 541 of 1991), wherein it was held that the entire class of employees who are similarly situated are required to be given the benefit of the decision whether or not they were parties to the original writ. Incidentally, this principle has been upheld by the Supreme Court in this case as well as in numerous other judgments like G.C. Ghosh v. UOI, [(1992) 19 ATC 94 (SC)], dated 20-7-1998; K.I. Shepherd v. UOI [(JT 1987 (3) SC 600)]; Abid Hussain v. UOI [(JT 1987 (1) SC 147)], etc. Accordingly, we recommend that decisions taken in one specific case either by the judiciary or the Government should be applied to all other identical cases without forcing the other employees to approach the court of law for an identical remedy or relief. We clarify that this decision will apply only in cases where a principle or common issue of general nature applicable to a group or category of Government employees is concerned and not to matters relating to a specific grievance or anomaly of an individual employee.

In view of the above, the OA is allowed. It is declared that regularization of the applicant's service in the grade of LDC shall be with effect from 01-07-1977 i.e. the date of his initial engagement and he is entitled to consequential seniority. However, as in the other case, he would be entitled to notional fixation of pay without any monetary benefits. On the basis of his revised seniority, if the applicant is entitled to higher promotion, the same be considered

and granted from the date his immediate junior was promoted and the seniority in respective posts (UDC and Assistant as the case may be) rescheduled. His entitlement to monetary benefit on account of the advancement of the seniority would be reckoned only prospectively after the review DPC takes place and his promotion date altered. In so far as promotion to the higher grade of Superintendent is concerned, his seniority in the grade of assistant as arrived at now would be considered. As the drill involves review of seniority right from LDC and also review of promotion to the post of UDC and Assistants, sufficient time would be required for the same, as the revised seniority has to be prepared after due notice to the affected parties. Hence, a period of 8 months is granted to implement this order. Again, it is made clear that in case the time granted falls short, respondents may move the Tribunal for further extension, before the expiry of the time allowed, by way of a Misc. Application, reflecting therein the extent of action taken, by narrating chronological sequence of events and justifying the extent of further time sought. Any inordinate delay in initiation of action etc. would not be a justification in seeking further extension of time. No cost."

11. The case of the applicant is also covered in the above case. In fact, as early as in 1985, referring to such a situation where one set of individuals approached the court and obtained an order, while the other set could not, in *Inder Pal Yadav v. Union of India*, (1985) 2 SCC 648, the Apex Court has held as under: -

"... those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court.

Thus, consistently, the law is that when a law point is decided by the Court applicability of the same is not only confined to the parties before the court but also to similarly situated persons.

12. Hence the OA is allowed to the same extent as in the case of Reghu Prasad and Leelamani and respondents are directed to accordingly take suitable action to pass necessary orders. Time limit granted is as in the above case 8 months in addition to the latitude provided to the respondents in the above O.A.

13. No cost. "

11. Subsequently the same issue was considered in a common order dated 9.12.2008 in O.A.297/08 and connected cases. The applicants therein have also been issued with an order regularising their dates of appointments with effect from the date of entry on casual basis. However, the actual pay and seniority on the dates of initial engagement were not

given though their juniors have also been given the same benefits. The respondents have turned down their request refering to the case of Uma Devi (supra). The applicants therein have challenged the decision of the respondents claiming parity with other similarly placed persons. This Tribunal has passed the following orders :-

"6. Arguments were heard and documents perused. Service records produced by the respondents have also been gone through. Admittedly, others similarly situated have all been granted regularization from the date of their initial engagement as daily rated LDCs and the consequential benefit including seniority granted. Fixation of pay, however, was on notional basis. The question is whether the same treatment should be extended to the applicants in these O.As

7. Respondents have candidly stated vide para 9, "The respondents had considered to implement order of the CAT in O.A. No. 1557/1998 and O.A. No. 436/2005 in respect of applicants as well as other similarly placed persons and underway of processing the same" and thereafter, went to say, "but in the meantime, the Hon'ble Supreme Court's judgment dated 10-04-2006 in Umadevi vs State of Karnataka was pronounced wherein the Apex Court has clearly ruled that casual workers cannot claim any benefit as applicable for regular employees." Thus, if the decision of Umadevi is applicable in the case of the applicants, then decision taken by the respondents cannot be interfered with. However, if the decision in Umadevi is not applicable, then the applicants' case should be allowed.

8. Counsel for the applicant is right when he argued that decision in Umadevi is not applicable as the case of the applicants in these O.As is one of equality amongst similarly situated. The decision cited by the applicant as mentioned above supports the case of the applicants. The Apex Court in para 11 of the said judgment in Pooran Chandra Pandey has held as under: -

11. Learned counsel for the appellant has relied upon the decision of this Court in Secy., State of Karnataka v. Umadevi and has urged that no direction for regularisation can be given by the Court. In our opinion, the decision in Umadevi case is clearly distinguishable. The said decision cannot be applied to a case where regularisation has been sought for in pursuance of Article 14 of the Constitution.

9. Once the respondents have admitted the fact that the applicants are similarly situated as others in whose case, the regularization had been granted from the date of their initial entry on daily rated basis and consequential benefits thereof also made available, the logical corollary is that the same treatment should be

extended to the applicants. And, as stated earlier, that was the real intention of the respondents, which was changed when judgment in Umadevi came to be delivered.

10. The Apex Court as early as in 1975 in the case of *Amrit Lal Berry v. CCE*, (1975) 4 SCC 714, held as under: -

We may, however, observe that when a citizen aggrieved by the action of a government department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to court.

11. The V Central Pay Commission in its recommendation, in regard to extension of benefit of court judgment to similarly situated, held as under: -

"126.5 – Extending judicial decisions in matters of a general nature to all similarly placed employees. - We have observed that frequently, in cases of service litigation involving many similarly placed employees, the benefit of judgment is only extended to those employees who had agitated the matter before the Tribunal/Court. This generates a lot of needless litigation. It also runs contrary to the judgment given by the Full Bench of Central Administrative Tribunal, Bangalore in the case of *C.S. Elias Ahmed and others v. UOI & others* (O.A. Nos. 451 and 541 of 1991), wherein it was held that the entire class of employees who are similarly situated are required to be given the benefit of the decision whether or not they were parties to the original writ. Incidentally, this principle has been upheld by the Supreme Court in this case as well as in numerous other judgments like *G.C. Ghosh v. UOI*, [(1992) 19 ATC 94 (SC)], dated 20-7-1998; *K.I. Shepherd v. UOI* [(JT 1987 (3) SC 600)]; *Abid Hussain v. UOI* [(JT 1987 (1) SC 147)], etc. Accordingly, we recommend that decisions taken in one specific case either by the judiciary or the Government should be applied to all other identical cases without forcing the other employees to approach the court of law for an identical remedy or relief. We clarify that this decision will apply only in cases where a principle or common issue of general nature applicable to a group or category of Government employees is concerned and not to matters relating to a specific grievance or anomaly of an individual employee."

12. In view of the above, all the OAs are allowed to the extent as specified hereinafter. It is declared that the applicants are entitled to the very same benefits as available to those similarly situated persons, vide O.A Nos. 82/2008 etc., referred to above. Thus, regularization of the applicants' service in the grade of LDC shall be with effect from 03-08-1992, 02-09-1983 and 19-03-1982 (respectively of applicants in OA 297/08, 299/08 and 300/08) i.e. the date of their initial engagement on daily rated basis and they are entitled to consequential seniority. However, as in the other case, they would be entitled to notional fixation of pay without any monetary benefits. They are entitled to grant of A.C.P. reckoning the period of regular service from the aforesaid dates. Again, on the basis of his revised seniority, if the applicants are entitled to

higher promotion, the same be considered and granted from the date their immediate junior was promoted and the seniority in respective posts (UDC and Assistant as the case may be) rescheduled. Their entitlement to monetary benefit on account of the advancement such promotion on the basis of revision of seniority would be reckoned only prospectively after the review DPC takes place and promotion dates altered. In so far as promotion to the higher grade of Superintendent is concerned, their seniority in the grade of assistant as arrived at now would be considered. As the drill involves review of seniority right from LDC and also review of promotion to the post of UDC and Assistants, sufficient time would be required for the same, as the revised seniority has to be prepared after due notice to the affected parties. Hence, a period of 8 months is granted to implement this order. Again, it is made clear that in case the time granted falls short, respondents may move the Tribunal for further extension, before the expiry of the time allowed, by way of a Misc. Application, reflecting therein the extent of action taken, by narrating chronological sequence of events and justifying the extent of further time sought. Any inordinate delay in initiation of action etc., would not be a justification in seeking further extension of time. The above order is passed keeping in view the equality clause in the Constitution and also Rule 24 of CAT (Procedure) Rules, 1987.

13. No cost."

12. Undisputedly these cases are covered by the aforesaid orders of this Tribunal dated 23.10.2008 and 9.12.2008. We do not find any reason to deviate from the decisions of this Tribunal in those cases.

13. Moreover, the Apex Court in U.P.State Electricity Board Vs. Pooran Chandra Pandey & Ors. (2008) 1 SCC (L&S) 736 has held that the judgment in Uma Devi's case (supra) cannot be applied to a case where regularisation has been sought for in pursuance of Article 14 of the Constitution. Para 11 of the said judgment reads as under :-

"11. Learned counsel for the appellant has relied upon the decision of this Court in Secy. State of Karnataka V. Umadevi and has urged that no direction for regularisation can be given by the Court. In our opinion, the decision in Umadevi case is clearly distinguishable. The said decision cannot be applied to a case where regularisation has been sought for in pursuance of Article 14 of the Constitution."

14. Again from para 16 onwards it is held as under :-

"16. We are constrained to refer to the above decisions and principles contained therein because we find that often Umadevi case 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 and Bharat Petroleum Corp. Ltd 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, Umadevi case cannot be applied mechanically without seeing the facts of a particular case, as a little difference in facts can make Umadevi (3) case inapplicable to the facts of that case.

17. In the present case the writ petitioners (the 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 regularisation 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 Umadevi (3) case 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 v. Union of India* 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* case is a decision of a seven-Judge Bench, whereas Umadevi (3) case 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* case does not specifically deal with the question of regularisation 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 regularisation 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 regularisation and are made to face the same selection which fresh recruits have to face.

20. For the reasons aforementioned, we find no merit in this appeal. The appeal is accordingly dismissed. No costs.

15. The orders of this Tribunal dated 14.7.2003 in O.A.1557/98 (Annexure A-4 in O.A.32/08) have attained finality. By the said order, the applicants have also become entitled to have their services regularised as LDC with effect from the dates of their initial appointment as casual labourers. The aforesaid order of this Tribunal itself was based on its earlier order dated 25.3.1993 (Annexure A-2 in O.A.758/07) in O.A.1037/91 and connected case. The direction to the respondents in the said order was to conduct a departmental test for regularising their service in the manner in which a similar test was conducted on 24.3.1985 for regularising the casual labourers in 1985 as a one time measure. Those who pass in the test and otherwise qualified for regularisation were to be regularised. The order dated 13.6.2005 of this Tribunal in O.A.436/05 (Annexure A-5 in O.A.32/08) was also on similar lines. The respondents have complied with those directions and regularised the service of many of the similarly placed persons and notionally fixed their pay in the scale of Rs.3050-75-3950-80-4590 (pre-revised) attached to the post of L.D.Cs. Based on their dates of regularisation as L.D.Cs, the respondents have also granted benefits under the Assured Career Promotion Scheme introduced by the Govt. of India and granted the first financial upgradation. The respondents have also issued similar orders in the case of the applicants in these O.As (Annexure A-5 dated 5.12.2006 and Annexure A-6 dated 6.9.2006 in O.A.758/07 and Annexure A-6 to Annexure A-26

in O.A.32/08). However, by the Annexure A-27 circular dated 23.10.2007 in O.A.32/08 and individual Annexure A-10 and Annexure A-11 orders dated 12.11.2007 in O.A.758/07, the respondents have, in effect, withdrawn the benefits already granted to the applicants. By the said action of the respondents, they have discriminated the applicants with the similarly placed L.D.Cs whose services have already been regularised and their pay has been notionally fixed in terms of the directions of this Tribunal in O.A.1557/98 and O.A.436/05. As held by the Apex Court in the case of U.P. State Electricity Board (supra), its judgment in Uma Devi's case (supra) has no application in these cases as similarly placed persons have to be treated alike in the matter of regularisation of their services and no discrimination can be made by the respondents.

16. In the above facts and circumstances, we allow these O.As and set aside Annexure A-10 and Annexure A-11 Memoranda in O.A.758/07 and the Annexure A-27 Circular dated 23.10.2007 in O.A.32/08. We direct the respondents to implement their Annexure A-5 order dated 5.12.2006 and Annexure A-6 order dated 6.9.2006 in O.A.758/07 and Annexure A-6 to Annexure A-24 and Annexure A-26 order dated 6.12.2006 and Annexure A-25 order dated 8.5.2006 in O.A.32/08. The respondents shall notionally fix the pay of the applicants in the cadre of L.D.C with effect from the respective dates of their initial engagement as daily rated clerks and count the period for promotion, higher grades and qualifying service for terminal benefits except seniority in the grade of L.D.C and to grant

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all consequential benefits including arrears of pay. The aforesaid directions shall be complied with, within the time frame as was fixed in the order dated 9.12.2008 in O.A.297/08 (supra) and connected cases.

(Dated this the 15th day of January 2009)

K.NOORJEHAN
ADMINISTRATIVE MEMBER
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GEORGE PARACKEN
JUDICIAL MEMBER