

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 34 of 2007

Tuesday, this the 24th day of July, 2007


C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

1. P.M. Ramesan,
H.No.340, Padathuparambil House,
Seashore Colony, Njarakkal P.O.,
Ernakulam.
2. N.K.Gopi,
Nikathithara House, Nayarambalam PO,
Ernakulam : 682 509
3. N.G.Udayakumar,
Nikathil House, Puthyvvype PO,
Ernakulam : 682 508
4. P.M.Karthikeyan,
Pravelichirayil House, Kumbalam PO,
Kochi : 6
5. V.V.Bhasi
Vadathara House, Elankunnapuzha PO,
Pallampilly : 682 503
6. K.V.Prakasan
145, Kalappurakkal House,
Kumbalam PO, Ernakulam
7. P.A.Mohanan
Punnakkathara House,
Kandakkadavu P.O., Kochi - 8
8. K.I.Venu
Karthathara House,
Kumbalangy South PO,
Kochi - 7
9. K.V.Manikkan,
Kalappurakkal House, Nettoor PO,
Maradu Via, Kochi - 4



10. N.K.Madhu,
Nikathithara House,
Nayarambalam PO : 682 509
11. T.N.Ravi,
Thudathil House, Madavana,
Panangad P.O., Kochi : 682 304
12. A.I. Abdul Rauf.
Naimanaparambil House, Nettoor PO,
Maradu Via, Kochi : 682 304
13. P.R. Unnikrishnan,
Akhil Nivas, Nethaji Road, Pottepadom,
Edappally, Kochi : 24
14. K.V. Murali,
Karakaithara, Cheruvype,
Ayyampilly PO : 682 501.
15. K.A.Mohammed Koya,
Nellikulam House, Chakkaraparambu,
Thammanam P.O., Kochi - 32
16. A.K.Purushan,
Attupurath Vadakke Padathu House,
Maradu P.O. ; 682 304
17. P.K.Viswanathan,
Padannathra House, Panambukad,
Vallarpadam P.O.
18. N.R.Ouseph,
Nedumbilli Veedu, Cherai PO,
Kochi : 682 014
19. M.X.Francis,
Mettakkat House, Santhipuram Road,
Palarivattom PO, Kochi - 25
20. M.P.John,
Karuthannattu House, Panangad PO,
Kochi : 682 506
21. P.S.Udayan,
Pazhamadom House, Madavana,
Panangad, Kochi : 6
22. E.N.Sivaraman,
Edachirapilly House, Maradu PO,
Ernakulam



23. K.K.Sivadasan,
Korothuparambu House, Nettoor PO,
Maradu Via, Kochi : 4
 24. T.K.Mohanan,
Thandasseril Nikarthil, Kumbalam PO,
106(1/34), Ernakulam.
 25. E.N.Amirudhan,
Edakochipadam House, Chilavannur,
Kadavanthra PO, Kochi : 20
 26. N.U.Babu,
Nikathithara House, Nayarambalam PO,
Ernakulam.
 27. K.K.Sukumaran,
Koluthara House, Nayarambalam PO,
Kochi.
 28. K.B.Sudharsan,
Kallingal House, Mamangalam PO,
Kochi : 25
 29. M.K.Pradeep,
Lakshmi Nivas, Anamoottil House, Pambaimoola,
Indira Gandhi Road, Edakochi, Kochi : 6
 30. P.N.Balakrishnan,
Parakimamoottil House, S.Parur PO,
Udayamperoor.
 31. V.N.Mohanan,
Vellakamparambu House, Nettoor PO,
Maradu (via), Kochi.
 32. N.K.Gopi,
Nikarthil House, Cherai PO, Kochi
 33. G.N.Asokan,
Gothuruthu House, Murukkumpadom,
Azheekal PO, Kochi.
 34. P.S.Shaji,
Pulikkal House, Edavanakkad PO : 682 502
 35. K.J.Louis Jude Thadeus,
Kandathiparambil, Kumbalanghi P.O.,
Kochi : 7
- ... Respondents.

(By Advocate Mr. N. Radhakrishnan)



v e r s u s

1. Union of India represented by its
Secretary, Ministry of Defence,
New Delhi.
2. The Flag Officer Commanding-in-Chief,
Southern Naval Command,
Naval Base P.O., Kochi.
3. The Civilian Gazetted Officer,
Staff Officer (Civilians), Headquarters,
Southern Naval Command, Kochi-4
4. The Chief Staff Officer (Personnel & Admn.),
Southern Naval Command, Kochi-4 ... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicants, thirty five in number have prayed for the following reliefs:-

- (a) This Tribunal may kindly be pleased to call for the entire records leading to the issue of Annexure A1 and to quash the same.
- (b) This Tribunal may kindly be pleased to direct the respondents 1 to 4 to take immediate steps for regularising after giving temporary status to the applicants in the post of Group 'D' unskilled labourers by considering their past service.
- (c) This Tribunal may kindly be pleased to declare that the applicants are eligible and entitled to be regularised after giving temporary status in the post of Group 'D' Unskilled Labourers.

2. Briefly the facts of the case are as under:-

- (a) As early as in 1992, this Tribunal had in OA No. 482/92 directed



the respondents to prepare a gradation list for casual employment and the said list was to be displayed in the notice board to enable the concerned individuals to note down their seniority position both for their further casual labour engagement and for other consequential benefits, i.e. temporary status/regularization. Accordingly casual labourers who had put in 206/240 days of service in a year (former in five working days a week and latter six working days a week) were conferred with temporary status initially, followed by regularization as Group D employees, subject to availability of vacancies. While this type of casual labourers was available, respondents resorted to certain contract labourers to meet certain emergent situation such as Malaria Eradication Programme and when some of the former type of casual labourers preferred OA No. 622/2001, the Tribunal passed an order dated 3rd September, 2001 whereby the claim of such casual labourers for replacement by them of the contract labourers was rejected but an order was passed to the effect that the respondents shall revise the gradation list prepared in accordance with the earlier order of the Tribunal in OA No. 482/92 by duly pruning the same, weeding out those who had not shown any interest to work and the revised list be finalized and persons from the revised list engaged as and when work was available. Such a list so prepared contained as many as 101 casual labourers of whom 25 have been conferred with temporary status and subsequently appointed in the regular Group D post against the 2/3rd vacancy earmarked for the temporary status labourers and the remaining 65 are yet to be conferred with temporary status. While so, according to the respondents, two judgments of the Apex Court resulted in the applicants not being conferred with temporary status and the said two cases are as under:-

(a) **Secy., State of Karnataka v. Umadevi (3), (2006) 4 SCC 1**, wherein the Constitution Bench of the Apex Court has held as under:-

43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the



requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as litigious employment in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

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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* 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 aboveresferred 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 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 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 regularising or making permanent, those not duly appointed as per the constitutional scheme.

(b) Director General, Doordarshan v. Manas Dey, (2005) 13 SCC 437
wherein the Apex Court has held as under:-

".... the department had circulated by OM No. 51016/2/90-Estt.(C) dated 10-9-1993 a scheme for grant of temporary status and regularisation of casual workers. The Scheme is called the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of the Government of India, 1993. The said Scheme came into force with effect from 1-9-1993. The Scheme envisaged grant of temporary status to casual labourers who had worked at least 240 days in a year (206 days in the case of offices observing 5 days a week).

* * *

9. Clause 4 of the Scheme is very clear that the conferment of temporary status is to be given to the casual labourers who were in employment as on the date of commencement of the Scheme. The Tribunal has taken the view that this is an ongoing scheme and as and when casual labourers complete 240 days of work in a year or 206 days (in case of offices observing 5 days a week), they are entitled to get temporary status. We do not think that clause 4 of the Scheme envisages it as an ongoing scheme. In order to acquire temporary status, the casual labourer should have been in employment as on the date of commencement of the Scheme and he should have also rendered a continuous service of at least one year which means that he should have been engaged for a period of at least 240 days in a year or 206 days in case of offices observing five-day a week. From clause 4 of the Scheme, it does not appear to be a general guideline to be applied for the purpose of giving temporary status to all the casual workers, as and when they complete one year's continuous service. Of course, it is up to the Union Government to formulate any scheme as and when it is found necessary that the casual labourers are to be given temporary status and later they are to be absorbed in Group D posts.

10. This position was highlighted in *Union of India v. Gagan Kumar* {(2005) 6 SCC 70}

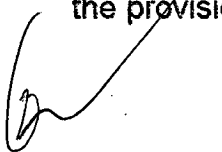
3. Under these circumstances, there was a felt need to appoint many

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Unskilled labourers by the Respondents. Rules provide for recruitment of unskilled labourers from amongst the Group D employees, subject to certain terms and conditions, vide SRO No. 150/2000 dated 01-06-2000 (Annexure R-1). The Respondents accordingly published Annexure A-1 notification for filling up the posts of Unskilled labourers. This notification is under challenge by the applicants, as according to them, the respondents ought to have preferred engagement of the applicants against these posts.

4. Contention of the respondents is that the applicants are still to be conferred with the Temporary Status and as such there is no chance of the vacancies of unskilled labourers, who are to be drawn from the willing and eligible Group D employees, being filled by them. According to the respondents, though the applicants are eligible to be conferred with Temporary Status, because of the above dictum of the Apex Court, they are not being conferred with such temporary status.

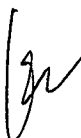
5. Applicants in their rejoinder specifically stated that the case of *Umadevi* is not applicable in their cases inasmuch as their initial engagement as casual labourers is in accordance with rules in extant and their entitlement to temporary status is in accordance with the provisions of order dated 10-09-1993 (Annexure A-2) as all the applicants were in the pay roll of the respondents as on the date of introduction of the scheme (01-09-1993) and that they had put in the requisite number of days of work to be eligible for temporary status, followed by absorption under the 2/3rd vacancies earmarked for such temporary status. Umadevi's case deals with persons who were not engaged in accordance with the provisions of Rules/instructions.



6. Counsel for the applicant argued that apart from the above contentions as contained in the O.A. and rejoinder, the recruitment rules for appointment as Unskilled labourer also provide for promotion as is evident from column 10 of the SRO which relates to period of promotion, if any and against which it has been stipulated, "01 (one) year in case of direct recruits. No probation period for promotees/absorptionists. Again, in column 12, there is a reference, "in case of recruitment by promotion". According to counsel for the applicants, in any case, applying the provisions of the scheme formulated in September, 1993, and as done in the past in respect of those similarly situated, the respondents should afford necessary provision both for temporary status and for accommodation against the present vacancies for which Annexure A-1 notification had been published.

7. Counsel for the respondents submitted that as per para 6 of the counter, out of 101 individuals who are in the gradation list, 25 having been already granted temporary status followed by Group D position, the remaining 65 are yet to be given the same benefits and it was in the light of the Hon'ble Apex Court's decision in the matter of conferment of temporary status and regularization of casual labourers the respondents are not in a position to grant temporary status to the applicants and subsequent appointment in the regular group D posts.

8. Arguments were heard and documents perused. Admittedly, all the applicants have put in 15 to 25 years of service as casual labourers. Their names are in the gradation list. Their seniors have been already conferred with temporary status and regularisation. And according to the respondents, but for



the decision in the case of *Umadevi and Manas Dey (supra)* there would be no hesitation in conferring the temporary status and regularization. It is also the admitted fact that the applicants squarely fall within the provisions of the scheme dated 10-09-1993. Under these circumstances, the benefits (i.e. temporary status) available to all the casual labourers who fulfill conditions as stipulated in the order dated 10-09-1993, should have been granted as early as in 1993 or immediately thereafter. This obviously does not seem to have been done, for even the pruned list was prepared only in 2001. nevertheless, once the individuals fall within that category covered by the 1993 scheme, their entitlement for the benefits as contained therein i.e. temporary status, followed by absorption as Group D against the 2/3rd vacancies as per the scheme, which is still in force got crystallized long back. Hence, the applicants are entitled to the benefits as provided for in the Annexure A-2 Scheme. It is so declared.

9. In so far as the judgment of the Apex Court in the case of *Umadevi (Supra)*, the spirit behind the same has to be looked into. These have been summarized in various judgments as stated below:-

(a) "any appointment in violation of the constitutional scheme would be rendered a nullity"

-*National Institute of Technology v. Niraj Kumar Singh*, (2007) 2 SCC 481, (also see *State of UP vs Desh Raj* (2005) 1 SCC 257., *Nagar Palika vs State of UP*, (2006) 5 SCC 127; *Inderpreet Singh Kahlon vs State of Punjab*, (2006) 11 SCC 356; *Municipal Council, Sujampur v. Surinder Kumar*, (2006) 5 SCC 173 ; *National Fertilizer Ltd., vs Somvir Singh*, (2006) 5 SCC 493 R.S. *Garg vs State of UP* (2006) 6 SCC 430}

(b) The words regular or regularisation do not connote are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. We have, therefore, to keep this distinction in mind and proceed on the basis that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised and that it alone can be regularised and granting

permanence of employment is a totally different concept and cannot be equated with regularisation.

-- S. Narayana v. Mohd. Ahmedulla Khan, (2006) 10 SCC 84 ; (Also see State of Gujarat v. Karshanbhai K. Rabari, (2006) 6 SCC 21; Principal Mehar Chand Polytechnic vs Anu Lamba (2006) 7 SCC 161

(c) appointments made on a contract basis or on daily wages and in violation of the statutory rules or the Rules framed under the proviso appended to Article 309 of the Constitution of India, being void ab initio and thus nullities and hence the question of regularising their services would not arise. (In yet another case held, "...absorption, regularisation or permanent continuance of temporary, contractual, casual, daily-wage or ad hoc employees dehors the rules and constitutional scheme of public employment cannot be granted by the courts.")

Accounts Officer (A&I), A.P. SRTC v. P. Chandra Sekhara Rao, (2006) 7 SCC 488 Accounts Officer (A&I), AP SRTC v. K.V. Ramana, (2007) 2 SCC 324 ,

(d) On regularization of casual labourers working for a substantial period, the crux of the matter as in Para 53 of the Apex Court judgment in Umadevi is "the State Governments and their instrumentalities to regularise as a one-time measure , the services of such irregularly appointed workmen, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the 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."

Employees' Union v. Mineral Exploration Corpn. Ltd., (2006) 6 SCC 310

10. When the above is the intent and spirit in the decision of the Apex Court in Umadevi, the question now is whether the respondents in denying the conferment of temporary status to the applicant have understood the judgment in the above way. The answer should be NO. For, it is not the case of the respondents that the initial appointment of the applicants was dehors of any rules, nor is it their case that the applicants are not entitled to the benefits under the 1993 scheme. Yet, the respondents have denied the conferment of temporary status to the applicant based on the decision in the case of 'Umadevi'.


Here exactly lies the error committed by the respondents. 'Umadevi' never said anything in negative in regard to those who had been engaged as casual labourer as per the provisions of rules and regulations. 'Umadevi' did not hold that such of those employees who have come through proper channel should be shunted out. Rather, in respect of those who have now completed 10 years or more, 'Umadevi', did suggest that their services be regularized. Nor does 'Umadevi' stand in the way of 1993 scheme for grant Temporary Status or regularization. All that is to be seen or ensured before regularization is that the persons concerned have been engaged in accordance with the rules and if there be any irregularity in adopting certain procedure, that could be excused. In fact, along with the other 25 candidates who were conferred with the temporary status and later on regularized, the applicants could have easily been conferred with temporary status, as grant of temporary status does not depend upon existence or otherwise of vacancies. Clause 3(2) of Annexure A-2 refers. Thus, it is an independent process. It is only when it comes to regularization that the question of vacancies arises.

11. While the above is the benefit which the applicants are entitled, in respect of filling up of vacancies to the post of Unskilled labourers, the reservation of the respondents in accommodating the applicants is fully justified. For, this post is tenable by regular appointment from out of the already working Group D employees. The applicants not even having been granted temporary status, cannot stake their claim for this post. The argument put forward by the counsel for the applicant that the rules envisages appointment by promotion also, vide clause 10 of Annexure R-1 has to be disregarded. For, such a term has been loosely worded in the regulation and the same cannot change the colour of the



provisions. In fact, in column 12 of Annexure R-1, - "in case of recruitment by promotion or absorption" the entry is only restricted to absorption and not promotion. Thus, by no stretch of imagination could it be said that the rules contemplate promotion. It is only absorption of serving Group D employees.

12. In view of the above the OA is partly allowed. It is declared that the applicants are entitled to grant of temporary status in accordance with the provisions of the Scheme formulated vide order dated 10-09-1993 and that the date of such temporary status notionally would be from the date the immediate seniors to the applicant were so granted the temporary status. The pay of the applicants should be fixed accordingly and in so far as regularization is concerned, the applicants are not entitled to be directly absorbed against the existing vacancies of Unskilled labourers for which Annexure A-1 notification has been issued. The same shall be filled by those Group D employees who have opted for the same. Since stay is operating, a fresh chance be given to such group D employees. In so far as the applicants are concerned, after grant of temporary status, the applicants and similarly situated shall be considered for the $\frac{2}{3}$ rd of the total Group D vacancies for due absorption. This absorption shall be in accordance with the seniority maintained by the respondents. And, resultant vacancies that may arise on filling up of the vacancies to the post of Unskilled labourers should also be accounted for while working out the aforesaid $\frac{2}{3}$ rd number of vacancies. Annexure A-1 shall remain in tact and may be operated by the respondents now. The time calendared for complying with the directions is as under:-



(a) Grant of Temporary status to the applicants: 2 months.

(b) Regularization: within one month from the date 2/3rd number of vacancies worked out taking into account the vacancies in Group D that would arise after absorbing the existing Group D employees who would have applied (or who may apply if one more opportunity be given by the Respondents, as due to the grant of interim stay, some would not have applied). as Unskilled Labourers (for which notification at Annexure A-1 had been floated.)

13. No costs.

(Dated, 24th July, 2007)



Dr. K B S RAJAN
JUDICIAL MEMBER

cvt.