

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 360 of 2008

FRIDAY....., this the 3rd day of April, 2009

C O R A M :

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

1. Suresh K.K.,
S/o. Sreedharan,
Part Time Casual Labourer,
Central Excise Hqrs. Office, Cochin,
Residing at Komorethu House,
Kumbalam P.O. : 682 506
2. Radhamani T.R.,
D/o. T.C. Raghavan,
Part Time Casual Labourer,
Central Excise Hqrs. Office, Cochin,
Residing at Trikayil Parambu,
Nettoor P.O., Maradu.
3. Sajeev R,
S/o. Rajappan,
Part Time Casual Labourer,
Central Excise Hqrs. Office, Cochin,
Residing at Plot No. 2,
Kudumbi Colony, Cochin – 20
4. Prasanth P.R.,
S/o. P.N. Raman Nair,
Part Time Casual Labourer,
Central Excise Ernakulam II Division,
Residing at Perkanjirakkattu House,
Perumpilly P.O., Mulanthuruthy.
5. Beevi Kunju K.H.,
D/o. Hamsa,
Part Time Casual Labourer,
Central Excise Hqrs. Office, Cochin,
Residing at Kanavath House, Nettor,
Maradu.

6. Anwar S,
S/o. Sinulabdeen,
Part Time Casual Labourer,
Central Excise Hqrs. Office, Cochin,
Residing at Kaippal Parambu, Kaloor.
7. Santhosh M.G.,
S/o. Gopinatha Shenoy,
Part Time Casual Labourer,
Central Excise Hqrs. Office, Cochin,
Residing at Thekkedath House,
Panangad, Cochin.
8. Geetha N.M.,
D/o. Madhavan,
Part Time Casual Labourer,
Central Excise Hqrs. Office, Cochin,
Residing at Naduthirivil House,
Panangad, Cochin.
9. Latha K.K.,
W/o. thambi,
Part Time Casual Labourer,
Central Excise Hqrs. Office, Cochin,
Residing at Karathara House,
Poonithura.
10. Thadevous K.V.,
S/o. K.V. Varghese,
Part Time Casual Labourer,
Central Excise Hqrs. Office, Cochin,
Residing at Kariveli House,
Caduthaka, Cochin : 23.
11. Pavithran A.K.,
S/o. Kannanghi,
Part Time Casual Labourer,
Central Excise Hqrs. Office, Cochin,
Residing at Attupurath House,
Maradu Post, Cochin.
12. Selvaraj B.M.,
S/o. Mariyan,
Part Time Casual Labourer,
Central Excise Hqrs. Office, Cochin,
Residing at Vedepparambu,
Vennala P.O., Cochin.

13. Baiju K.P.,
 S/o. M.N. Peethambaran,
 Part Time Casual Labourer,
 Central Excise Hqrs. Office, Cochin,
 Residing at Mattiliparambil House,
 Tripunithura : 682 306

... Applicants.

(By Advocate Mr. S. Ramesh Babu)

v e r s u s

1. Union of India through
 The Secretary,
 Ministry of Finance,
 Department of Revenue,
 North Block, Delhi.

2. Commissioner of Central Excise,
 Office of the Commissioner of Central
 Excise, Customs, Customs Central
 Revenue Building, I.S. Press Road,
 Cochin.

... Respondents.

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

The Original Application having been heard on 11.03.09, this Tribunal on
 3-4-2009.. delivered the following :

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

This is the second round of litigation. Earlier, this Tribunal directed the respondents to consider formulation of a scheme for regularization of the applicants on the lines as mandated in para 53 of the Constitution Bench judgment in *State of Karnataka vs Umadevi*, (2006) 4 SCC 1, read with Ministry of Personnel O.M. dated 11th December, 2006 (Annexure A-3). Annexure A-6 of the O.A. refers.

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2. After consideration of the case, the impugned order at Annexure A-7 had been passed by the respondents, which inter alia states as under:

"The Ministry has considered the decisions of the Hon'ble Tribunal in the light of Annexure A2 and has decided that Shri K.K. Suresh and 12 others are part time Casual Workers and there is no provision in relevant Recruitment Rules and DOP&T Guidelines to regularize the part time casual workers. Moreover, they are not covered under the Supreme Court judgment dated 10-04-2006 passed in Uma Devi case as they were not appointed against any sanctioned post.

In view of the foregoing the request for regularization in the Department cannot be acceded to."

3. It is against the above that this present O.A. has been filed on the following amongst other grounds:-

- (a) The decision vide Annexure A-7 is contrary to the direction of this Tribunal as contained in Annexure A-6 order.
- (b) Even otherwise, the applicants are entitled to the claim of regularization on merit.
- (c) The only requirement was to test the eligibility of the applicants vis a vis a scheme to be framed as so directed.
- (d) The objections now being raised ought to have been raised in the earlier round of litigation.
- (e) The appointment of the applicants as part time casual labourers is after they had been sponsored by the Employment exchange.

b

(f) That there is no provision in the R.Rules is least relevant for regularization as it was on account of absence of such provision that the Apex Court has mandated for formulation of a scheme.

(g) The post of part time casual labourer is a sanctioned post. The applicants have not been engaged on contract basis.

4. Respondents have contested the O.A. Their contentions are as under: -

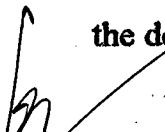
(a) It is respectfully submitted that the applicants are part time casual labourers appointed vide Annexure A-1 in the office of the 2nd respondent temporarily on daily wage basis and it is well settled that the casual appointment would not confer them any right to a permanent appointment in the Government service. The applicants were not appointed in the office of the 2nd respondent towards and duly sanctioned posts but were engaged to do work of a casual nature in the department and not for work of a full time nature. A regular post could not be created for such a nature of work and is not available in the department also. The direction for regularization by the Apex Court was only in respect of cases where irregular appointments of duly qualified persons in duly sanctioned posts were made. The applicants were not appointed in the office of the 2nd respondent towards any duly sanctioned posts. The appointment of the applicants is not an irregular one since they were appointed on being sponsored by the Employment Exchange. Appointments can be considered as irregular only when selections have been made in disregard of the procedure prescribed in the recruitment rules. The applicants were appointed to attend to works of casual and part-time nature available in the department for which no posts can be sanctioned.

(b) ~~None of the applicants are 'irregularly' appointed because admittedly all of them were recruited through Employment Exchange. As such, the first condition for the applicability of the findings at paragraph 53 of (2006) 4~~

SCC 1 – Umadevi's case is absent as far as the applicants are concerned. None of the applicants were appointed and continuing in 'duly sanctioned posts' in the Department and as such the second condition is also not satisfied. Since there are 'no sanctioned posts' equivalent to those in which the applicants are temporarily appointed the question of consideration of 'qualification for the posts' does not arise. The applicants could not be regularized following the principles enunciated in paragraph 53 of (2006) 4 SCC 1. Annexure A7 is perfectly justified and consistent with the binding principles declared by the Apex Court in *Secretary, State of Karnataka vs. Umadevi*, (2006) 4 SCC 1. The Department of Revenue has no independent powers to frame a Scheme for regularization of casual workers. Under the Allocation of Business Rules, 1961, this is the prerogative of the Department of Personnel and Training. There are no sanctioned posts in the Department relating to which a Scheme for regularization can be framed.

(c) The applicants are casual workers engaged only for doing work of a casual/seasonal/intermittent nature. Their work is not of a full time nature. A regular post could not be created for such a nature of work and is not available in the Department. As such the applicants are not entitled to the benefit of the directions for one-time regularization given at paragraph 53 page 42 of (2006) 4 SCC 1 in Umadevi's case and Annexure A3.

5. Counsel for the applicant argued that the respondents have completely ignored the direction given by the Tribunal in its order vide Annexure A-6. Against the said order they had moved the High Court but their writ petition has been dismissed. As such, they have no option but to frame the scheme to regularize the applicants, who fulfill all the conditions as contained in para 53 of the decision of the Apex Court in Uma Devi's case.



6. Counsel for the respondents has stated that the prime requirement for regularization through a scheme is that such persons must have been working against the sanctioned post, whereas, these applicants are not working against any sanctioned posts. They are being paid under contingent funds. This Tribunal's directions should be viewed as one to consider formulating the scheme only when all the conditions attached to such regularization as specified for in para 53 of the judgment in Uma Devi are fulfilled. In the absence of sanctioned posts, there is no question of framing a scheme.

7. Arguments were heard and documents perused. The question is whether the applicants are entitled to the claim of regularization on the basis of the directions given by the Apex Court in the case of **State of Karnataka vs Umadevi**, (2006)⁴

SCC 1. Para 53 reads as under:-

"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 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 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. ”.

8. One of the contentions raised in the counter is that in view of the fact that the applicants came through employment exchange, there is no irregular appointment and hence, para 53 is not applicable cannot be accepted. The intention of the Apex Court is that even where there be an irregular appointment, if the employees have served for a period of ten years against the sanctioned posts, their services be regularized by framing the scheme. The other contention of the respondents is that there is no sanctioned post against which the applicant could be regularized. The question is whether existence of sanctioned post is a sine qua non for establishment of a scheme for regularization. The answer to this question is in affirmative. In this regard, the decision by the Apex Court in the case of *Employees' Union v. Mineral Exploration Corp. Ltd.*, (2006) 6 SCC 310, is relevant and the same is as under:-

“17. It is seen from the above paragraph that this Court directed the Union of India, 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. (emphasis supplied)

18. Placing strong reliance on the above passage, Mr V.A. Bobde submitted that the respondent Corporation should be directed to take steps to regularise the services of the members of the appellant Union who have worked for ten years or more in duly sanctioned posts. He further submitted that in view of the verdict of the Constitutional Bench, the respondent Corporation is duty-bound to consider the case of the



members of the appellant Union who satisfy the test prescribed in para 53 of the above judgment.

19. Mr V.R. Reddy, learned Senior Counsel for the respondent first invited our attention to the various documents relied on by the Corporation. He drew our attention to the appointment order. A model form of the appointment order reads as under:

"Temporary Industrial Establishment of Mineral Exploration Corporation at _____ Project.

Appointment Order

Shri _____ s/o _____ is hereby offered a temporary appointment on contingent/temporary basis @ Rs _____ per day for unskilled nature of job in the temporary industrial establishment at _____, project on the following terms and conditions:

- (i) The appointment will be purely on contingent/temporary basis and the contract of employment will terminate on _____ or completion of work whichever is earlier. The contract of employment can be renewed for a further specific period, if deemed fit as per exigencies of work, by issue of a specific order.
- (ii) The appointee will have to perform any of the jobs of unskilled category which may be assigned to him from time to time.

If the above terms and conditions are acceptable to Shri _____, he should send his acceptance in the enclosed pro forma and report on duty immediately.

Project Manager"

20. Relying upon the above appointment order, Mr V.R. Reddy submitted that the appointments were purely on contingent/temporary basis and the contract of employment will terminate on the completion of the project work and, therefore, they are not entitled for regularisation.

39. We, therefore, direct the Tribunal to decide the claim of the workmen of the Union strictly in accordance with and in compliance with all the directions given in the judgment by the Constitution Bench in *Secy., State of Karnataka v. Umadevi (3)1* and in particular, paras 53 and 12 relied on by the learned Senior Counsel appearing for the Union." (Emphasis supplied)



9. In *Municipal Corpn., Jabalpur v. Om Prakash Dubey*, (2007) 1 SCC 373, after extracting para 53 of 'Umadevi' judgment in para 10, and after describing the question involved viz is there any distinction between 'irregular appointment' and 'illegal appointment' the Apex Court has observed in para 15 as under:-

15. Yet, recently in *Principal, Mewar Chand Polytechnic v. Anu Lamba* it was held:

"35. The respondents did not have legal right to be absorbed in service. They were appointed purely on temporary basis. It has not been shown by them that prior to their appointments, the requirements of the provisions of Articles 14 and 16 of the Constitution had been complied with. Admittedly, there did not exist any sanctioned post. The Project undertaken by the Union of India although continued for some time was initially intended to be a time-bound one. It was not meant for generating employment. It was meant for providing technical education to the agriculturists. In the absence of any legal right in the respondents, the High Court, thus, in our considered view, could not have issued a writ of or in the nature of mandamus." (emphasis supplied)

10. Thus, unless the requisite conditions as specified in para 53 of the judgment in Umadevi is fulfilled, the respondents cannot be compelled. True, there had been an order from the Tribunal to the effect that the respondents may consider formulation of a scheme as stated in para 53 of the Apex Court judgment in Umadevi, but when the respondents on consideration arrived at a conclusion that such a regularization cannot be possible as one of the spinal conditions viz that the individuals should have been employed against sanctioned posts is not fulfilled, there is no further scope.

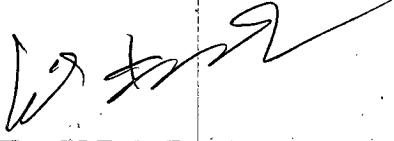
11. Vide ground H of the OA the applicants have contended as under:-

"Equally incorrect is the stand that the applicants have not been appointed against sanctioned posts. In this context it is submitted

that the post of part time casual labourer is a sanctioned post in the contingent establishment and during all relevant times including at present, the applicants are working against such sanctioned posts".

12. No documents were however, made available to substantiate the above ground. In case the applicants have any Statutory orders/Rules in regard to the above, it is open to them to move the respondents for their consideration and act on the basis of the same for framing the scheme, as other conditions are fulfilled in the case of the applicants in which event, the respondents shall consider the same and communicate their decision in that regard.
13. With the above observation given to the applicants, the OA is dismissed.

(Dated, the 3rd April, 2009)



(Dr. K B S RAJAN)
JUDICIAL MEMBER

Cvr.