

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

**Transfer Application No. 02 of 2010
(Writ Petition No. 3271 of 2008 (S/S)**

**Reserved on 03.05.2017
Pronounced on 4th May 2017**

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mrs. P. Gopinath, Member-A**

Ramu, aged about 30 years, S/o Sri Mewa Lal, R/o Village - Belsar Post Office- Belsar, District - Gonda.

.....Applicant
By Advocate : Sri Praveen Kumar

Versus.

1. Bharat Sanchar Nigam Limited through its Chief Managing Director, Sanchar Bhawan, New Delhi.
2. Chief General Manager, Telecom, U.P. (East) Circle, Bharat Sanchar Nigam Limited, Lucknow.
3. Principal General Manager, Telecom District Lucknow (PGMTD Lucknow) Bharat Sanchar Nigam Limited.
4. Divisional Engineer (Headquarter), Telecom District Manager Office, Bharat Sanchar Nigam Limited, Gonda.
5. Deputy Divisional Engineer, Telephone Exchange, Bharat Sanchar Nigam Limited, Tarabgunj, Gonda.

.....Respondents.

By Advocate : Sri A.K. Chaturvedi & Sri Rajendra Singh

O R D E R

By Mrs. P. Gopinath, Member-A

The applicant in the matter before us had filed Writ petition No. 3271 (S/S) of 2008 before Hon'ble High Court, which was subsequently transferred to this Tribunal by order of Hon'ble High Court dated 23.12.2009 and registered as T.A. No. 02/2010. By the said T.A., the applicant has sought the relief of being allowed to continue as part time Sweeper.



2. The applicant was appointed as part time sweeper by the respondent No. 5. While working so, the services of the applicant was terminated by Annexure A-1 letter dated 22.04.2008. The applicant has submitted several representations for continuing his services as part time sweeper. The applicant prays for quashing of Annexure A-1, termination order dated 22.04.2008 and to allow him to continue work as part time sweeper, the work he was performing before being disengaged.

3. Respondents argue that Annexure A1, order dated 22.04.2008 makes a reference to four other letters dated 14.08.98, 29.9.2000, 17.05.2006, and 7.02.2008 which are produced as Annexure CA-1, CA-2, CA-3 and CA-4 by the respondents with the Counter reply. The engagement of part time labor was banned w.e.f. 1.08.1998 (Annexure CA-1). Thus the authority who had engaged the applicant after 01.08.1998 had no authority to engage the applicant after 01.08.1998. The respondents do not contest the applicant's contention that he was engaged w.e.f November 1997 prior to the issue of Annexure CA-1 order dated 01.08.98. Hence, dispensing the services of the applicant as part time causal labour is not covered by Annexure CA-1 order. The regularization of the applicant is covered by various order of the Apex Court as argued in Court. In the case of Secretary, Ministry of Communication and Others Vs. Suku Bai, (1997), 11 SCC 224, the Hon'ble Apex Court had noticed that the Tribunal was not right in coming to the conclusion that the scheme for conferring temporary status on full-time casual labourers is also applicable to part-time casual labourers. Hence, the applicant, a part time casual labour in this O.A, is also not eligible for conferment of full time or temporary status.

4. The Hon'ble Apex Court in State of Karnataka Vs. Uma Devi, (2006) 4 SCC 1 had observed as follows:

"38. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the

engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

39. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on

Articles 14 and 16 of the Constitution are therefore overruled.

5. Whereas the applicant is not entitled for engagement as full time causal labour or grant of temporary status, the prayer of the applicant in the O.A is for continuing as part time sweeper. The only reason cited by the respondent to discontinue the applicant as part time was Annexure CA-5 letter dated 16.08.1999 which imposed a complete ban on engagement of part time causal labour w.e.f. 01.08.99. The applicant in this O.A was engaged in November 1997 and hence he is not covered by above cited ban order of 16.08.99.

6. In view of the above, the O.A stands disposed of with direction to the respondents to re-engage the applicant on part time basis subject to availability of work, as the order of 16.08.1999 issued subsequent to engagement of applicant is not applicable to him. The aforesaid process may be completed within a period of 60 days from the date of receipt of certified copy of this order. There shall be no orders as to cost.



(P. Gopinath)
Member (A)



(Justice Permod Kohli)
Chairman

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