

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

**Transfer Application No. 02 of 2011
(Writ Petition No. 9581 of 2006 (S/S))**

Reserved on 17.3.2015

Pronounced on 31.03.2015

Hon'ble Mr. Navneet Kumar, Member-J

Hon'ble Ms. Jayati Chandra, Member-A

Rakesh Kumar, S/o late Sri Rajjan Lal, R/o House no. 510/79 New
Hyderabad, Lucknow

.....Applicant

By Advocate : Sri Y.C.Srivastava

Versus.

1. Bharat Sanchar Nigam Limited through its General Manager, U.P. Telecom East, Lucknow.
2. Deputy General Manager (Admn.) U.P. Telecom East Bharat Sanchar Nigam Limited, Lucknow.
3. Senior Architect, Bharat Sanchar Nigam Ltd, 4-A third Floor, Habibullah state, Hazratganj, Lucknow.

.....Respondents.

By Advocate : Sri Pankaj Awasthi for Sri A.K. Chaturvedi .

ORDER

By Ms. Jayati Chandra, Member(A)

Initially the applicant had filed Writ petition no. 9581 (S/S) of 2006 before Hon'ble High Court, which was subsequently transferred to this Tribunal by order of Hon'ble High Court dated 24.9.2010 and registered as T.A. No. 2/2011. By the said T.A., the applicant has sought the following relief(s):-

- (i) *"issue a writ, order or direction in the nature of mandamus commanding the Opposite parties to consider the case of the petitioner for regularization as the same has been deliberately left out because of the inaction and inertia of the opposite parties while similarly situated candidates have been regularized in the interest of justice.*
- (ii) *Issue a writ, order or direction in the nature of mandamus directing the Opposite parties to provide the petitioner with the minimum of the pay scale which may be admissible to him.*

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(iii) *Issue any other writ, order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case in the interest of justice.*

(iv) *Allow the Writ petition with costs."*

2. The facts, as averred by the applicant, are that the applicant has been working as a 'Danik Safai Karamchari' since 1989 in the office of respondent no.3 and had worked till 2006 when his services were terminated orally. Many persons who had joined service after 1989 and who were performing the same duties as that of the applicant were regularized without considering the claim of the applicant. The applicant submitted representation to the respondent no.3 on 5.10.2000 (Annexure no.2). After repeated verbal requests being made by the applicant, the respondent no.3 sent full details of the applicant to respondent no.2 for considering his case for regularization vide letter dated 24.5.2002 (Annexure no.3). The respondent no.2 sent a letter dated 18.12.2003 to all concerned units and directed them to send full details of part time workers who have incidentally been left out from being regularized for any reason upto 7.1.2004 (Annexure no.4). The respondent no.3 sent full details of the applicant for regularization vide letter dated 27.2.2004, which was received in the office of respondent nos. 1 & 2 on 15.3.2004 (Annexure no.5). As the services of the applicant had not been regularized in spite of working for the last more than 18 years, he filed Writ petition No. 9581 (S/S) of 2006. The applicant has further stated that Hon'ble Supreme Court in the case of State of Haryana & Others Vs. Pyara Singh & Others reported in 1992 (4) SCC 118 has been pleased to hold that adhoc and temporary employee who have been continuing in service satisfactorily for long period have a right to be considered for regularization. The Hon'ble Supreme court has reiterated the aforesaid view in the case of State of Haryana Vs. Surendra Kumar & Others reported in 1997 (3) SCC 633 and also in the case of Arun Kumar Rout Vs. State of Bihar reported in 1998 (9) SCC 71.

3. The respondents have denied the averments so made by the respondents by means of Counter Affidavit in which they have stated that the applicant had worked as Part Time Casual Worker from September, 1989 on daily wage basis as per need and requirement of sweeping work in the office of respondent no.3. Several other persons were also engaged as Part Time Casual Labourer on daily wage basis as per need

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and requirement for sweeping work in the office of respondent no.3. No part time casual labourer engaged in the office of respondent no.3 has been engaged as Full Time Casual labourers or conferred temporary status or regularized till date. In term of Department of Telecommunication Services, Govt. of India, New Delhi letter dated 14.8.1998 and 25.8.2000, only those part time casual labourers who were engaged between the period from 1.9.1999 to 31.8.2000 were eligible for conversion from Part Time Casual Labour to full Time Casual Labour, but the applicant during the said period had only worked for 92 days only. They have further stated that no sanctioned post of Group 'D' is lying vacant in the office of respondent no.3. There is no need and justification for sanction of a Group 'D' post for the office of respondent no.3 for performing the sweeping work keeping in view the carpet area of the office. Only three hours sweeping work is required for sweeping in the carpet area of the office of respondent no.3. The applicant had not worked continuously from September, 1989 till the filing of Counter Affidavit. As per letter dated 24.5.2002, the applicant was not eligible for conversion from part time casual labourer to full time casual labourer in the office of respondent no.3 as well as there was no shortage of Group 'D' staff in the office of respondent no.3 as no sanction Group 'D' post in the office of respondent was lying vacant. The various decisions cited by the respondents do not apply in the case of the applicant.

4. The applicant has filed Rejoinder Affidavit denying the averments made by the respondents in their Counter Affidavit and reiterated the averments made in Transfer Application.

5. During the course of hearing, learned counsel for the applicant has placed reliance the following decisions:-

(i) **State of Jharkhand Vs. Kamal Prasad & Others reported in 2014 7 SCC 223** in which it was held that state has failed to prove that respondents have not rendered continuous services for atleast 10 years without benefit/protection of an interim order hence respondent employees have continued in their service for more than 10 years continuously and are entitled to all consequential benefits in terms of para 53 of Uma Devi.

(ii) **Hari Nandan Prasad & Another Vs. Employer I/R to Management of Food Corporation of India & Another reported in (2014) 2 SCC (L&S) 408.** The Hon'ble

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Supreme Court has held that it would depend on the facts of each case as to whether the order of regularization is necessitated to advance justice or it has to be denied if giving of such a direction infringes upon the employer's right.

(iii) **Raja Ram Pandey Vs. State of U.P. & Others reported in 2009 (27) LCD 771** the Hon'ble High Court has held that right to consider for regularization is a fundamental right.

6. We have heard the learned counsel for the parties and have also perused the pleadings on record.

7. It is not denied by the applicant that he was a part time casual worker as per the details provided by him regarding his working days as contained in Annexure no.1. It is seen that the applicant has worked for ranging periods as part time casual worker from 1989 to 2006. Infact, some months he had worked as little as 09 days. The respondents have stated that there was a move for conversion of part time casual workers into full time casual workers. This policy was enumerated in Government of India DOT letter dated 25.8.2000, which stipulated that the scheme is one time measure and it shall be applicable to those part time casual workers who have worked for 240 days in the preceding 12 months during this period. However, such conversion is subject to there being shortage of Group 'D' staff to the extent of available vacancy after granting temporary status and existing full time casual workers and that no additional post can be created for this purpose. The respondents have stated in their Counter Affidavit that no post of Group 'D' was vacant in the office of respondents. The applicant has not produced any evidence to the contrary. The Hon'ble Supreme Court in **Direndra Chamauli Vs. State of U.P. reported in 1986 1 SCC 637** has held that casual workers on daily wage basis are not entitled to regularization when there are no sanctioned post. It is also the case of the applicant that he is only part time casual worker. In the case of Pyara Singh (supra) relied upon by the learned counsel for the applicant it was held that adhoc and temporary employee who have been continuing in service satisfactorily for long period have a right to be considered for regularization, is not without the fact with commensurate the posts have to be sanctioned. Coming to the question of creation of post, the Hon'ble Supreme Court in

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the case of Commissioner, Corporation of Madras Vs. Madras Corporation Teachers, Mandram reported in 1987 (1) SCC 253 has held that creation/abolition of a post is purely a policy matter of the employer. The Tribunal has no power to direct for creation of a post or to determine the salary of such post.

8. The cases cited by the applicant do not render much assistance as facts and circumstances are different. In the State of Jharkhand (supra) the aggrieved persons were adhoc employees in autonomous service, in Harinandan Prasad & Another deal with the cases of unfair labour practice under Industrial Disputes Act, 1947. The Allahabad High Court has dealt with a case of the petition who appointed as a seasonal Collection Amin and his juniors were regularly appointed against regular vacancies. In this case the applicant was a part time casual worker and there is no vacancy against he can be regularized nor is there a sonority list which would indicate a person junior to have bee given certain relief which have not been extended to him.

8. In view of the aforesaid discussions, T.A. fails and is accordingly dismissed. No costs.

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(Ms. Jayati Chandra)
Member (A)

Navneet Kumar

(Navneet Kumar)
Member (J)

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