

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW
BENCH LUCKNOW**

Original Application No.118/2011

Order Reserved on 20.11.2014

Order Pronounced on 04-12-2014

HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

Mohd. Quadir age 35 son of late Sri Mohd. Yaseen r/o Village-Aurangabad Khalsa, Post Binjnaur, District- Lucknow.

Applicant

By Advocate: Sri S.N.Singh Gaharwar

Versus

Union of India and others

1. **Secretary to the Govt. of India, Ministry of Defence, New Delhi.**
2. **Directorate General of Civil Supplies & Transport Army HQ, New Delhi.**
3. **Area Commander, Head Quarter, U.B.Area, Bareilly.**
4. **Sub Area Commander, HQ Sub Area, Lucknow.**
5. **Commanding Officer, Food Inspector Unit, Army Supply Core, Lucknow.**

Respondents

By Advocate : Sri Rajendra Singh

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

1. To quash the impugned oral service termination order dated 3.8.2010, and reinstate the petitioner in the service with all consequential benefits.
2. To direct the respondent to consider the case of regularisation of service and other consequential benefits to the petitioner in the light of law laid down by Hon'ble Supreme Court in Appeal No. 3595-3612/1999 "Secretary State of Karnataka and others Vs. Uma Devi and others"
3. Any other order or direction which is just deemed fit and proper under the facts and circumstances of the case of petitioner in the interest of justice for proper adjudication of the case.

2. The brief facts of the case are that the applicant joined as a Carpenter on daily wage basis in 1996. Since 1996, the applicant continued to work and for the first time, his services were terminated orally in 2009. The applicant preferred an O.A. No. 306/2009. The said O.A. was disposed of by the Tribunal. In the said O.A., the learned counsel for respondents fairly conceded that all his arrears of wages will be paid to him as soon as he approaches the respondent authority. Apart from this, it is also submitted by the respondents that they have no hesitation in engaging him again in his previous capacity and this concession is extended by the respondent authority keeping in view the long service of the applicant provided the applicant reports for duty soon. The respondent issued a letter to the applicant for collecting his wages and also asked him to join duty on any working day between 8.00 am to 1.00 p.m. After the said orders, the services of the applicant were again terminated by the respondents in the month of August, 2010. The applicant served a legal notice upon the respondents as well as a reminder to the same and has also filed a writ petition before the Hon'ble High Court vide Writ Petition No. 1243 (S/S)/2011. The said writ petition was dismissed on the ground of maintainability and alternative remedy and it is directed that the petitioner to approach the appropriate forum. The applicant as such preferred the present O.A.

3. On behalf of the respondents, the counter reply is filed in which it is categorically stated that the applicant was for the first time engaged on time to time basis from October, 1999 whenever the work of casual labour arose in the unit and no commitment is given for continuous employment. As far as regularization of the applicant is concerned, he does not fulfill the criteria for regularization as per DOP&T Circular. The respondents have also denied this fact that the applicant has completed 15 years of service.

It is again reiterated by the respondents that the applicant was engaged from time to time from October 1999 as per the requirement of work and since the applicant was not holding any civil post, as such question of issuance of termination order does not arise. The learned counsel for the respondents has also taken a ground that in terms of the decision of the Hon'ble Supreme Court in the case of **Secretary , State of Karnataka and others Vs. Uma Devi and others reported in 2006 (4) SCC-1**, the applicant has no right to be regularized and also no claim whatsoever, as such the present O.A. is liable to be dismissed.

4. On behalf of the applicant, rejoinder reply is filed and through rejoinder reply, mostly the averments made in the O.A. are reiterated and contents of counter reply are denied.

5. Heard the learned counsel for the parties and perused the records.

6. The applicant claims to be engaged as daily wager with the respondents and services were terminated orally in the year 2009. The applicant preferred an O.A. vide O.A. No. 306/2009 in which he has prayed that the direction be issued to the respondents that the arrears of wages should be paid to him and he should be given an opportunity to serve in the establishment of the respondent authority. After hearing the counsel for the parties, the Tribunal disposed of the O.A. with a direction to the applicant to present himself before the respondent No. 5 for engagement as a casual employee and also to receive payment of his past wages. In pursuance thereof, the respondents issued a letter to the applicant on 12.3.2010 asking him to report to the office on any working day between 8.00 am to 1.00 pm and also to collect the wages for the month of April and May, 2009 on any working day between 9 AM to 1 PM. The applicant thereafter, in the month of August 2010 submitted a legal notice upon the respondents in regard to re-

engagement of his service and also sent a reminder in the month of September, 2010. It is also to be pointed out that the respondents passed an order in the month of September, 2009 in which it is categorically stated that since the applicant was engaged as a casual labour in July 1996 on daily wages and a reference of the office memorandum dated 11th December, 2000 is taken which is in regard to regularization of casual workers appointed against the sanctioned post and reference is being made of the case of Secretary State of Karnataka Vs. Uma Devi (supra) and it has been indicated that any public appointment has to be in terms of constitutional scheme. Apart from this, it is also to be indicated that the applicant has also preferred a writ petition before the Hon'ble High Court and the Hon'ble High Court dismissed on the ground of alternative remedy with liberty to approach the appropriate forum.

7. As per the averments of the respondents, it is to be pointed out that no commitment is given for continuous employment and the applicant was only engaged as casual worker as and when the services were required. Not only this, it is also argued by the learned counsel for the respondents that there is no question of terminating the services of the applicant arose as he was engaged in the unit on the basis of emergent requirement of work on daily wages. It is once again reiterated by the respondents that as and when the need of work arises in the unit, casual labours are hired on day to day basis on daily wages. Not only this, it is also submitted by the respondents that no body has been regularized in the concerned unit.

8. Apart from this, the Hon'ble Apex Court in the case of **State of Karnataka Vs, Uma Devi reported in 2006 (4) SCC-1** has been pleased to observe as under:-

“ It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain-not at arm's length-since he might have been searching for some employment

so as to eke out his livelihood and accepts whatever he gets. But on that ground alone it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment bring at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it."

9. Further The Hon'ble Apex Court in the case of **Official Liquidator Vs. Dayanand and others reported in (2009)1 Supreme Court Cases (L&S) 943** has been pleased to observe as under:-

“64. The next issue which needs to be address is whether the impugned orders can be sustained on the ground that by having worked continuously for 10 years or more as company paid staff as on 27.8.1999, some of the respondents acquired a right to be absorbed in the regular cadre or regularized in service and they are entitled to the benefit of the principle of equal pay for equal work and have their pay fixed in the regular pay scales prescribed for the particular posts.

65. The questions whether in exercise of the power vested in it under Article 226 of the Constitution of India, the High Court can issue a mandamus and compel the State and its instrumentalities/agencies to regularize the services of temporary/ad-hoc/daily wager/casual/contract employees and whether direction can be issued to the public employer to prescribe or give similar pay scales to employees appointed through different modes, with different condition of service and different sources of payment have become subject matter of debate and adjudication in several cases.

10. The Hon'ble Apex Court in the case of **State of Karnataka and others Vs. M.L.Kesari** reported in (2010) 9 SCC 243 has been pleased to observe as under:-

“Appointment made not against the sanctioned post or appointment of unqualified persons are illegal appointment”

11. As per the observations of the Hon'ble Apex Court and the facts of the case, we do not find any ground to interfere in the present O.A. Accordingly, the O.A. is dismissed. No order as to costs.

J.Chandra

(Ms. Jayati Chandra)
Member (A)

Navneet Kumar

(Navneet Kumar)
Member (J)

HLS/-