

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 367 of 2005

This the ~~10th~~ day of January, 2007

CORUM

Hon'ble Shri A.K. Singh, Member (A)

Girish Kumar Gupta aged about 38 years son of Shri Matadin Gupta, R/o Ashanagar, Hardoi.

...Applicant

By Advocate:- Shri Anurag Shukla

Versus

1. Director General, Postal Department, Dak Bhawan, New Delhi.
2. Post Master General, Bareilly Region, Bareilly.
3. Superintendent of Post Offices, Hardoi Division, Hardoi.

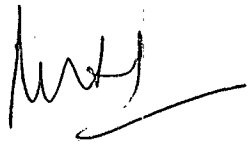
...Respondents

By Advocate:- Shri D.S.Tewari

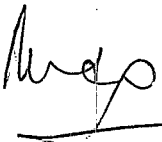
ORDER

By Shri A.K.Singh, Member (A)

The O.A. 367 of 2005 has been filed by the applicant, Girish Kumar Gupta (address given in the O.A.) against inaction on the part of the respondents for his regularisation on the post of Gardner even after his having put in over 20 years of service.



2. The applicant submits that he was appointed as a contingency paid Gardner on 29.7.86 on a regular and full time basis. The post of Gardner on which he was engaged was lying vacant at the time of his appointment. He was engaged on a salary of Rs. 75/- per month in Head Post Office, Hardoi. The applicant submits that he worked from 29.7.86 to 29.11.89 regularly on the post on the aforesaid salary. His working hours were, however, curtailed w.e.f. 29.11.89 to only 5 hours per day without any reason. In the mean time, several posts of Postman fell vacant due to retirement of incumbents holding these posts and hence the applicant was given the charge of Postman in one of such vacancies on 30.1.2004. He was however, continued to be paid salary for the post of Gardner despite the additional duty of a Postman. The applicant consequently preferred a representation before the Superintendent of Post Offices, Hardoi Division, Hardoi on 17.11.2003 specifically mentioning therein that though he was appointed a full time Gardner on a salary of Rs. 75/- P.M. but his working hours were reduced from 8 hrs. to 5 hrs for apparently no good reasons. He also submitted that as he was being paid salary on a monthly basis, his appointment was not subject to duration/limitation of working hours per day. He accordingly requested for his regularization in Group 'D' cadre, in his representation in



accordance with the guidelines issued by the Apex Court. The applicant also prayed for payment of salary of the post of Postman for the additional hours of work put in by him. He also periodically reminded Respondent No.3 and also met him in person in June, 2004. Instead of considering his request, the respondent No.3 terminated his services vide his order dated 16.7.2004 and he was relieved from his duties on 17.7.2004 by the Post Master, Hardoi in terms of the aforesaid order. The applicant further submits that he again met respondent No.3 and repeated his bonafide prayer before him. Respondent No.3 accordingly reviewed his earlier order dated 16.7.2004 terminating his services and reinstated him on the post as per order dated 24.8.2004. The applicant has continued to work on the post of Gardner since then.

3. He submits that as per direction of the Hon'ble Supreme Court in the case of Daily Rated Casual Labour Vs. Union of India (1988) 1 SCC 122, the Post and Telegraph Department, Ministry of Communication framed a scheme known as "Grant of Temporary Status & Regularisation Scheme" on 12.4.1991. The salient feature of the scheme are as under:-

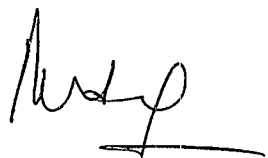
- i) Temporary status would be conferred on the casual labours as on 29.11.1989 and who continue to be

currently employed and have rendered continuous service of at least one year. During the year, however, they must have continuous service of 240 days (206 days in the case of original offices observing five days a week);

ii) Such casual workers engaged for full working hour's i.e. 8 hours including recess of half hour lunch time will be paid salary /wages at the rates which constituted the minimum of the pay scale for a regular Group 'D' employee and will also include D.A., HRA and CCA as admissible to a Group 'D' employees. Ministry of Communication also issued a notification dated 24.2.1989 as per which the schedule annexed to India Post and Telegraph (Group D Posts) recruitment Rules 1970 were amended. As a result of this amendment under head "subordinate offices" in Item II, the following entries were inserted in Column 9:-

"In the scheduled annexed to the Indian Post and Telegraph (Group D posts) Recruitment Rules, 1970 under heading "subordinate offices" in item II in Column 9, the existing entries 100% direct recruitment shall be substituted by the following:-

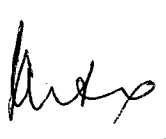
By means of an interview from amongst the categories specified and in the order indicated below. Recruitment from the next category is to be



made only when no qualified person is available in the higher category.

- i) Extra Departmental agents of the recruiting division or unit in which vacancies are announced;
- ii) Casual labours (full time and part time) of the recruiting division or unit
- iii) Extra Departmental agents of neighbouring division or unit
- iv) Nominee of employment"

4. Applicants submits that in view of these changes in the recruitment Rules for the post of Group 'D' , the casual labourers both (full time as well as part time) were to be given preference in the matters of appointment to Group D posts. That even if the period of 5 hours is taken, the applicant has to be considered as a part time casual labour and will be entitled for the benefit of regularisation as well as the substantive appointment to regular Gr. 'D' posts in preference to others subject to eligibility for the same. He further submits that he has already rendered a total service of around 20 years, but has not been regularized of a Group D post till date even though he fulfills all the requirements for such regularisation under the rules. Accordingly he has prayed for the following reliefs:-



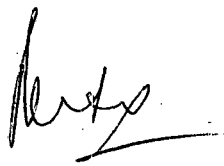
- i) to issue a direction to the respondents to regularize him on the post of Gardner, a post on which he has continuously and satisfactorily worked w.e.f. 29.7.86 to 29.11.89 as full time Casual Labour and also has worked as a part time casual labour i.e. from 29.11.89 onwards.
- ii) to issue a direction to the respondents to make payment of salary for the post of Postman on which the applicant worked w.e.f. 31.1.2004 to 17.4.2004 and allow the applicant to work on the post of postman, for which he is eligible and has requisite experience.
- iii) to pass any other order or direction which this Hon'ble Tribunal deems fit and proper under the circumstances of the case.

5. Respondents on their part have opposed the O.A. They submit that the applicant was engaged as contingency paid Gardner and as part time Worker on 29.7.86. They also submit that he has not worked continuously as Postman w.e.f. 31.1.2004. Moreover, he has only worked to help the postman from the period from 1.2.2004 to 21.6.2004 and from 23.6.2004 to 16.7.2004 and he was accordingly paid for the total hours of work performed by him as a Postman. Respondents further submit that the applicant does not fulfill the conditions of regularisation scheme under the guidelines laid down by

the Hon'ble Supreme Court order dated 27.10.1987 as he was only a contingency paid part time worker, and had not worked continuously for the aforesaid period as a regular employee.

The respondents further submit that the applicant was not appointed or recruited on a regular basis in accordance with rules against any sanctioned post and hence he has no right to claim regularization. Respondents place reliance on Apex Court decision in the case of **Union of India Vs. Vishambhar Dutt [Reported in (1996) 11 SC 341]** and in the case of **Secretary, State of Karnataka and others Vs. Uma Devi (3) and others [Reported in (2006) 4 SCC1]** which clearly lay down that persons appointed on temporary, contractual, casual, daily wage or adhoc basis, even though they might have worked for a long time, are not entitled for regularization. In view of the above mentioned reasons, respondents submit that O.A. 367/2005 is bereft of any merit and hence should be dismissed.

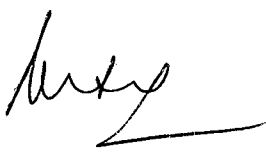
6. Both the applicant as well as respondents were heard in person on 15.12.2006 through their respective counsels. Shri Anurag Shukla appeared for the applicant while Shri D.S. Tewari appeared for the respondents. Learned counsels reiterated their submissions as above.



7. I have given my thoughtful consideration to the submissions made by the counsels in support of their respective case. In the first place I will like to clarify that a contingency paid worker is the same as a casual employee. The payment to a casual employee is also made from contingency funds. Payment to regular employees are made from the sanctioned budget. Hence, there does not appear to be any material difference between a casual or a contingency paid employee. In fact a long term contingency paid employee is the same as a casual employee.

8. In the present case, we find that the applicant has been working on the post of Gardner for a long spell of 20 years whether in continuous or broken periods. As per principles enunciated by the Hon'ble Apex Court in various cases e.g. in the case of **Ashwani Kumar Vs. State of Bihar** [Reported in (1997) 2 SCC 1], it has been held that regularization of a casual or daily wage employee is possible only against sanctioned or permanent vacancies.

In the case of **State of Haryana Vs. Piara Singh** [Reported in (1992) 4 SCC 118] it has been held that those eligible and qualified and continuing in service satisfactorily for long periods have a right to be considered for regularization. In the aforesaid case, the Apex Court has also held that long continuance in service gives rise to a presumption about need of



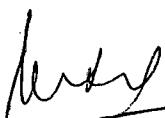
the post on a regular basis. The relevant extract of the aforesaid judgment of the Apex court is reproduced below:-

“So far as the work charged employees and casual labour are concerned, the error must to be regularize them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject to availability of work. If a casual labourer is continued for a fairly long spell- say two or three years- a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the authority concerned to examine the feasibility of his regularization. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. Security of tenure is necessary for an employee to give his best to the job.”

In the case of **Gujarat Agricultural University Vs. Rathod Labhau Bechar** [Reported in (2001) 3 SCC 574] the apex court reiterated the same principles and observed as under:-

“If the work is of such a nature, which has to be taken continuously and in any case when this pattern becomes apparent, while they continue to work for year after year, the only option to the employer is to regularize them”.

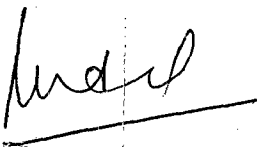
In the case of **Bhagwati Prasad Vs. Delhi State Mineral Development Corporation** [Reported in 1990 SCC (L&S) 174] the Apex Court held that in view of long duration of work by means of which the employees had gathered practical experience, the minimum educational qualification prescribed for the post would not come in the way of regularization of such employees.



Even in the case of **Secretary , State of Karnataka and others Vs. Umadevi (3) and others** [Reported in (2006) 4 SCC 1, the Apex Court while summing up their discussion in para 53 of the judgment , observed 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 regularization 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 regularize 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 or 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 regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

9. The above mentioned judgment clearly suggests that in case where irregular appointments of duly qualified persons in duly sanctioned vacant posts have been made and such employees have continued to work for 10 years or more without interventions of the orders of the court or tribunals, the question of regularization of services of such employees may have to be

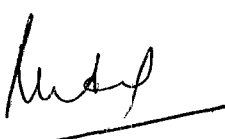


considered on merits in the light of the principles enunciated by the Apex Court in its earlier judgments.

10. When I examined the case of the applicant in the light of the above mentioned judgment which also include the judgment in Secretary, State of Karnataka and others Vs. Umadevi and others (Supra), I find that the applicant has worked on the aforesaid post of Gardner for a period of around 20 years. He was engaged on 29.7.86 and has accordingly completed about 20 years service on the aforesaid post with continuous and broken periods. According to the applicant, he is also eligible for the post, he is holding. Respondents have not contested the point that the applicant is also eligible for holding the post of Gardner. According to the respondents, he has carried out additional duties of helping the Postman for brief periods i.e. from 1.2.2004 to 21.6.2006 and from 23.6.2004 to 16.7.2004. Hence, even on the basis of the latest judgment of the Apex Court i.e. Secretary, State of Karnataka and others Vs. Umadevi and others (Supra), the case of the applicant merits consideration as per para 53 of their judgment, wherein their Lordships have clearly held that if an employee is eligible to hold a post and has completed a service of 10 years or more on the same, his case for regularization merits consideration even if his appointment is irregular. The cases continuance on a post for long years on the basis of court orders are however, not

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covered by this category. In this case, I find, in the first place that the applicant is eligible to hold the post of Gardner. He has been appointed on the same through a valid order dated 29.7.86 though in a temporary/ casual capacity. He has continued to work on the aforesaid post for nearly 20 years. The respondents have not contested the point that applicant is eligible to the post of Gardner. In view of the above, I find that the prayer of the applicant for regularization on the aforesaid post merits consideration. The applicant has also claimed salary for the period he has worked to either as Postman or to Assist any Postman from 1.2.2004 to 21.6.2004 and from 23.6.2004 to 16.7.2004. Respondents have clearly affirmed in para 4 of their counter affidavit that the applicant had worked for above mentioned period to help the Postman. Helping the postman obviously means "assisting him in his job" which in term will mean performing part of his duties. Hence the applicant is entitled to receive salary for the post of Postman for these additional hours of work put in by him. On the basis of the above the following directions are issued to the respondents:-


-  i) Respondents will consider the claim of the applicant for regularization on the post of Gardner or in the alternative they will accord preference to him in regular recruitment of Group 'D' post against any existing or future vacancy in the cadre for which he is eligible as per rules. The entire exercise should be completed expeditiously as possible preferably within a

period of six months w.e.f. the date of receipt of a certified copy of this order.

ii) The applicant's services on the post of Gardner will not be terminated till his case is considered for regularisation in the manner stated at (i) above.

iii) He will be paid additional salary for the hours of service he worked on the post of Postman in case the same has not been paid to him so far.

11. The O.A. is accordingly allowed without any order as to costs.


MEMBER (A)

HLS/-