

**Central Administrative Tribunal Lucknow Bench Lucknow**

**Miscellaneous Application No. 582/2009**

**This the 26<sup>th</sup> day of August, 2009.**

**Hon'ble Ms. Sadhna Srivastava, Member (J)**  
**Hon'ble Dr. A.K. Mishra, Member (A)**

1. Parveen Kumar, aged about 28 years, son of Sri Tara Chand, resident of House No. 144, Block 28, Trilokpuri, New Delhi (presently residing at House No. 98, Chhoti Jagauli, Kursi Road, Lucknow) (lastly working a casual worker in Passport Office, Ghaziabad).
2. Vinod Kumar, aged about 29 years, son of Sri Jai Prakash Singh, resident of House No. 218, Gali No. 5, Chaudhary Charan Singh Colony, Near 'L' Block, Sector 12, Pratap Vihar, Ghazibad (presently residing at House No. 116, Chhoti Jugauli, Kursi Road, Lucknow) (lastly working as casual worker in Passport Office, Ghaziabad).

Applicants.

By Advocate Sri R.C. Singh.

Versus

1. Union of India, through the Secretary, Ministry of External Affairs, New Delhi-110001.
2. Joint Secretary (CPV) & Chief Passport Officer, Government of India, Ministry of External Affairs, (C.P.V. Division), Patiala House Annexe, Tilak Marg, New Delhi.
3. Passport Officer, Government of India, Ministry of External Affairs, CGO Complex-1, Hapur Chungi, Hapur Road, Ghaziabad (U.P.).

Respondents.

By Advocate Sri Sandeep Chandra.

Order

**By Hon'ble Dr. A. K. Mishra, Member (A)**

Applicants No. 1 and 2, who were removed from their position as Casual Workers in orders of respondent No. 3 dated 30.9.2004 and 4.10.2004, have challenged these orders and are seeking re-engagement as casual workers, conferment of temporary status and regularization on the ground that the removal orders were got confirmed in the order and judgment of this Tribunal (Principal Bench) in O.A. No. 314/2005 fraudulently.

2. They have filed the miscellaneous application No. 582/2009 to permit them to join together and file a joint Original Application under Section 19 of the At Act, 1985. The learned counsel for the respondents has objected to the prayer for joint application on the



ground that causes of action and the reliefs sought by both the applicants were not the same and they did not have a common interest.

3. He has also challenged the maintainability of O.A. on the ground of res judicata as the facts of this application as well as the main reliefs sought have already been covered in the judgment and order of this Tribunal (Principal Bench) in O.A. No. 314/2005.

4. Let us take up the ground of non-maintainability of the application before we consider the prayer for joint application. The order of this Tribunal dated 30.8.2006 in O.A. 314/2005 has been annexed at Annexure A-6 by the applicant. The judgment comprehensively deals with all the facts relating to removal of the applicants. Both the orders relating to their temporary removal and permanent removal were challenged with a prayer to reinstate them in service with back wages and to provide both continuity in service and all consequential benefits. The operative part of the order as contained in Paragraph-10 of the judgment is extracted below:

“It is well settled that casual workers do not hold a post nor are they appointed in accordance with any statutory provisions. Having not been so appointed or acquired status, they could not successfully rely upon the same provisions for protection. The casual workers form a class by themselves and cannot claim discrimination against those regularly recruited as per rules. A regular appointment can only be made consistent with the requirement of Articles 14 and 16 of the Constitution of India. A Constitutional Bench of the Hon'ble Supreme Court in Secretary State of Karnataka and Ors Vs. Uma Devi 2006 (4) SCALE has frowned upon regularization as a mode of recruitment by the back door. It has been observed that such casual employment



is accepted knowing its nature and consequences and would come to an end when it is discontinued, being outside the purview of the constitutional scheme of appointment.”

5. It is clear from the judgment that the O.A. was dismissed purely on the legal ground that a casual worker did not hold a regular post and was not entitled to the constitutional protection meant for regular employees. After citing the path-breaking judgment of the Supreme Court in Secretary State of Karnataka and Ors Vs. Uma Devi 2006 (4) SCALE -197 it was held that engagement or disengagement of a casual worker was outside the purview of the constitutional scheme of appointment.

6. The applicant has submitted that the allegation of indiscipline and misconduct made against them were not substantiated in any inquiry. He came to know about this fact from some reliable source and has filed the present application primarily on the strength of this knowledge and has requested for production of the case records of the departmental inquiry (vide paragraphs 4.16 and 8(a) of the application). The learned counsel for the applicant cites the case of A.V. Papayya Sastry Vs. Government of A.P.& Ors. AIR 2007 SC-1546 to substantiate his contention that any order which was obtained by means of fraud will not have any sanctity in the eyes of law. According to him, the order of this Tribunal in O.A. 314/2005 was obtained on the strength of the submission of the respondents that there was an inquiry in which indisciplined acts of the applicants had been substantiated. Since the basic premise relating to indiscipline and misconduct was found not to be true, in that view of the matter, the judgment and order in O.A. 314/2005 will not have any binding effect. Following the ratio of the judgment of the Supreme Court cited by him, he contends that even a judgment of the Supreme Court can



be recalled by a subordinate court, if it is established that the order was obtained by the successful party by practising fraud.

7. Now let us examine whether there was any fraud in the submissions of the respondents before this Tribunal in the aforesaid O.A. Annexure A-5 is a copy of the rejoinder reply filed by the applicants to the counter affidavit filed by the respondents in O.A. 314/2005. Certain portions of this reply are extracted below for better understanding:

“Reply to preliminary objections:

1. x x x x x x The respondents have further annexed a copy of the enquiry report by the Passport Officer, Ghaziabad. On perusal of the said enquiry report, it is evident that the applicants were assigned various duties x x x x x x.”

“ x x x x x x The allegations of the respondents in the corresponding para of their counter reply against the applicants regarding insubordination etc. are wrong, concocted and the said inquiry is nothing but merely an eyewash inasmuch as the same has not been conducted in accordance with law and no opportunity was granted to the applicants for defending themselves x x x x x x.”

“ x x x x x Moreover, the said inquiry officer has arbitrarily concluded at the back of the applicants that they are guilty of the misconduct which has never been committed by the applicant. From the said inquiry report, it is evident that the applicants have been made the scapegoat by the respondents apparently to hide their own inefficiency of not making passports in the time. x x x x x x.”

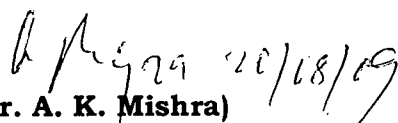



8. From these submissions in their rejoinder reply, it is very clear that the copy of the inquiry report was filed by the respondents along with their counter affidavit and the applicants have made their comments not only on the findings of the inquiry report but also about the inquiry officer. Therefore, it is strange that the applicants should have taken a contradictory plea at paragraph 4.16 of this application that despite their best efforts, they could not get a copy of the inquiry report.

9. Since a copy of the inquiry report was filed along with the counter affidavit in O.A. 314/2005, we do not find any reason to call for the records of the preliminary inquiry.

10. We find that the facts of this case and the relief sought are already covered in the judgment and order of this Tribunal in O.A. No. 314/2005. Further, we find that the judgment dated 30.8.2006 in the aforesaid O.A. was delivered on legal grounds following the law laid down by the constitutional Bench of Supreme Court in Umadevi case. Therefore, we hold that there is sufficient force in the contention of the learned counsel for the respondents that the application is not maintainable on the ground of resjudicata. The contention of the applicant that the earlier judgment of this Tribunal was obtained by fraud does not hold water in view of the fact that the inquiry report was available before the Principal Bench of this Tribunal prior to passing of the order.

11. In the circumstances, we dismiss this application as barred by res judicata. Consequently, the M.A. for joint application having become infructuous, is also dismissed. No costs.

  
(Dr. A. K. Mishra)  
Member (A)

  
(Ms. Sadhna Srivastava)  
Member (J)