

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

Original Application No. 76 of 1996.

Date of Order : 4.8.1999

Smt. Duley Devi W/o Arun Kumar, Sweeper-cum-Frash
Office of the Regional Labour Commissioner (Central)
Patna, resident of Budha Colony, Near Dujra Bhathi, P.S.
Budha Colony, District-Patna.

..... Applicant

By advocate Shri M.P.Dixit.

- Versus -

1. The Union of India through Chief Labour
Commissioner, (Central), New Delhi.
2. The Regional Labour Commissioner (Central) Maurya
Lok Complex Block, Patna (Bihar).

.... Respondents.

By advocate Shri G. K. Agarwal, ASC.

C O R A M

Hon'ble Mr. L.R.K.Prasad, Member (Admn.)

Hon'ble Mr. Lakshman Jha, Member (Judicial)

O R D E R

Hon'ble Mr. Lakshman Jha, Member (Judicial) :-

This is an application under section 19 of the
Central Administrative Tribunals Act, 1985 (for short,
Act) with prayer to quash and set aside the order
of termination of the applicant dated 25.1.1996, and

2. 2. 1996 (vide letter no. Adm. II/23/14/94 dated 25.1.1996, and no. A-1/73(2)/87-Pt. II. dated 2.2.1996) passed by the Respondent No.1 i.e. The Chief Labour Commissioner (Central) New Delhi and the Regional Labour Commissioner (Central) Maurya Lok Complex, Patna, Bihar (Respondent No.2) as at Annexure-A/1 and A/1 (a).

The applicant, Smt. Duley Devi ^{was} engaged as a Part Time Sweeper in the year 1987 in the office of the Respondent No.2. She belongs to scheduled caste category. On 8.11.1994, she was appointed on the post of Sweeper-cum-Frash by the then Regional Labour Commissioner (Respondent No. 2) after duly obtaining sanction of Respondent No.1. The applicant assumed her duty as the Sweeper-cum-Frash on 15.11.1994, as at Annexure-A/4, but she was illegally terminated from the services with effect from 1.4.1995, without any show-cause notice. She filed a representation on 28.3.1995, against the termination order, which was not favourably considered. Therefore, the applicant filed an O.A. vide No.164/95 before this Tribunal, which was disposed of by order dated 11.12.1995, as at Annexure-A/2. The Tribunal found that the appointment of the applicant as Sweeper-cum-Frash was not illegal and the order of cancellation/termination of her appointment without notice or any show-cause was against the principle of natural justice. Accordingly, the cancellation order dated 29th March, 1995, was quashed and the respondents were

directed to re-consider her case and the representation dated 28.3.1995 in the light of observation made in the O.A. and in accordance with law. The applicant was directed to be deemed in service as Sweeper-cum-Frash with consequential benefits.

2. It is the further case of the applicant that the Respondent No.1, i.e. The Chief Labour Commissioner (Central) New Delhi, passed impugned order dated 25.1.1996 as at Annexure-A/1 for the termination of the services of the applicant from the date, the Respondent No. 2 received the order. Accordingly, the Respondent No. 2, vide his impugned order dated 2.2.1996, as at Annexure-A/1(a) terminated the services of the applicant as Adhoc Sweeper-cum-Frash with immediate effect. However, she was allowed to continue as Part Time Sweeper @ Rs.10/- per working day as usual. It is stated that the appointment of the applicant as Sweeper-cum-Frash had been made by the competent authority i.e. Respondent No. 2, after duly obtaining sanction order of Respondent No.1. It is also said that the Respondent No. 2 had requested the Respondent No.1 for the regular appointment of the applicant on the aforesaid post for long period by conversion of one of the vacant post of a Peon for which 'no objection' had already been given by the

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Respondent No.1. This Tribunal in the aforesaid O.A., after taking into consideration, all the material objection, relating to the appointment of the applicant had held ^{that} the cancellation of her appointment was illegal, and accordingly, had directed the Respondent No.1 to consider the representation of the applicant in the light of the observation to that effect. But, the Respondent No.1 ignoring the observation of the Tribunal in the aforesaid case, has wrongly rejected the representation of the applicant for regularisation of her adhoc appointment on the aforesaid post giving rise to this second round of litigation.

3. The Respondents, in their counter, have stated that no post of Sweeper has been sanctioned for the office of Regional Labour Commissioner (Central), Patna i.e. Respondent No. 2. The offices of the Respondent No. 2 have a carpet area of about 1170 Sq. feet, whereas, creation ~~for~~ ^{the} post of one Sweeper at a minimum of 8,000 Sq. feet is required. The creation of the post depends upon the recommendation of S.I.U. (Staff Inspection Unit). The applicant was engaged as Part Time Sweeper and her appointment orders as Sweeper-cum-Frash on adhoc basis was wrongly issued by the Respondent No. 2 in violation of the Rules. The applicant did not fulfil the conditions for recruitment and is

not qualified for the post. She was not sponsored by the Employment Exchange or other similar agencies ^{adhoc} i.e. Surplus Cell. Thus, her appointment as Sweeper-cum-Frash was not in accordance with law and the Rules. Accordingly, the Respondent No.1, on re-consideration on the representation of the applicant as directed by this Tribunal in O.A. No.164/95, rejected her representation vide impugned orders.

4. The learned counsel for the applicant referred to the order passed in O.A.164/95, as at Annexure-A/2 and contended that this Tribunal, on consideration of the material on record, did not find fault with the appointment of the applicant as Sweeper-cum-Frash. The applicant had been working as Part Time Sweeper since 1987 in the office of the Respondent No. 2. The Respondent No. 2 had already obtained 'no objection' of Respondent No.1 for conversion of one of the post of Peons to the post of Sweeper-cum-Frash and after obtaining such permission, appointed the applicant subject to the approval of the Respondent No.1. It appears from para 14 and 15 of the order as at Annexure-A/2, that the Tribunal after perusing the notes in the relevant file of the Respondents, found that one of the post of Peons in the office of Respondent No. 2, had been kept vacant for the work as Sweeper-cum-Frash and to re-designate ^{the post} ~~as such~~.

The Respondent No.1 had already issued no objection to the proposal of the Respondent No.2, ~~to~~ re-designate the one vacant post of Peon as Sweeper-cum-Frash ^{the provision} in conformity with ~~under~~ new plan scheme under 7th Five Year Plan. Considering all the aspects of the matter, the Tribunal in the aforesaid O.A. No.164/95, held in para 19 as follows :-

" On a consideration of all these material facts and circumstances appearing from the record, we are of the view and held accordingly, that the appointment of applicant as Sweeper-cum-Frash, by the impugned order issued by the then Regional Labour Commissioner, Patna, dated 8th September, 1994, cannot be faulted by any stretch of imagination and it could not be said to be either bad/illegal or irregular. The Tribunal further held that the order of cancellation/termination of her appointment without notice or any show-cause was against the principle of natural justice and illegal. Accordingly, the cancellation order was cancelled and the Respondents were directed to re-consider her representation against termination in the light of aforesaid observations.

5. It appears that the Respondent No.1, vide impugned order dated 25th March, 1996 as at Annexure-A/1, rejected the representation of the applicant ignoring the aforesaid observations of this Tribunal. In the opinion of Respondent No.1, there was no need of

full time regular post of Sweeper-cum-Frash in the office of the Respondent No. 2. Further, according to him, the vacancy had not been notified as required under the Employment Exchange (Compulsory Notification of Vacancy Act), and the Respondent No. 2 had no power vested in him for making adhoc appointment to any post. Thus, the appointment of the applicant was not in accordance with the law, and its continuation would be equally illegal. The Respondent No.1 has further observed in the order impugned that the Rules of natural justice could not be invoked for perpetuating an illegality and he has relied upon the rulings of the Patna High Court in Surendra Pd. Singh Vrs. State of Bihar and another (1993 Lab IC page 2230) and in Vijay Kr. vrs. State of Bihar, as reported in 1983 Lab IC Vol. XVI page 1884, in support of his stand. Accordingly, *impugned* passed order for termination of the services of the applicant, which was communicated to her vide order dated 2.2.1996, as at Annexure-A/1(a).

6. The learned counsel for the applicant Mr. Dixit, vehemently assailed the aforesaid order of Respondent No.1 as contained in Annexure-A/1. He referred to the office order dated 29th March, 1995, issued by the Respondent No. 2, by which, the appointment of the applicant had been cancelled earlier, which was challenged in the aforesaid O.A. before this Tribunal. He contended

that the appointment of the applicant had been terminated ^{firstly,} on the ground that the post of Peon was not converted into that of Sweeper-cum-Frash, and, secondly, no procedure was followed for regular appointment, i.e. obtaining nomination from Employment Exchange and other provisions of Recruitment Rules. This Tribunal after taking into consideration, the aforesaid grounds and the materials on record, set aside the order of termination with the observation as stated above. In other words, this Tribunal held that the appointment of the applicant was not illegal on the materials as produced before it. The Respondent No.1 ought to have taken note ^{of} ~~A~~ the aforesaid observation in the O.A. and should have passed orders on her representation in the light of the aforesaid observation. But, instead of doing so, on the same grounds, the representation of the applicant has been rejected by the order impugned. The learned counsel for the applicant contended that the aforesaid order of this Tribunal in O.A. has not been challenged before competent court, and, therefore, it is binding. He has relied upon a Ruling of the Hon'ble Supreme Court as reported in 1994(26) ATC page 448, and submitted that an order of competent court, even though erroneous, mistaken or improperly obtained, cannot be substituted or clarified and modified by the executive authorities, according to their own views.

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Remedy in such a case can be had only from a higher Court or from the same Court. The contention of the learned counsel for the applicant appears quite sound and acceptable in view of the aforesaid authoritative pronouncement of the Hon'ble Apex Court.

7. In the instant case, the learned counsel for the applicant relying upon a number of rulings contended that the impugned order of termination is not sustainable for want of proper show-cause notice to the applicant. He elaborated that even in case of illegal or irregular appointment, the principle of audi alteram partem is required to be strictly followed in the sphere of public employment.

8. Reliance has been placed on the decision of the Apex Court in Shri Ram Vs. D.I.Q. School, Azamgarh, as reported in 1983(1) SLJ page 459, in which the cancellation of appointment without an opportunity of hearing has been held violative of principle of natural justice.

9. In an another case, the Hon'ble Supreme Court, was reported in AIR 1991 SC page 309 (Shrawan Kr. Jha vs. State of Bihar), ~~had~~ held that holders of appointment order should be heard before cancellation as a compliance of principle of natural justice.

10. Reliance has also been placed on the decision of the Central Administrative Tribunal, New Delhi, in

Pratima Sharma vs. Union of India & Ors. as reported in 1992(20) ATC page 382. In the aforesaid case before the Tribunal, the applicant (handicapped) continued on adhoc basis for 4½ years and then her services were terminated on the ground that a regular person had become available. The termination of the applicant's services was held invalid for want of notice.

11. The learned counsel for the applicant relying upon the latest rulings of the Hon'ble Supreme Court as reported in 1998(3) All P.L.R. (Basudeo Tiwary vs. Sidhu Kanu University), contended that for want of notice, termination is not sustainable. In the case before the Hon'ble Supreme Court, the appellant was appointed as Lecturer, Department of History, S.R.T. College Dhamri and was posted in Godda College. He made representation to Vice-Chancellor for regularisation of his services in terms of relevant statutes of the University and on the basis that he had been working as a Lecturer in an affiliated college under private management before the same was taken over as a constituent unit of a University. The representation of the applicant was turned down by the Vice-Chancellor and he was directed to be terminated from the services on the ground that on the relevant date the syndicate had no power to make appointment of Lecturer, and therefore, his appointment was not lawful. The relevant

Rules provided that any appointment or promotion made contrary to the provision of the Act, statutes Rules or regulation or in any irregular or unauthorised manner, shall be terminated at any time without notice. Even in the face of such provision under Rule, for termination without notice, the Hon'ble Supreme Court held that the principle of audi alteram partem being facet of natural justice is also a requirement of article 14 of the Constitution. Natural Justice is the anti thesis of arbitrariness. In the sphere of public employment, any action taken by the employer against an employee, must be fair, just and reasonable. Termination, on the ground of irregular appointment is not sustainable for want of proper notice. It may be pointed out that this Tribunal in the aforesaid O.A. No. 164/95, *of the* held the termination of adhoc appointment of the applicant without notice or show-cause, illegal and bad in law being in violation of the principle of natural justice.

12. Thus, the order impugned is not only against the observation of this Tribunal, relating to the illegality of the order, but also against the aforesaid ^{Cancellation of appointment} authoritative pronouncements in a number of cases of the Hon'ble Supreme Court.

13. The learned counsel for the applicant contended that the applicant was engaged as Part Time Sweeper on

the basis of daily wages of Rs.10/- . She has continued till date after termination of his services as Sweeper-cum-Frash in the regular scale of 4th grade. She had been appointed on adhoc basis on the regular post by Respondent No. 2, after obtaining sanction of Respondent No.1. In view of her long continuance as Part Time Daily Rated Sweeper, she ~~deserves~~ consideration for regularisation in the services of the Respondents, even though, the intitial appointment was illegal or irregular. *(the learned counsel of the applicant)*
He has relied upon a number of rulings in support of his aforesaid contention. In the case of Prem Singh and Ors. vs. Haryana State Electricity Board and Ors. reported in 1996(4) SCC 309, their lordship of the Supreme Court held that the appointment though strictly speaking not justified, in the peculiar facts and circumstances of the case invalidating them in entirety ^{was} not just and equitable. In the case of Sharda Singh vs. State of Punjab and Ors., reported in AIR 1993 SC page 2248, their lordship of the Supreme Court, although found that the procedure adopted for appointment were irregular, but held that the same did not vitiate the selection of the candidate, ultimately made by the committee. Yet in ^{an} another case, the Hon'ble Supreme Court held that, even in case of illegal appointment, the same shall not be terminated, if the employees have put in services for a number of years. Relying upon this decision, in the case of S.C.Puttaswamy and Ors. vs.

Hon'ble Chief Justice of Karnataka, reported in 1991(2) PLJR SC page 77, which has been held that the services of the employee cannot be terminated, even in case of illegal appointment, if he has put in services for a number of years.

14. In a case as reported in 1996(2) PLJR, relying upon a number of rulings of the Hon'ble Supreme Court, held that, normally a person should not be kept in a temporary service for long, but where such a temporary or adhoc appointment is continued for long period, a Court must direct regularisation.

15. The Central Administrative Tribunal, New Delhi in B.S.Chandalia vs. Union of India & Ors., as reported in 1998(37) ATC page 469, relying upon a Full Bench decision in Sakkubai's case, in a case Part Time Casual Labour engaged as Sweeper was dispensed with his services on the ground of alleged irregular appointment. The Tribunal held that the Respondents themselves having employed the applicant for more than seven years, initially as Part Time Sweeper, they could not raise this informity at this stage. Further considering the reasons given in the Full Bench decision in Sakkubai's case and also the provisions made in P&T Scheme, which dealt with regularisation of Part Time Workers held that there was no good reason, why a similar approach should not be adopted in the case of the applicant, and, accordingly, he was held entitled to the same benefits

as were given to these workers of P&T Department. It may be pointed out that there are a cateno of rulings of the Hon'ble Supreme Court, High Court and of the Central Administrative Tribunals, which clearly indicate that irrespective of the fulfilling the criteria of qualification, age and experience, the long continuation in a job entitles the incumbent for consideration for regularisation.

16. Before we part with, we would like to observe that the applicant is engaged as Sweeper since 1987 on a daily wage of Rs.10/-. It appears to be incompatible with the recent trends in the sphere of social welfare legislation and the schemes relating to regularisation implemented by other various Govt. Departments.

17. Thus, we find that the applicant shall be deemed to be in service as Sweeper-cum-Frash and shall be entitled to back wages after deducting the amount already paid as Daily Rated Mazdoor and other consequential benefits.

18. In view of the aforesaid discussions, we are of the considered view that the orders impugned are not sustainable and they are accordingly set aside and quashed. The respondents are directed to consider the case of the applicant for regularisation of her services as Sweeper-cum-Frash w.e.f. the date of her appointment

and to pass orders in accordance with law and in the light of observation made above, within a period of two months from the date of receipt of a copy of this order. The O.A. is accordingly allowed. There shall be no order as to costs.

MPS.

Lakshman Jha
(Lakshman Jha)

Member (Judicial)

L.R.K.Prasad
(L.R.K.Prasad)

Member (Admn.)