21-11-2007

Mr. Tanvir Ahmed, Proxy Counsel to
Mr. V.K. Joshi, Counsel for the applicant-

Heard the learned Counsel for the applicant.

For the reasons dictated separately, the OA is disposed of.

(M.L. CHAUHAN)
Judl. Member

R/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

Jaipur, this the 21st day of November, 2007

ORIGINAL APPLICATION No.384/2006

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER

Ranjeet,
s/o Shri Ram Prasad Barera,
r/o Balabhabadi, Gumanpura, Kota
at present resident of House No. 163-B,
Mosque Road, Keshvpura, Kota.

.. Applicant

(By Advocate: Shri Tanvir Ahmed, proxy counsel to Mr. V.K.Joshi)

Versus

1. Union of India
through Secretary,
Ministry of Defence,
New Delhi.

2. The Chairman,
Managing Committee,
Army School,
Kota (Raj.)

3. The Principal, Army School,
Dadwara-Kota (Rajasthan)

.. Respondents

(By Advocate: …..)

O R D E R (ORAL)

The applicant has filed this OA praying for the following reliefs:-

> "I) by appropriate order or direction, the entire relevant record of the non-applicants, pertaining to the case, may be summoned.
> II) by an appropriate order or direction the impugned verbal order of termination dated 2.2.2006 may kindly be quashed and set aside.
> III) By an appropriate order of direction the respondents be directed to reinstate the applicant in service and to take back him on duty forthwith.
> IV) By an appropriate order of direction the respondents be directed to pay him the pay scale of Class-IV employee Rs. 2550-3550 from the date of his initial appointment.
> V) Any other order/directions of relief may be granted in favour of the applicant which may be deemed just and proper in the facts and circumstances of this case.
> VI) Cost of the Original Application may also be awarded in favour of the humble applicant."

2. Briefly stated, facts of the case are that the applicant was initially appointed as Safai Karamchari vide order dated 25.4.1996 on ad-hoc basis. As can be seen from this order, the said appointment of the applicant was made on account of application dated 27th March, 1996 submitted by the applicant and it was not made after following due process of selection. The said appointment was continued from time to time with artificial breaks except the period when the applicant remained out of service for long period w.e.f. April, 1998 till 31.3.99. Initially the applicant was granted basic pay of Rs. 750/- + DA but subsequently, that appointment was converted into that of a consolidated salary of Rs. 3000/- p.m. w.e.f. 2nd June, 2002. As can

be seen from letters dated 15th June, 2002 (Ann.A9), 28th June, 2003 (Ann.A10), 5th January, 2003 (Ann.A11), 24th December, 2003 (Ann.A12) and lastly letter dated 17th June, 2005, the applicant was appointed on tenure basis on consolidated salary of Rs. 3000/- p.m. It may be stated here that appointment of the applicant on ad-hoc basis was made on tenure basis for a period of 6 months. The said appointment was made pursuant to the application moved by the applicant from time to time. The grievance of the applicant is that he was permitted to work by the Principal upto 2nd February, 2006 whereby his services were orally terminated. It is on the basis of these facts that the applicant has prayed for the aforesaid reliefs.

Although in the OA, the applicant has averred that he was given appointment on the post of Safai Karamchari against a vacant/substantive post by the Chairman, Military School, Kota w.e.f. 25.4.1996 after following the regular process of selection, but from perusal of various appointment letters which have been placed on record as Ann.A1 to A13, it is evident that the applicant was engaged as Safai Karamchari on ad-hoc basis pursuant to various applications submitted by the applicant from time to time. Thus, the contention that he was appointed after regular process of selection, is without any basis. The applicant has further averred that he has been working with the respondents for the last 10 years, as such he cannot

be treated on ad-hoc basis in view of the law laid down by the Hon'ble Rajasthan High Court in Mrs. Rekha Mathur vs. State of Rajasthan and others, 1988 (2) WLN page 569 and Dr. Shri Kant Rao vs. State of Rajasthan and Ors., 1975 WLN page 110. The applicant has also prayed that he is also entitled to the pay scale of Class-IV employee Rs. 2550-3550.

3. I have given due consideration to the submissions made by the learned counsel for the applicant. I am of the view that the applicant is not entitled to any relief.

4. The matter on this point is no longer res-integra. In Constitution Bench decision of the Hon'ble Apex Court in Secretary, State of Karnataka vs. Uma Devi (3), 2006 SCC (L&S) 753, the Apex Court has exhaustively dealt with the matter similar to that under consideration in the present case. At this stage, it will be useful to quota some of the observations made by the Apex Court therein.

In Para 4 and 5 of the judgment, the Constitution Bench observed as under:-

> "4. The Union, the States, their departments and instrumentalities have resorted to irregular appointment, especially in the lower rungs of the service without reference to the duty to ensure a proper appointment procedure through the Public Service Commissions or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract

or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching the courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the posts concerned. The Courts have not always kept the legal aspect in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called 'litigious employment', has arisen like a phoenix seriously impairing the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution. Whether the wide powers under Article 226 of the Constitution are intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognized by our Constitution, has to be seriously pondered over. It is time, that the courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons *and from issuing direction for continuance of those who have not secured regular appointment as per procedure*

established. The passing of orders for continuance tends to defeat the very constitutional scheme of public employment. It has to be emphasized that this is not the role envisaged for the High Courts in the scheme of things and their wide powers under Article 226 of the Constitution are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment. Its role as the sentinel and as the guardian of equal rights protection should not be forgotten.

5. This Court has also on occasions issued directions which could not be said to be consistent with the constitutional scheme of public employment. Such directions are issued presumably on the basis of equitable considerations or individualization of justice. The question arises, equity to whom ? Equity for the handful of people who have approached the court with a claim, or equity for the teeming millions of this country seeking employment and seeking a fair opportunity for competing for employment? When one side of the coin is considered, the other side of the coin has also to be considered and the way open to any court of law of justice, is to adhere to the law as laid down by the Constitution and not to make directions, which at times, even if do not run counter to the constitutional scheme, certainly tend to water down the constitutional requirements. It is this conflict that is reflected in these cases referred to the Constitution Bench."

(emphasis supplied)

Thus, in view of the observations made by the Hon'ble Apex Court on which emphasis has been supplied, it is clear that no direction can be issued to the respondents to reinstate the applicant or to take him back in duty. Further, as can be seen from order dated 17th June, 2005 (Ann.A13), which is last appointment order issued to in favour of the applicant, it is clear that the applicant was engaged as Safai Karamchari to meet the temporary need of the school and the post carried a total pay of Rs. 3000/-. The said appointment order was for six months w.e.f. 17th June, 2005 to 16th December, 2005. It is further stipulated in the said letter that services of the applicant can be terminated earlier, if the school no longer needs his services, and if temporary need subsists after six months the management may extend the duration of appointment for further period and in the absence of such extension services of the applicant will automatically stand terminated after six months. Further condition in the appointment order is that no notice will be necessary to terminate the services of the applicant nor he will be entitled to any compensation in lieu thereof. Thus, in view of such stipulation in the appointment letter and also in view of the law laid down by the Apex court as stated above, the prayer of the applicant that verbal order of termination dated 2.2.2006 be quashed and respondents be directed to reinstate the applicant in

service and to take back on duty forthwith, is without any basis and requires out right rejection. Further, in para 43, the Hon'ble Apex Court in Uma Devi (3) (supra) has specifically observed that if it is contractual appointment, the appointment comes to an end at the end of the contract and in case the temporary employee or casual worker is continued for long time beyond the term of his appointment he would not be entitled to absorption for regular service or made regular on the basis of such continuance. At this stage, it will be useful to quota para 43 of the judgment, which thus reads:-

> "43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that *unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee.* If it is a contractual appointment, the appointment comes to an end at the end of the contract; if it <u>were an engagement or appointment</u> on daily wages or casual basis, <u>the same would come to an end when it is discontinued.</u> Similarly, a temporary employee could not claim

to be made permanent on the expiry of his term of appointment. *It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made following a due process of selection as envisaged by the relevant rules.* It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employee who by the very nature of their appointment has come to an end or of ad hoc employee who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of constitutional scheme."

(emphasis supplied)

Thus, according to me, the applicant is not entitled to any relief as prayed for.

The contention of the applicant that he has been allowed to continue for the last 10 years and as such it will be unjust to discontinue him, cannot be accepted in view of the observations made by the Hon'ble Apex Court in para 45, which thus reads:-

"45. While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person

concerned has worked for some time and in some cases for a considerable length of time. 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 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 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 brings 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 consequences flowing from it. In other words, even while accepting the

employment, the person concerned knows the nature of his employment. *It is not an appointment to a post in the real sense of the term.* The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. *The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by the law for public employment* and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution."

(emphasis supplied)

Thus, the observations made by the Hon'ble Apex Court in the case of Uma Devi (3) (supra) as reproduced, clearly negates the claim of the applicant.

As regards the claim of the applicant that direction be given to the respondents to pay him the pay scale of Class-IV Rs. 2550-3550 from the date of his initial appointment, can also not be granted in view of the observations made by the Hon'ble Supreme Court in Uma Devi (3) case in para 48, which thus reads:-

"48. It was then contended that the rights of the employees thus appointed, under Articles 14 and

16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. *Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules.* No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Article 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of relevant recruitment rules. The arguments based

on Article 14 and 16 of the Constitution are therefore overruled."

Thus from the Paragraphs as quoted above, it is clear that the Apex Court has categorically held that temporary, contractual, casual or daily wage ad hoc employee appointed dehors the constitutional scheme to public employment have no legitimate expectation to be absorbed or regularized or granted permanent continuation in service on the ground that they have been continued for a long time in service. Such employees form a class in itself and they cannot claim that they have been discriminated as against those who have been regularly recruited as per rules.

Further, the applicant has not been able to point out any statutory rule on the basis of which his continuance in service or regular scale can be granted. It is well settled position that where rules exist no direction can be issued by the court for continuance in service or permanent absorption of casual, ad hoc or daily rated employees. Such directions are executive function and it is not appropriate for the court to encroach into the function of another organ of the State. Thus, for the foregoing reasons, I am of the view that the present OA is bereft of merit and the applicant is not entitled to any relief.

Before parting with the matter, it may be observed that the applicant has worked with the

department for the last 10 years with intermediate breaks and he has been engaged as Safai Karamchari on adhoc basis due to administrative exigencies and such arrangement should ordinarily be discontinued when such adhoc/temporary appointment is substituted/ replaced by regularly selected employees. Since this is not a case of the applicant in this OA that he has been replaced by fresh adhoc/temporary employee, as such, it not proper for this Tribunal to give directions in that regard as argued by the learned counsel for the applicant. In any case, it will be permissible for the applicant to make representation before the appropriate authority in case his services as Safai Karamchari has been replaced by engaging fresh Safai Karamchari on ad-hoc basis by the respondents, in that eventuality, I see no reason why the appropriate authority should not consider the matter sympathetically and in accordance with the rules.

5. With these observations, the OA is disposed of at admission stage with no order as to costs.

(M.L.CHAUHAN)

Judl. Member

R/