

(3)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

22.9.2009

OA 420/2009

Mr. Ashok Yadav, counsel for applicant.

At the request of learned counsel for the applicant, adjourned to 22.10.2009.

(B.L. KHATRI)
MEMBER (A)

22.10.2009

OA No. 420/2009

Mr. Ashok Yadav, Counsel for applicant.

Heard learned counsel for the applicant.

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

(B.L. KHATRI)
MEMBER (A)

AHQ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 22ND day of October, 2009

ORIGINAL APPLICATION NO. 420/2009

CORAM:

HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

Rachana Gupta (Tambi) wife of Shri Sanjeev Gupta resident of 142, Katewa Nagar, New Sanganer Road, Jaipur.

.....APPLICANT

(By Advocate: Mr. Ashok Yadav)

VERSUS

1. Union of India through Secretary, Ministry of Tourism, Government of India, New Delhi.
2. The Principal, Institute of Hotel Management Catering Technology and Applied Nutrition, Near Chinkara Canteen, Sikar Road, Bani Park, Jaipur.

.....RESPONDENTS

(By Advocate: -----)

ORDER (ORAL)

The applicant has filed this OA u/s 19 of the Administrative Tribunal's Act, 1985 against the order dated 18.05.2009 (Annexure A/1) whereby joining report of the applicant had not been accepted on the ground that Institute of Hotel Management Catering Technology and Applied Nutrition, Jaipur had not issued any order of appointment to the applicant. Through this OA, she has prayed for the following reliefs:-

- "(i) Order dated 18.5.2009 may be declared as illegal.
- (ii) The respondents may be directed to allow the applicant to resume her duties.
- (iii) The respondents may be directed to regularize the services of the applicant as per the law laid down by the Hon'ble Supreme Court in regard in catena of cases."

18

2. Learned counsel for the applicant inter-alia has made the following submissions:-

- (i) that vide order dated 06.07.2007, the applicant's contract period as Computer Operator on Tally Accounting System was extended upto 31.12.2007.
- (ii) That on 23.12.2008, the applicant made an application dated 23.12.2008 (Annexure A/4) to respondent no. 2 to sanction maternity leave with effect from December, 2008 under Maternity Act.
- (iii) That despite the application made by the applicant, the respondent no. 2 did not sanction the maternity leave to the applicant on the ground that she is not a regular employee. The applicant made several reminders to respondent no. 2, the latest being 31.03.2009 (Annexure A/5) but of no avail.
- (iv) That on 31.03.2009, the applicant submitted another application (Annexure A/6) for extension of maternity leave up to the 3rd week of May, 2009.
- (v) That after coming from maternity leave on 11.5.2009 (Annexure A/7), the applicant reported back and gave her joining report on that day itself at the office of respondent no. 2, but she was not allowed to join by respondent no. 2.
- (vi) That vide letter/order dated 18.05.2009 (Annexure A/1), the respondent No. 2 denied the applicant to let her join again and also denied to pay any maternity benefit.

3. At the end, learned counsel for the applicant invited attention to Annexure A/2 i.e. Character Certificate issued by the Principal of the Institute where he has informed that the applicant is working in this Institute w.e.f. October, 2001 on contract basis.

4. I have heard the learned counsel for the applicant and perused the record of the case. I find that the applicant had been engaged on

1/1

contract basis as Computer Operator and the contract was valid upto 31.12.2007. On being asked by the Bench, the learned counsel for the applicant could not produce any order for further continuation of the applicant on the contract basis. He has invited attention of the Bench only to Annexure A/2 i.e. Character Certificate issued by the Principal of the Institute where it has been mentioned that she has been working in this Institute w.e.f. October, 2001. After availing the maternity leave, the applicant submitted joining report on 11.05.2009 (Annexure A/7) but there is no evidence that her engagement on contract basis had been continued up to this date. There is no necessity for issuing any order after the period of contract expires. This issue is wholly covered by the judgment of the Hon'ble Apex Court in the case of **Secretary, State of Karnataka vs. Uma Devi (3),** 2006 SCC (L&S) 753. In this connection, it is considered necessary to reproduce relevant portion of Para No. 43 of the judgment, which reads as under:-

"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 were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. 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 by 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 employees 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 the constitutional scheme....."

5. It is also considered necessary to reproduce Para No. 47 of the judgment, which reads as under:-

"47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post."

6. From the facts of the case, it is evident that appointment/engagement of the applicant was on contract basis for a specified period, which was valid upto 31.12.2007 and the appointment/ engagement of the applicant was not based on proper selection/ relevant rules/ procedure. After completing the said tenure i.e. upto 31.12.2007, the applicant cannot claim any legal right for continuation or engagement on contract basis.

7. After having considered the facts of the case and the judgment in the case of Secretary, State of Karnataka vs. Uma Devi (3)

Yours

(Supra), I am of the opinion that the applicant has not made out any case for intervention by this Tribunal with the order dated 18.05.2009 (Annexure A/1) passed by Respondent no. 2.

8. In the result, the OA is dismissed with no order as to costs.


(B.L. KHATRI)
MEMBER (A)

AHQ