

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

15

ORDERS OF THE BENCH

20.09.2011

OA No. 225/2010

Mr. P.N. Jatti, counsel for the applicant.

Mr. Mukesh Agarwal, counsel for respondents.

Learned counsel for the applicant submits that he has filed rejoinder to the reply in the registry, and served the same to the learned counsel for the respondents. The registry is directed to place the same on record.

Put up the matter on 27.09.2011 for hearing.

Anil Kumar

(ANIL KUMAR)
MEMBER (A)

Kumawat

27/9/2011

27.9.2011

Mr. P.N. Jatti, Counsel for applicant.

Mr. Mukesh Agarwal, Counsel for respondents.

Heard. The OA is disposed of by a separate order.

Anil Kumar

(Anil Kumar)
M(A)

rejoinder
filed
in

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

Jaipur, the 27th day of September, 2011

ORIGINAL APPLICATION No. 225/2010

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Kishore Kumar son of Shri Santosh Kumar by caste Sweeper, aged about 39 years resident of Harijan Basti Ward No. 21, Shri Madhopur, presently working as Sweeper in the post office Shri Madhopur with effect from 29.02.1984.

... Applicant

(By Advocate : Mr. P.N. Jatti)

Versus

1. Union of India through the Secretary to the Government of India, Department of Post, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Post Master General, Western Region, Jodhpur.
4. Superintendent Post Offices, Sikar Division, Sikar.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER (ORAL)

The applicant has filed this OA praying for the following relief:

- (i) That by suitable writ/order or the direction the respondents be directed to allow the 8 hours duty per day to the applicant and the payment for that be made to the applicant.
- (ii) That further the services of the applicant be regularized as per the orders of the Department annexed with the OA."

2. The applicant has stated that he has been working since 29.02.1984 as a part time ~~casual~~^{casual} labourer as Sweeper. The Department of Posts has issued orders from time to time to provide full time work to the part time casual labourer like the applicant and the applicant has also submitted application but no action has been taken by the respondents. That the applicant has been working continuously for more than 8 hours a day but the respondents are paying the money for 6 hours and 30 minutes a day which is an arbitrary act of the respondents. That respondents issued a circular dated 17.05.1989 (Annexure A/3) vide which priority was given to the part time casual labour for regularizing their service as per their turn as per condition no. (iii) of the Circular. Another circular dated 16.09.1992 (Annexure A/4) was issued by the Department of Posts, para 2 of which reads as follows:-

"2. The matter has been examined and I am directed to say that if part time casual labourers are working for five hours or more, it may be examined whether they can be made full time by readjustment or combination of duties. It is, however, reiterated that there should be no engagement of fresh casual labourers."

3. Further the Department of Posts issued another order dated ^{Arif Kumar} 28.04.1994⁷ (Annexure A/5) by which the Department again emphasized that efforts should be made to provide full time employment to part time casual labourer working in the Department. Thus the applicant requested that he may be given 8

hours duty and that he should also be regularized as per orders of the Department.

4. The respondents have stated that as per Secondary School Certificate, the date of birth of the applicant is 01.07.1970 and, therefore, he could not have been employed since 29.02.1984 as his age on that date would be less than 14 years. As per standard norms of work load of contingent paid sweeper, the work load of applicant is 6.30 hours and for that he is being paid wages.

5. That the Department of Post vide D.G. Post letter No. 45-37/91-SPB-I dated 05.06.1991 (Annexure R/3) introduced "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme". As per clause-1 of the Scheme, temporary status would be conferred on the casual labourers in employment 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 they must have engaged for a period of 240 days (206 days in the offices observing 5 days week). Since there is no work of 8 hours for the applicant, therefore, he cannot be treated as full time casual labour. That the applicant is a part time casual labour and, therefore, he could not be given salary for 8 hours per day.

6. With regard to the second request of the applicant for regularisation of his service, the respondents have stated that as

per law laid down by Hon'ble Supreme Court in the case of **Secretary, State of Karnataka vs. Umadevi (3)**, 2006 (4) SCC 1, temporary, contractual, casual, ad hoc or daily wages employees do not have any right of regularisation or permanent in public employment. Further, all the past precedents, which runs counter to what has been held in the judgment, will stand denuded of their status as precedents. The Hon'ble Supreme Court in Para 47 of the judgment held as under:-

“When a person enters a temporary employment or get engagement as a contractual or casual worker and engagement is not based on the proper selection as recognized by the relevant rule 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 of being confirmed in the post when an appointment to be post could be made only following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, theory of legitimate expectation can not be successfully advanced by temporary, contractual or casual employees. It can not also be held that state has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State can not 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 post.”

Thus in view of law laid down by Hon'ble Supreme court, the applicant has no right for regularisation and this OA deserves to be dismissed.

7. Having heard the rival submission of the parties and after perusal of the documents on record, it is clear that the respondents have issued the circular dated 17.05.1989 (Annexure

A/3) wherein it has been stated that those casual labourers who are engaged for a period of 8 hours a day should be described as full time casual labourers. Those casual labourers who are engaged for a period of less than 8 hours a day should be described as part time casual labourers. All other designations should be discontinued. That if a part time casual labourer has served for 480 days in a period of 2 years, he will be treated, for purpose of recruitment, to have completed one year of service as full time casual labourer. The Department has also issued instructions vide letter dated 16.09.1992 (Annexure A/4) wherein guidelines for regularisation of casual labourers as full time casual labourers has been issued, relevant para no. 2 has been quoted above.

8. Similarly, the Department has again issued instructions in this regard on 28.04.1997 (Annexure A/5). Thus, the intention of the Department is that part time labourer should be made full time casual labourer by readjustment or combination of duties, if it is possible according to the requirement of work.

9. I am of the opinion that the respondents shall consider making the applicant full time casual labourers as per their own letters, if he is otherwise found suitable and fulfills terms & conditions as settled in the letter of the Department itself. This

exercise may be completed within a period of three months from the date of receipt of a copy of this order.

10. As regards the request of the applicant for regularisation of his service is concerned, I am of the opinion that in view of the ratio laid down by the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka vs. Umadevi (3)** (supra), the applicant is not entitled as matter of right for regularisation of his services.

11. With these observations, the OA is disposed of with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

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