

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 23.07.2013

OA No. 470/2011

Mr. P.N. Jatti, counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondents.

Heard learned counsel for the parties.

O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO. 470/2011

Jaipur, the 23rd day of July, 2013

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Prahlad Chand Mali son of Shri Ramesh Chandra Mali by caste Mali, aged about 34 years, resident of Ho. No. 344, Dari Mohalla, Nasirabad, District Ajmer.

... Applicant

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

Versus

1. Union of India through the Secretary to the Government of India, Department of Posts, Dak Bawan, Sansad Marg, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Post Master General, Southern Region, Ajmer.
4. Supdt. Post Offices, Beawar Dn., Beawar.
5. Senior Post Master Nasirabad, Post Office, Nasirabad (Rajasthan).

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER (ORAL)

The applicant has filed the present OA claiming the following reliefs:-

- "(i) That by a suitable writ/order or the direction, the impugned order dated 11.01.2011 vide Annexure A/1 be quashed and set aside.
- (ii) That further by a suitable writ/order or the directions, the respondents be directed to take the applicant on duty.
- (iii) That as the applicant has been terminated arbitrarily, therefore, all the consequential benefits be made to the applicant with effect from 01.01.2009.
- (iv) Any other relief which the Hon'ble Tribunal deems fit."

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2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was engaged to work as Gardener in the post office of Nasirabad. That the applicant worked in the post office from 07.00 AM to 05.00 PM. That the applicant worked continuously with effect from 01.01.1994 to 31.12.2008. The respondents disengaged the services of the applicant with effect from 01.01.2009.

3. The applicant submitted a representation dated 15.12.2010 to the respondents but the respondents rejected the representation vide letter dated 17.01.2011 (Annexure A/1).

4. The learned counsel for the applicant submitted that the applicant has worked for 365 days in the year 1994. Therefore, he is entitled for regularization. To support his averments, he drew my attention to a circular of the respondent's department dated 01.11.1995 (Annexure A/3).

5. The learned counsel for the applicant further submitted that the applicant has been working with the respondent's department for 8 to 10 hours. Therefore, he is eligible for regularization. He denied that the applicant was a contingent employee. To support his averments, he drew my attention to Circular dated 17.05.1989 (Annexure A/5). He further submitted that order for regularization of part-time casual worker as full time casual workers was issued by the respondents on 16.09.1992 (Annexure A/6). He further

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submitted that the Ministry of Communication, Department of Posts issued order with regard to regularization of part time casual laborers vide order dated 28.04.1997 (Annexure A/8).

6. He also referred to the order of the Central Administrative Tribunal, Cuttack Bench in the case of **Bhagirathi Prusti vs. Union of India & Another** [OA No. 483/1992 decided on 06.08.1997] (Annexure A/9) whereby the respondents were directed to include the name of the applicant in that OA in the common panel strictly in accordance with the circular dated 20.10.1984. Further he drew my attention to a circular dated 18.11.1988 by which certain guidelines were issued for the regularization of Mazdoors (Group D) (Annexure A/10).

7. He further submitted that the applicant's name was sponsored by the Employment Exchange and that he has signed the Attendance Register regularly: Therefore, he requested that the impugned order dated 17.01.2011 (Annexure A/1) be quashed and set aside and directions be issued to the respondents to take the applicant on duty with effect from 01.01.2009.

8. On the other hand, learned counsel for the respondents raised the preliminary objections that the present OA is barred by limitation and, therefore, it should be dismissed in liminie. He submitted that it is an admitted fact that the services of the applicant were dispensed with effect from 01.01.2009 but the

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applicant did not avail of any statutory remedy till filing of the present OA before this Tribunal on 10.10.2011. Hence, it is apparent that the OA preferred by the applicant is not within the statutory period of limitation as prescribed under Section 21 of the Administrative Tribunal's Act, 1985. He further submitted that the applicant in order of cover the statutory period of limitation, filed a representation dated 15.12.2010 through his counsel. Since the very representation made by the applicant was beyond the statutory period of limitation, as prescribed under Section 21 of the Administrative Tribunal's Act, 1985, therefore, the present OA is not sustainable in the eyes of law, being barred by limitation. Moreover, the applicant has not filed an application for condonation of delay, therefore, the present OA be dismissed being time barred.

9. Learned counsel for the respondents argued that the Department of Posts having vast network specially in the rural and remote areas where mostly departmental sub-Post offices ~~is~~ having establishment of one or two regular employees are functioning and to cater the basic needs of these small offices that is cleaning, sweeping, catering, drinking water supply for which the services of a full-fledged employee are not at all justified as per establishment norms. Therefore, the department of Posts has decided to grant sweeping, gardening and water allowances on pro-rata basis, as per establishment norms prescribed by the Directorate to the In-charge of these post offices by paying this amount to individual(s) on daily basis who perform these works.

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10. The learned counsel for the respondents further submitted that the applicant was engaged as part time contingent worker to perform the duties of Gardener. He submitted that neither any vacancy was notified by the Employment Exchange nor any appointment was accorded to the applicant as per statutory recruitment rules. The gardening area of the post office of Nasirabad where the applicant was working was 3622 Sq. feet and for this small area, full time gardener was not justified as full time gardener is required to be engaged on 1.5 Acre area as per the departmental guidelines. To support his averment, he drew my attention to the circular with regard to staff paid from contingencies (whole time and part time) (Annexure R/2). The applicant was engaged as part time contingent gardener with effect from 01.01.1994 to 31.12.2008. He performed the duties for two and a half hours per day. Since he was a part time contingent gardener, therefore, the question of his regularization does not arise. As per norms, only those casual labourers whose duty hours were for more than 8 hours a day and who had continuously worked for 240 days in a year are entitled for consideration of regularization.

11. He further submitted that circular dated 01.11.1995 (Annexure A/3), circular dated 17.05.1989 (Annexure A/5), Circular dated 16.09.1992 (Annexure A/6), Circular dated 12.10.1990 (Annexure A/7) and the Circular dated 28.12.1997 (Annexure A/8) are not applicable in the case of the applicant.

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12. He further submitted that the applicant was engaged by the Postmaster, Nasirabad and he worked as a part time contingent paid gardener till 31.12.2008. The applicant was engaged as a part time contingent paid employee without following due process of recruitment and was not engaged against any sanctioned post. The applicant was very much aware of the consequences of the engagement being of casual nature. The applicant, therefore, does not have any right for regularization/appointment without undergoing a regular process of recruitment as per the statutory recruitment rules.

13. To support his averments, he referred to the judgment of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka & Others vs. Umadevi (3) & Others**, 2006 (4) SCC 1. In Para No. 39 of the judgment, the Hon'ble Supreme Court has held that:-

"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 holder of a post since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution."

In view of the ratio decided by the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka & Others vs. Umadevi (3) & others (supra)**, the applicant is not entitled for any relief in the present OA. He was engaged for unskilled work only for 2-4 hours daily. He was not engaged by following prescribed procedure for appointment as per the

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statutory recruitment rules. Therefore, the applicant has no right to continue with the respondents.

14. The learned counsel for the respondents further submitted that there is no provision in the department recruitment rules to regularize such part time contingent persons who have been working for 2-4 hours a day.

15. He also submitted that the case law referred to by the learned counsel for the applicant i.e. the order of the Central Administrative Tribunal, Cuttack Bench, Cuttack in the case of **Bhagirathi Prusti vs. Union of India & Another** [OA No. 483/1992 decided on 06.08.1997] (supra) is also not applicable under the facts & circumstances of the present case. Moreover in view of the judgment of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka & Others vs. Umadevi (3) & Others**, 2006 (4) SCC 1, the judgment on the issue rendered earlier have been over-ruled. Therefore, reliance placed by the learned counsel for the applicant on the order of the Central Administrative Tribunal in OA No. 483/1992 decided on 06.08.1997 [Bhagirathi Prusti vs. Union of India & others] is misconceived.

16. The learned counsel for the respondents further submitted that the similar controversy has been decided by this Tribunal in OA No. 256/2012 decided on 12.12.2012 [**Kishan Lal Saini vs. Union of India & Others**] and vide order dated 07.02.2013 in OA No. 471/2011 [**Ram Chandra Mali vs.**

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Union of India & Others]. While deciding OA No. 256/2012 decided on 12.12.2012 [Kishan Lal Saini vs. Union of India & Others], this Tribunal has relied on the following judgments of the Hon'ble Supreme Court:-

- (1) Secretary, Ministry of Communication & Others vs. Sakkubai & Another, 1997 (11) SCC 224.
- (2) Union of India & Another vs. Mohan Pal etc. Appeal (Civil) 3168 of 2002 decided on 29.04.2002.

17. Learned counsel for the respondents argued that in view of the fact that similar controversy has already been decided by this Tribunal, this OA has no merit and it should be dismissed with costs.

18. The applicant has also filed rejoinder in which he has reiterated the facts which he has mentioned in the OA. However, he has also mentioned in the rejoinder that the present OA is not barred by limitation as the respondents have rejected of the applicant vide order dated 17.01.2011 (Annexure A/1).

19. Heard the learned counsel for the parties, perused the documents on record and perused the case laws, referred to by the learned counsel for the parties.

20. The learned counsel for the applicant in support of his averments that the applicant's name was sponsored by the Employment Exchange, has not produced any documentary evidence. Similarly, he has also not produced any documentary

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evidence with regard to the fact that he was working for 8 to 10 hours with the respondent's department. On the contrary, the respondents have denied that the applicant was sponsored by the Employment Exchange. They have also denied that the applicant was working for 8 to 10 hours per day. Learned counsel for the respondents has submitted that the applicant was contingent part time gardener who was working on contingent basis with them. Therefore, in the absence of any proof, it cannot be held that the applicant's name was sponsored by the Employment Exchange or that he was working for 8 to 10 hours per day with the respondents.

21. I have carefully gone through the Circular dated 01.11.1995 (Annexure A/3). This circular is applicable to those full time casual labourers who were recruited after 29.11.1989 and upto 01.09.1993. It is an admitted fact that the applicant was employee with the respondent department on contingent basis with effect from 01.01.1994 that is after 01.09.1993. Therefore, the circular dated 01.11.1995 (Annexure A/3) would not be applicable in the case of the applicant. Circular dated 17.05.1989 (Annexure A/5) is also not applicable in the case of the applicant as he was engaged 01.01.1994 by the respondents. Similarly, the circular dated 16.09.1992 (Annexure A/6) is not applicable in the case of the applicant. Circular dated 12.10.1990 (Annexure A/7) is applicable who belong to ST category and who have put in 240 days service in a year for full time casual labourers and 480 days service period of two years for Part time casual labourers on

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20.10.1990. Since the applicant was engaged on 01.01.1994, which is after 20.10.1990, therefore, this circular is also not applicable in the case of the applicant. The circular dated 28.04.1997 (Annexure A/8) is a clarification of circular dated 16.09.1992 (Annexure A/6), therefore, it is also not applicable in the case of the applicant.

22. I have perused the case law, as referred to by the learned counsel for the applicant, in the case of **Bhagirathi Prusti vs. Union of India & Another** [OA No. 483/1992 decided on 06.08.1997] (supra) and I am of the view that this order is not applicable under the facts & circumstances of the present OA. Moreover, the Hon'ble Supreme Court has laid down the law with regard of regularization of casual employees in the case of **Secretary, State of Karnataka vs. Umadevi (3) & Others (supra)**. In view of the ratio decided by the Hon'ble Supreme Court in this judgment, I am of the view that the applicant is not entitled for regularization.

23. I have carefully perused the order of this Tribunal in OA No. 256/2012 decided on 12.12.2012 [**Kishan Lal Saini vs. Union of India & Others**] (supra) and the order of this Tribunal in OA No. 471/2011 decided on 07.02.2013 [**Ram Chandra Mali vs. Union of India & Others**] (supra). I am of the view that the controversy involved in the present case is squarely covered by the orders passed by this Tribunal in OA No. 256/2012 decided on 12.12.2012 and OA No. 471/2011 decided on 07.02.2013.

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24. Thus in view of the discussion held above, I am of the view that the applicant is not entitled for any relief in the present OA. I find no merit in the OA.

25. Consequently the OA being devoid of merit is dismissed with no order as to costs.



(Anil Kumar)
Member (A)

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