

**CENTRAL ADMINISTRATIVE TRIBUNAL
AMHEDABAD BENCH**

**Original Application No. 374 /2016
Dated this the 9th day of March, 2018**

CORAM :

Hon'ble Shri Jayesh V. Bhairavia, Member (Judicial)

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Reserved On 7.3.2018
Pronounced On : 9.03.2018

Shri Victor Joseph S/o Shri Michael Rathinam, Aged 42 years, Ex. Office Staff of the respondents, residing at 28, Thakor Vas, Ramanbhai House, Memnagar, Ahmedabad. **...Applicant**

(By Advocate : Shri M.S.Trivedi)

VERSUS

1 The Deputy Director General, Office of the D.G., Narcotics Control Bureau, 3rd Floor, Enclave Building, Sports Road, Fort, Mumbai – 400 001.

2. The Zonal Director, Narcotics Control Bureau, 2nd and 3rd Floor, Drive-In-Cinema-Building, Thaltej Road, Ahmedabad**Respondents**
(By Advocate : Ms. Prachi Upadhyay)

O R D E R

BY THE COURT :

This O.A. has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, seeking following reliefs :-

"1 That the Hon'ble Tribunal be pleased to allow this petition.

2 That the Hon'ble Tribunal further be pleased to hold / declare that the impugned oral termination of the service of the applicant w.e.f. 3.2.2014 by the respondent No. 2, and inaction on the part of the respondents not considering the request / representation of the applicant dated 22.1.2015 (Annexure A/1), ex facie, illegal, arbitrary and unjust and nonest n the eye of law.

3 That, the Hon'ble Tribunal further be pleased to direct the respondents to reinstate the applicant's service as Farash with all consequential benefits including permanent status to the applicant.

4 Such other and further relief/s as may be deemed just and proper in view of the facts and circumstances of the case may be granted."

2. The brief facts giving rise to this application are that applicant was engaged as Farash (Daily Wager) by the respondent No.2 in June 2000 and was continuously working for more than a decade i.e. up to 3.2.2014.

It is pleaded that while working satisfactorily for more than 10 years, he had submitted a request for grant of permanent status, but, as per his knowledge, the same was not forwarded to the Headquarter Office.

3. The learned counsel for applicant submitted that on 3.2.2014, the respondent No.2 had orally ordered to discontinue the services of the applicant without giving any prior notice and the said action of the respondent – department terminating the services of applicant has prejudiced his right and interest for regularisation. It is further submitted that on 16.05.2013 and on 22.1.2015 (Annexs. A/1 and A/3) the applicant had filed a representation to respondent No. 1 and 2 requesting to regularise his engagement as well as allow him to continue in the service by withdrawing oral termination order, however, no heed has been paid. It is also submitted that the respondents have not provided any details with regard to total vacancy position of the post of Farash / Safaiwala in the office of respondent No.2 nor had provided any details about the decision on the representation of the applicant. The respondents had allowed the applicant to work as Farash / Safaiwala for considerable long period which itself indicate permanent nature of work, therefore, the impugned action of termination of applicant's service, is in violation of the principles of natural justice as well as in violation of Articles 14, 16 and 19 of the Constitution of India.

Hence, the applicant has preferred this application challenging his oral termination and for issuing a direction to the respondents to reinstate him as Farash/Safaiwala with all consequential benefits.

4. Heard Shri M S Trivedi, learned counsel for the applicant and Ms. Prachi Upadhyay, learned counsel representing the respondents and perused the paper book carefully.

5. Per contra, the respondents had filed their reply and denied the contentions of the applicant. The learned counsel Ms. Prachi Upadhyay on behalf of respondents submitted that applicant was engaged as a daily wager. There was no approved vacancy, therefore, there is no question for regular appointment of any Farash / Safaiwala. The applicant was engaged by an oral order in June 2000 and, since his appointment itself was on daily wages, his working with the department does not confer any right in his favour to claim any right for regularisation. The respondents in their reply have categorically stated that it is wrong to state by the applicant that he was engaged as a full time Farash. It is further stated that the applicant was very much aware about his engagement with the respondent No. 2 as Daily Wager, the application of the applicant dated 16.5.2013 itself proof of knowledge of the applicant that applicant was not engaged on any approved post and vacancy. The respondents have acted as per law and did not violate any rule while terminating the services of the applicant.

The engagement of applicant was only for carrying out day-to-day work on casual basis and he was assigned duties of Farash on casual / daily wages. The respondents have denied the contention of the applicant with regard to his right of granting

temporary status, as he was never appointed as a regular employee. The learned counsel for respondents argued that there was no need of giving any prior notice for discontinuing the service of the applicant, therefore, the decision of respondents is just and there was no violation of principle of natural justice on the part of respondents. The applicant is not entitled to any relief as prayed for.

6 The applicant has filed rejoinder to the reply of the respondents and reiterated the submissions in the OA.

7. Heard the learned counsel for the parties and perused the records of the case.

8. In the instant O.A. the applicant was engaged as Farash / Safaiwala in the year 2000 by the respondent No. 2 purely on temporary and daily rated basis and the said engagement was ordered to be terminated in the year 2014. Therefore, the applicant approached this Tribunal with the prayer to direct the respondents for cancellation of his termination and for his regularisation. To substantiate this claim, the learned counsel for the applicant vehemently argued that the applicant was engaged by oral order and allowed to work for more than a decade however, by an oral order the said engagement of the applicant has been terminated. The said action of the respondents is in violation of the principles of natural justice as well as Articles 14, 16 and 19. The said submission of the applicant cannot be accepted in the facts and circumstances and on perusal of factual matrix available on record.

9. It is appropriate to note here the law laid down by Hon'ble the Apex Court in the case of State of Karnataka Vs Uma Devi (3)

reported in 2006 (4) SCC 1 has laid down 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 right to be absorbed in service***”.

Further, a Constitution Bench has also considered different facets of the issue relating to regularisation of services of ad hoc / temporary / daily wage employees and, unequivocally ruled that such appointments are not entitled to claim regularisation of service as of right.

It is also settled law that those who have been engaged for temporary work on daily wages or engaged temporarily or on contractual basis, cannot claim to be continued till their engagement is regularised or regular appointments are made by the employers.

10. In the present case, the applicant was admittedly offered work by the respondents on day to day basis, that too as and when it was required and the applicant was well aware of the nature of employment on casual basis and he had consciously accepted the same at the time of seeking engagement. In absence of any approved post in the establishment, the respondents cannot appoint any person on regular basis. It is seen that in the present case the applicant was not engaged as Farash / Safaiwala against any approved post of Farash / Safaiwala. It is not the case of the applicant that engagement of the applicant was made after following due procedure of selection and recruitment. It is an admitted fact that applicant's engagement was only on temporary basis as daily rated that too by an oral order. In view of this fact, the applicant cannot claim

any right to be reinstated or regularisation of his services. The decision for termination of the applicant cannot be said to be in violation of principle of natural justice or violation of Article 14 & 16 of Constitution of India, nor it can be said to be in violation of the law laid down by Hon'ble the Apex Court.

11. In view of above narration of facts and the law laid down by Hon'ble the Supreme Court, I find that applicant is not entitled for the relief(s) as prayed for and the O.A. is liable to be dismissed. The O.A is accordingly dismissed with no order as to costs.

[Jayesh V. Bhairavia]
Judicial Member

Mehta/nilesh

