

(Reserved on 25.09.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD**

This the **08th** day of **October** , **2018**.

HON'BLE MR. JUSTICE BHARAT BHUSHAN, MEMBER (J).
HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).

Original Application Number. 331/00822/2009.

Smt. Dullar Devi, W/o Sri Ram Dhani, R/o Village – Adalhat, Post –
Adalhat, PS, Adalhat, District - Mirzapur.

.....Applicant.

VE R S U S

1. Union of India through the Secretary, Ministry of Telecommunication and Information Technology, Govt. of India, Sanchar Bhawan, New Delhi - 110001.
2. The Chief General Manager, Telecom (East) CGMT, Bharat Sanchar Nigam Ltd., (BSNL) office of the CGMT (E), B.S.N.L., U.P. Telecom Circle (East), Lucknow.
3. The General Manager, Telecom District (GMTD), B.S.N.L, District Mirzapur.

.....Respondents

Advocate for the applicant : Shri Manoj Dhruvbanshi

Advocate for the Respondents: Shri Anil Kumar

ORDER

(Delivered by Hon'ble Mr. Gokul Chandra Pati, A.M)

In this Original Application (in short OA) filed under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for following main reliefs: -

“(i).to quash / set aside the impugned order dated 06/10.07.2009 passed by respondent no. 3 (Annexure

No. 1 to the Compilation No. 1) with all its consequential effects.

(ii).to direct the respondents authorities not to give effect to the impugned order dated 6/10.07.2009 passed by respondent no. 3 and not to interfere in peaceful working of the applicant as casual labour (RM) in any manner and to pay her salary and other emoluments month to month regularly as and when it falls due and also to pay the arrears of salary of the applicant till date.”

2. Regarding the facts of the case, the applicant claims that she had been appointed as a casual labour vide order dated 20.09.1999 (Annexure A-2) w.e.f. 01.12.1997. The respondents however, have disputed her claim and have taken a stand that the concerned officer had wrongly issued the order dated 20.09.1999 in spite of the ban imposed by the Government of India on engagement of any fresh casual labourers vide letter dated 14.08.1998 (Annexure A-4 to the Short Counter Reply). The said order dated 20.09.1999 has also shown incorrectly showing the date of appointment of the applicant with retrospective effect from 01.12.1997 and for that reason, that officer has been put under disciplinary proceedings. It is stated by the respondents in the impugned order dated 06.07.2009, by which the applicant's services have been terminated after rejecting her representation for regularization on different grounds, that as per the official record duly verified by a special committee constituted by the respondents, the applicant is found to have worked from October, 1999 and not from December, 1997.

3. The applicant, who was appointed as a casual labourer, was first regularized vide order dated 31.07.2006 (Annexure A-11), which was subsequently cancelled vide order dated 02.01.2007 (Annexure A-13) . The applicant had filed a writ petition No. 8643/2007 challenging the said cancellation of order of regularization. The Hon'ble Single Judge of Allahabad High Court allowed the writ petition vide the order dated 16.11.2007 and set aside the impugned order passed by the respondents. Against the order dated 16.11.2007, the respondents filed special appeal No. 310/2008 alongwith other similar cases in the Division Bench and

these appeals were disposed of vide order dated 04.12.2008 (Annexure A-15), confirming the judgment dated 16.11.2007 to the extent it had set aside the orders impugned in the writ petitions, but with the liberty to the respondents for passing fresh orders in accordance with law after giving show cause notice to the applicant.

4. Thereafter, a show cause notice dated 28.02.2009 (Annexure A-16) was issued to the applicant and after receipt of reply to the said show cause notice from the applicant (Annexure A-17), the impugned order dated 06.07.2009 (Annexure A-1) has been passed, wherein not only the request for regularization was refused, but also the engagement of the applicant as casual labour was cancelled. Being aggrieved, the applicant has filed the instant OA.

5. The respondents have filed the short counter reply (in short SCR) as well as counter reply (in short CR). It is stated that a ban was imposed vide letter dated 30.03.1985 of the respondents for fresh engagement of casual labourers and while issuing the scheme for regularization of casual labourers called "Casual Labourers (Grant of Temporary Status and Regularization) Scheme", vide the Circular dated 07.11.1989, it was clearly mentioned that no casual labourers who have been recruited after 30.03.1985 should be granted temporary status without specific approval. The Department of Telecommunication, Government of India (in short DOT) had issued instructions dated 12.02.1999 (Annexure R-1 to the SCR) for regularization of temporary status casual labourers according to which, the casual labourers who were engaged before 30.03.1985 and had completed 10 years of service, were made eligible for such regularization. Another instruction dated 01.09.1999 (Annexure R-2 to the SCR) was issued by the DOT clarifying that casual labourers engaged as on 01.08.1998 were eligible for regularization of services subject to certain conditions. It was also clarified that for regularization of

casual labourers with temporary status who are eligible as on 31.03.1997, it will be effective from 12.02.1999.

6. It was stated by the respondents that the DOT vide order dated 14.08.1998 (Annexure R-4 to the SCR) has further decided that in terms of earlier order dated 14.08.1984, the existing part-time casual labourers may be absorbed against regular vacancies and that there will be no recruitment of part-time casual labourers in the department in future. It was also clarified that part-time casual labourers, who have rendered 240 days service in any four years prior to 30.03.1985 may also be considered for regularization. Vide another instruction dated 16.09.1999 (Annexure R-5 to the SCR) the DOT had decided that one time relaxation, part-time casual labourers with 240 days in the preceding 12 months i.e. from 01.08.1998, may be converted to full time casual labourers. The DOT has further issued instruction dated 29.09.2000 (Annexure R-7 to the SCR) for adjusting all part time casual labourers who were converted into full time casual labourers in terms of letter dated 16.09.1999 and 29.09.2000, against available vacancies of regular Mazdoor. It was also clarified that there should be no casual labourers without temporary status after 01.08.1998 and all casual labourers not eligible for temporary status as on 01.08.1998 were to be disengaged forthwith.

7. It is further stated by the respondents that the letter dated 20.09.1999 was issued after the ban w.e.f. 30.03.1985. It is further stated in the SCR and CR that the engagement of the applicant was not in accordance with rules as no post was advertised for engagement, hence her case is not covered for regularization as per the extant rules. It is stated that in compliance of the judgment of Hon'ble High Court dated 04.12.2008, a show cause notice was issued and after granting opportunity to the applicant, the order dated 06.07.2009 has been passed after verifying the engagement work period of the applicant by a four members committee. It is stated that applicant was not part time casual labourer on

01.08.1998 and not completed 240 days prior to 01.08.1998 as per the instructions, mentioned above.

8. We have heard the matter at length. Learned counsel for the applicant argued exhaustively and stressed on the observations of Hon'ble Allahabad High Court in judgment dated 04.12.2008 (Annexure A-15). Learned counsel for the applicant argued mainly on the following points: -

- Vide the circular dated 25.08.2000 (Annexure R-6 to the SCR) the respondents decided to convert part time casual labourers into full time casual labourers. Accordingly, the applicant's case was considered for conversion into full time casual labourer and then regularized w.e.f. 01.10.2000 vide order dated 31.07.2006.
- Vide letter dated 14.05.2001 (Annexure A-5), a proposal of conversion of part time casual labourers to full time casual labourers was considered. It was mentioned in the letter that part time casual labourers with less than 4 hours of duty per day, who have worked for 240 days in the preceding 12 months will be converted into full time casual labourers only when there is a shortage of Group 'D' staff. If there is no shortage of Group 'D' staff, conversion of part time casual labourers to full time casual labourers will not be done. But there were vacancy of Group 'D' staff available with the respondents vide copy of the letter at Annexure A-10.
- In para 53 of the judgment of Hon'ble Supreme Court in the case of Secretary, State of Karnataka Vs. Uma Devi - 2006(4) SCC 1, it has been held that the regularization, if any, already made, but not sub-judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

- Vide the order dated 14.05.2015, this Tribunal in OA No. 817/2009 – Masan Ali Vs. Union of India & Ors in a similar situation as the applicant, involving cancellation of regularization, has held that the termination was not legal.

9. Learned counsel for respondents in his oral submissions highlighted the fact that the applicant was not eligible for regularization since she was engaged vide order dated 20.09.2009 and hence she was not on the role of the department as on 01.08.1998 and had not completed 240 days prior to 01.08.1998 as per the earlier scheme. It was further submitted that the applicant was appointed by the concerned officer in spite of ban on engagement of part time labourers that was prevailing on account of various circulars issued by the DOT, as stated in the SCR and CR. He submitted that as per the circular dated 14.08.1998 (Annexure R-4 to the SCR), the part time casual labourers, who have rendered minimum service of 240 days in any four years prior to 30.03.1985, may also be considered for regularization. He further submitted that the circular dated 25.08.2000 was issued modifying the earlier circular dated 14.08.1998 to the extent that those casual labourers, who have completed 240 days in the preceding 12 months may be converted into full time casual labourers and since the reference to earlier circular dated 14.08.1998 was there, this circular dated 25.08.2000 is applicable to those casual labourers, who were on the role as on 14.08.1998. In both the circulars, it was held that no part time casual labourers shall be engaged by the respondents. But, in spite of the ban order, the applicant was engaged, for which the concerned officer, who issued the order dated 20.09.2009, has been put under disciplinary proceedings.

10. Following are the relevant issues in this case : -

- (i). Whether the applicant is entitled to the benefit of the circular dated 25.08.2000.

- (ii). Whether the termination of the services of the applicant as per order dated 06.07.2009 was justified in view of the facts and circumstances of the case.

11. In the order dated 04.12.2008 of Hon'ble Allahabad High Court in special appeal filed by the respondents, by which the judgment of Hon'ble Single Judge setting aside the cancellation of regularization of the applicant was considered, has held as under: -

“12. In the circumstances while confirming the judgment of Hon'ble Single Judge to the extent it has set aside the orders impugned in the writ petitions we make it clear that the other observations of Hon'ble Single Judge may not come in the way of the appellants for passing fresh orders in respect of the petitioners in accordance with law which they may pass after issuing an appropriate show cause notice to the petitioners henceforth giving them opportunity to submit their reply effectively. This exercise shall be completed by the appellants within three months from today.”

It is seen from the order, all the points mentioned by the learned counsel for the applicant were considered by the Hon'ble High Court. Hon'ble High Court confirmed the order of Hon'ble Single Judge to the extent of setting aside the impugned order mainly because of it was not passed as per law and without giving any opportunity of hearing to the applicant. There is no finding of Hon'ble High Court on the submissions of the counsel for the applicant (respondents in special appeal). After the order dated 04.12.2008 of Hon'ble High Court, the respondents issued a show cause notice dated 28.02.2009 to the applicant to clarify the deficiencies and she was called to furnish the proof relating to her casual service from 01.12.1997 to 1997 (it appears to be typographical mistake in the show cause notice). In reply to the show cause notice, the applicant stated that she was working w.e.f. 01.12.1997 and mentioned a letter dated 31.07.2006 as enclosure, but no evidence in support of her engagement with effect from 01.12.1997 was furnished. In view of this fact, the contention that

the applicant was working from 01.12.1997 has no force. This is also confirmed by the findings that as per the departmental documents, register etc maintained by the department, the applicant had worked from October, 1999 onwards, i.e after the issue of the order dated 20.09.1999 (Annexure A-2). This fact is mentioned in the impugned order dated 06.07.2009. Hence, the fact that the applicant was working as part time casual labour from 01.12.1997 is incorrect, as contended by the respondents in their pleadings.

12. It is further noticed that when the order dated 20.09.1999 was issued, a ban order of the Government of India as per the letter dated 14.08.1998 (Annexure R-4 to the SCR) banning further engagement of part time casual labour was in force. Therefore, the officer, who had issued the order dated 20.09.1999, appointing the applicant w.e.f. 01.12.1997 had violated the instructions of the Government of India by he committed serious misconduct. There is no proof available either with the respondents or with the applicant to show that the applicant was indeed engaged by the department from 01.12.1997 as stated in the order dated 20.09.1999 (Annexure A-2). Although, the respondents have mentioned in the counter reply that the concerned officer has been put under disciplinary proceedings, the details regarding status of the disciplinary proceedings have not been mentioned by the respondents. **We hope that exemplary action would have been taken against that officer for violation of Government instructions and for burdening the Government with unnecessary litigation.**

13. In view of the facts discussed above, we are of the view that in this case, due to mistake of one officer under the respondents, who issued the letter dated 20.09.1999, the applicant has come before us with a plea for regularization of servuces for which she is not entitled as per letters dated 14.08.1998 and 25.08.2000. The respondents have continued to extend the scope of regularization of

part time casual labourers mainly because of demand to employees' union for such regularization with relaxation of criteria from time to time.

14. Learned counsel for the applicant has also argued that the case of the applicant is covered under the circular dated 25.08.2000 (Annexure R-6 to the SCR). We are not convinced by this argument because of the fact that this circular has referred to the circular dated 14.08.1998, which had banned further appointment of part time casual labourers. Therefore, the circular dated 25.08.2000 would have taken into account the casual labourers legally and regularly appointed after the issue of circular dated 14.08.1998. The case of the applicant is not covered under these circulars as the applicant's engagement vide order dated 20.09.1999 was done when the ban of engagement of part time casual labourers was in force as per the letter dated 14.08.1998. Hence, we do not accept this argument of the learned counsel for the applicant. The circular dated 25.08.2000 is applicable to those part time casual labourers, who were already under employment as on 14.08.1998. It is further noted that as per para (v) of the said circular dated 25.08.2000, such casual labourers will not be entitled for grant of temporary status as well as regularization, which was granted earlier by circular dated 14.08.1998. The case of the applicant is also not covered under the circular dated 29.09.2000 (Annexure R-7 to the SCR) as a plain reading of this circular will clearly show that the case of the applicant is not covered under this circular.

15. Reference of learned counsel for the applicant to para 53 of the judgment of Hon'ble Apex Court in the case of Uma Devi (Supra) will also not be helpful for the applicant as it has stated that the case of regularization already made, need not be reopened on the basis of the judgment of Hon'ble Apex Court. But in this case, the case of the applicant was reopened vide order dated 02.01.2007 (Annexure A-13) due to the fact that the applicant was

not eligible for regularization under the extant scheme of the respondents as discussed earlier. Further, since the order dated 02.01.2007 (Annexure A-13) has already been set aside by the Hon'ble High Court and the present impugned order dated 06.07.2009 has been issued as per the direction of Hon'ble High Court, the question of regularization does not arise, since the applicant was not eligible for consideration as per the policy decisions of the Government.

16. Learned counsel for the applicant has also referred to the judgment of the Tribunal in the case of Masan Ali in OA No. 817/2009 (Supra). But in the case of Masan Ali, the allegation of retrospective engagement, as in the applicant's case, was not made. Therefore, the facts in OA No. 817/09 are distinguishable and the said decision of the Tribunal is inapplicable to the present OA. Similarly, other cases cited by the counsel for the applicant are also not applicable as the case of the applicant is distinctly different on account of an illegal order issued by one officer for her engagement.

17. Learned counsel for the applicant has also submitted written submissions although there was no such direction to him for this purpose. However, we have gone through the written submission, which mainly reiterates the arguments of the learned counsel for the applicant in his oral submissions. The points in the written submissions are mainly on the point that the applicant was engaged by the department from 01.12.1997. In fact, which was found to be incorrect after due inquiry by a Committee of four members, as stated by the respondents in the impugned order as well as discussed above. It has also been referred to the various letters in which the benefit of regularization to the casual labourers was extended by the respondents, as discussed earlier. All these circulars are not applicable in view of the engagement of the applicant vide order dated 20.09.1999 during the ban period, hence the engagement dated 20.09.99 has no force based on which the applicant can claim any further benefit. Learned counsel for the

applicant has also referred to the order of this Tribunal in the case of Masan Ali (Supra), which is not applicable in this case, as discussed above.

18. In view of the facts and circumstances of the case, as discussed above, we find no merit in the case and the OA is liable to be dismissed. The OA is accordingly dismissed. No costs.

(GOKUL CHANDRA PATI)
MEMBER-A

(JUSTICE BHARAT BHUSHAN)
MEMBER-J

Anand...