

RESERVED ON 26.04.2018

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

This the **15th** day of May, **2018**.

PRESENT:

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER- A

ORIGINAL APPLICATION NO. 330/01428/2016

Shree Bhagwat Kumar son of Shri Ram Sajan, Resident of Village Janakpur, Post Campierganj, District - Gorakhpur.

.....Applicant.

V E R S U S

1. Chief Managing Director, Bharat Sanchar Nigam, New Delhi.
2. Chief General Manager, Telecom U.P (East) Circle, Lucknow.
3. Sub Divisional O.F.C Maintenance Microwave Building Civil Lines, Telephone Exchange Compound, Gorakhpur.

.....Respondents

Advocate for Applicant : Shri R.K. Singh
Advocate for the respondents : Shri K.K. Mishra

O R D E R

By way of the instant original application, the applicant has prayed for following main reliefs: -

“(a). To issue an order or direction in the nature of certiorari quashing the order dated 19.10.2016 and contract dated 03.07.2016..

(b). To issue a mandamus directing the respondent authorities to pay regular salary post of sweeper (IV Class Employee) to the applicant alongwith consequential benefit and arrear of regularizing the service of complaint qua sweeper by extending the benefit to the applicant as have been provided to other similarly situated employee namely Smt. Vidya

Devi working in the office of Sub Divisional Engineer, Telecom Microwave Maintenance, Azamgarh and others under the present fact and circumstances of the case.

(c). to issue a nature of mandamus directing the respondent authorities to pay the regular payment of the salary of the petitioner month to month.

(d). to issue a nature of mandamus directing the respondents may kindly be restrained from interfering in functioning of the applicant to the post of Sweeper (Safai Karmachari)."

2. The facts of this case as mentioned in the OA are that the applicant was initially engaged as part time Sweeper in August 1993 by respondent No. 4 and in the year 1996, he was appointed as full time Safai Karmchhari (8 hours daily) and continued to work till June 1998. On 03.07.1999, an agreement of contract was signed by the applicant being forced by respondent No. 4 with wages of Rs. 56.65 per day. It is stated that on 23.01.2006 (Annexure A-3A), the respondent No. 3 issues a letter for regularizing the service of some employees similar to the applicant. It is further stated that one Smt. Vidya Devi, Safai Karmchhari working in office of Sub Divisional Engineer, Telecom, Microwave Maintenance, Azamgarh, who was also appointed as part time Sweeper in 1992 has been granted full wages and her services have been regularized after passing of the order of this Tribunal as well as Hon'ble High Court, Allahabad at Annexure A-4, A-5 and A-6 to the O.A. It is contended that the case of the applicant is similar to Smt. Vidya Devi and he is entitled to

same benefit as has been extended to her by the respondents. For redressal of his grievance, the applicant preferred a representation dated 27.11.2013 (Annexure A-7) followed by representation dated 04.12.2013 (Annexure A-8).

3. Thereafter, the applicant filed the O.A No. 24/2014 which this Tribunal disposed of vide order dated 16.08.2016 (Annexure A-11) with direction to the respondents to decide the representation of the applicant dated 04.12.2013 in compliance to which the impugned order dated 19.10.2016 (Annexure A-1) has been passed rejecting the representation of the applicant. Thereafter, the applicant submitted applications dated 23.12.2015 (Annexure A-12) and 25.01.2016 (Annexure A-14). Having received no response from the respondents, the applicant has filed the instant O.A challenging the order dated 19.10.2016. It is contended that the case of the applicant is similar to Smt. Vidya Devi and thus the action of the respondents in rejecting the claim of the applicant for regularization is discriminatory. It is also contended that the contract dated 03.07.1999 was without any justifiable reasons and obtained by force. It is also contended that similar contract dated 03.07.1999 has already been quashed by this Tribunal vide order dated 15.03.2002.

4. The respondents have filed Counter Affidavit. It is stated that the impugned order dated 19.10.2016 is self explanatory. It is further stated that Smt. Vidya Devi was not a part time worker and she has not been regularized and she is being paid wages on hourly

basis as per instructions on the subject. It is contended that the applicant has never been engaged as a part time Sweeper by the BSNL but he was engaged on contract basis. Thus, in view of the Judgment of Hon'ble Apex Court in the case of State of Tamil Nadu through Secretary to Government, Commercial Taxes and Registration Department Secretariat and another Vs. A. Singamuthu – (2017) 4 SCC 113, the applicant is not entitled for regularization.

5. The applicant has filed Rejoinder Affidavit. It is stated that the applicant was appointed as part time Sweeper in august 1991 and thereafter in the year 1996, he was appointed full time Safai Karamchari (8 hours on the day) and completed about 20 years of service in the department. It is reiterated that on 03.07.1999, the respondents took signature of the applicant in agreement dated 03.07.1989 and that similar agreement dated 03.07.1999 has already been quashed by the Tribunal in the case of Smt. Vidya Devi with direction to the respondents to allow her to work in the same status. Since, the case of the applicant is covered by the case of Smt. Vidya Devi, the applicant is also entitled to continue in the same post alongwith similar benefits.

6. Shri R. K. Singh, learned counsel for the applicant and Shri K.K. Mishra, learned counsel for respondents were heard and the pleadings as well as the Written Argument filed by the counsel for the applicant are considered.

7. One of the ground taken by the applicant is that his case being similar to the case of Smt. Vidya Devi, who was also appointed as part-time sweeper, but subsequently changed to contractual engagement, the benefits extended to her as per the order of this Tribunal should be extended to the applicant also, as her case is similar to the applicant's case. The respondents denied the fact that the case of the applicant is similar to that of Smt. Vidya Devi as stated in para 3 and para 12 of the counter affidavit. It is the case of the respondents that the applicant was not engaged as a part time sweeper, but he was engaged on contractual basis, unlike Vidya Devi who was engaged as a part time sweeper.

8. In the case of Vidya Devi, the respondents had taken a stand that she was on a part time contractual engagement vide order of Hon'ble High Court dated 8.4.2003 (Annexure A-5), which had not been accepted by this Tribunal vide order dated 15.3.2002 (Annexure A-4). In the present OA, the applicant was paid wages as per the copy of the bills for the month of Nov. 98, December, 98 and March 99, copies of which are attached at Annexure A-3 to the OA. The bills indicated "on contract basis", but the name of the post was shown to be "full time sweeper" and the applicant's name has been shown as "Name and address of incumbent". These clearly show that the although the applicant's engagement was shown to be on contract basis, but actually it was as a full time sweeper on daily wage of Rs. 56.65 per day. The engagement continued at the same

rate of Rs. 56.65 per day after March 99, although the bills/receipts are in a different format, as the bills upto the month of May, 2010 indicate. These bills have not been specifically contested or denied by the respondents in their counter affidavit. Although it is stated in the impugned order dated 19.10.2016 (Annexure A-1) that there is a complete ban in BSNL on engagement of casual labour since 1.08.1998, but engagement of the applicant in the Month of May, 2010 shows that the order to ban engagement of casual labourers was being bypassed by such type of contractual engagement, which are nothing but casual employment in a disguised form.

9. Hence, the case of the applicant merits consideration by the respondents. But the applicant's claim of parity with Vidya Devi's case is not acceptable, as the respondents have stated that the applicant's engagement has been discontinued as stated in the para 3(ii) of the impugned order dated 19.10.2016. This has not been specifically contradicted by the applicant. Further, no proof like copy of the wage bill or any other document to contradict the contention of the respondents that his engagement has been discontinued has been enclosed by the applicant on record. The applicant, unlike Vidya Devi, did not challenge the change in terms of his engagement from July, 1999 to contractual basis within the specified time or immediately after the judgment of this Tribunal in Vidya Devi case.

10. In the written argument submitted by the learned counsel for the applicant, the contentions in the OA are reiterated. It is stated that the representation dated 4.12.2013 before the authorities to consider the application of the applicant as per the order dated 15.03.2002 of this Tribunal in the case of Vidya Devi was not considered by the respondents. Learned counsel also cited the judgment of Hon'ble Allahabad High Court in the case of Prakash Narayan Sirothiya vs. State of U.P. and others reported in (1994) 3 UPLBEC 1737, the petitioners were appointed on daily wage in Forest Department for more than 10 years except in one case where he worked for more than 8 years. Taking into account regular nature of work, Hon'ble High Court allowed the writ and directed the respondents to take necessary steps to regularize their services. But in the present OA, it is the stand of the respondents that the applicant has been discontinued from service which has not been specifically contradicted with evidence like current wage bills / receipts to show that the applicant being engaged currently. Hence, this cited case is factually distinguishable.

11. Learned counsel for the applicant has cited a judgment of Hon'ble Allahabad High Court in the case of State of U.P. and others vs. Mahipal Singh and another reported in 2014 ADJ 703. In this case, Mahipal Singh (respondent in the writ petition) was appointed by SDO as a sweeper with approval of the DM. Then Government was moved for creation of a post of sweeper. The respondents

moved State Public Services Tribunal for his regularization, which was dismissed. Dismissal order was challenged in Hon'ble High Court. Considering the fact that he was working for more than ten years as a part time employee, State of U.P. was directed to take a decision for creation of post of sweeper and till creation of post, the employee concerned was to be paid salary at the lowest grade of employees of the post of sweeper in State of U.P. This decision was upheld in the Special Appeal before Division Bench with modification that the salary equal to the salary at lowest grade of employees with effect from the date of order of learned Single Judge. But in this OA, it is the contention of the respondents that the applicant's engagement has been discontinued, and there is no document produced by the applicant against this contention of the respondents. Hence, the ratio of this judgment will not apply to the facts of the present OA.

12. Learned counsel for the respondents has cited the judgment of Hon'ble Apex Court in the case of State of Tamil Nadu and another vs. A. Singamuthu reported in (2017) 4 Supreme Court Cases 113, where the issue was whether the government order to permit regularization of full time daily wage workers would be applicable for part time daily wage employees. Hon'ble Apex Court held in this case as under:-

“19. It is pertinent to note that even the regularisation of services of part-time employees vide G.O.(Rt.) No.505 Finance (AA-2) Department dated 14.10.2009 and G.O.(2D) No.32 Finance

(T.A. 2) Department dated 26.03.2010 was effected by extending the benefit of G.O. dated 28.02.2006 only from the date of Government Orders and not from the date of completion of their ten years of service. The Division Bench also failed to take note that GOMs. No. 22 P & AR Dept. dated 28.02.2006 is applicable only to full-time daily wage employees and who had completed ten years of continuous service as on 01.01.2006 and not to part-time employees. As per G.O.(Rt.) No.84 dated 18.06.2012, the respondent is entitled to the monetary benefits only from the date of issuance of Government Order regularizing his service that is 18.06.2012. The impugned order of the Division Bench affirming the order of the Single Judge granting benefits to the respondent from the date of completion of ten years of service is erroneous and the same is liable to be set aside.”

In the case cited, there was a government scheme for regularization for full time employees and the issue was whether part time employees can also be considered. But in the present case, copy of the applicant's salary bills for Nov. 1998, December 1998 and March 1999 enclosed at Annexure A-3 of the O.A, clearly show that the applicant was engaged full time on contractual basis for 8 hours per day. Hence the cited case is distinguishable from the present O.A.

13. In view of above and taking into account the discussion in para 8 and 9 of the order, this OA is disposed of with a direction to the respondents to consider the case of the applicant on merit for engagement on same terms as he was being engaged during March 1999 or earlier in case there is a need for engaging a sweeper on the basis of the requirement and on such engagement, his case for

regularization as per the approved scheme of the Government shall be considered on merits, subject to the eligibility of the applicant.

14. The OA is disposed of with directions in terms of the para 13.

No costs

(GOKUL CHANDRA PATI)
MEMBER-A

Anand...