

## Open Court

**Central Administrative Tribunal, Allahabad Bench,  
Allahabad**

**T.A. No. 06/2011  
(Civil Misc. Writ Petition No.52090 of 2003)**

**This the 11th day of July, 2018**

**Hon'ble Mr. Justice Bharat Bhushan, Member (J)**

1. Anoop Singh son of late Shri Ram Phool Singh resident of Manak Juri Post Office Jalalapur, Dhana, District- Jyotibaphule Nagar.

2. Jai Prakash son of late Sri Mukandi Singh resident of village and Post Sisauna, District- Bijnore.

Applicants

By Advocate: Sri D.K. Srivastava

Versus

1. Union of India through its Secretary, Department of Telecommunication, Sanchar Bhawan, New Delhi.

2. The Chief General Manager, Bharat Sanchar Nigam (West), U.P. Circle, Meerut.

3. General Manager, Bharat Sanchar Nigam Limited, Moradabad.

4. Sub-Divisional Engineer/Officer Bharat Sanchar Nigam Limited, Moradabad.

Respondents

By Advocate: Sri D.S. Shukla

**By Hon'ble Mr. Justice Bharat Bhushan, Member (J)**

The present T.A. 6/2011 was received in this Office on account of transfer order dated 8.7.2010 passed by the Hon'ble High Court, Allahabad in Writ Petition No. 52090 of 2003. The relevant portion of this order is reproduced as below:-

“Learned counsel for the respondents has raised a preliminary objection that in view of

the relief as claimed by the petitioner that the present writ petition filed by him is not cognizable before this Court as per the provisions as provided under Section 28 of the Administrative Tribunals Act, 1985.

Learned counsel for the petitioner does not dispute the above said submission made by learned counsel for the respondents.

Accordingly, in view of the said facts and keeping in view the provisions as provided under Section 28 of the Administrative Tribunals Act, 1985, the present writ petition filed by the petitioner is not maintainable before this court under Article 226 of the Constitution of India and now cognizable before the Central Administrative Tribunal.

Accordingly, office is directed to transmit the paper book of the present case to the Central Administrative Tribunal."

2. The applicants claim that they were working as daily wager in the Department of Telecommunication, Moradabad on muster roll under one Sri R.K. Verma from the year 1982 to 1989. Thereafter, muster roll was closed but they continued to work in the Department. They have also claimed that names of as many as six persons were mentioned in the attendance sheet. One person was

regularized in the department and other five persons including the applicants have not been regularized. Applicants further claim that General Manager, Bharat Sanchar Nigam Limited (in short BSNL) Moradabad has not considered the names of applicants for regularization despite the fact that some persons were considered for regularization.

3. Applicants sought direction asking the respondents to consider the case of applicants for appointment and regularization in the Department. A request was also made to consider their past services for maintaining their seniority.

4. As stated earlier, the Hon'ble High Court, Allahabad did not decide the dispute in view of provision of Section 28 of the Administrative Tribunals Act, 1985 and transferred the petition to this Tribunal.

5. BSNL has filed counter affidavit denying all the claims of applicants. Respondents have also drawn the attention of this Tribunal to various circulars and Office memorandums whereby they have precluded to recruit persons on daily wage for the work of regular nature. They have been specifically directed to recruit daily wager only for the work which is of casual, seasonal, intermittent nature or for the work which is not of full time nature for which regular post cannot be created.

6. Respondents have also refused to accept the appointment of the applicants as daily wagger/casual labour in absence of authentic appointment letter. The documents produced by the applicants have been signed by some persons without designation. The respondents have further disputed the claim of applicants that they had rendered requisite 240 days continuous work in a year prior to the ban of engagement of casual labour in the Department.

7. Heard Sri D.K. Srivastava learned counsel for applicants and Sri D.S. Shukla learned counsel for respondents.

8. Admittedly, the applicants were never appointed in the Department on regular basis. No posts were advertised, examination conducted or interview held. Applicants are claiming relief merely on the ground of alleged appointment as daily wagger from 1982 to 1989. Their status has been disputed by the Department. Department has certainly not accepted their continuous appointment for 240 days in a year prior to the ban. There is no evidence on record to support that applicants have been working in the BSNL as daily wagger during the said period. Even if, their claims are accepted that they had worked for considerable period in the BSNL, that by itself would not give any right to them for

regularization or for appointment of permanent nature in the said department.

9. Constitution Bench of Hon'ble Apex Court in the case of **Secretary, State of Karnataka and others Vs. Umadevi (3) and Others reported in (2006) 4 SCC 1** has held that absorption, regularization, or permanent continuance of temporary, contractual, casual, daily wage or adhoc employee appointed/ recruited and continued for long in public employment de hors the constitutional scheme of public employment. The Court further held that constitutional court should not issue direction for regularization of service of such employees.

10. The Hon'ble Apex Court further reiterated the aforesaid law in the case of **Satya Prakash and others Vs. State of Bihar and others reported in 2010 (2) UPLBEC 1181**, wherein following observations were made by the Court:-

*"6. We are of the view that the appellants are not entitled to get the benefit of regularization of their services since they were never appointed in any sanctioned posts. Appellants were only engaged on daily wages in the Bihar Intermediate Education Council. In Muadevi's case (supra) this Court held that the Courts are not expected to issue any direction for absorption/regularization or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees. This Court held that 5 such directions issued could not be said to be in consistent with the constitutional scheme of public employment. This Court held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service*

or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. In view of the law laid down by this Court, the directions sought for by the appellants cannot be granted.

7. paragraph 53 of Umadevi's Judgment, deals with irregular appointments (not illegal appointments). Constitution Bench specifically referred to the judgment in *S.V. Narayanappa v. State of Mysore*, (1967)1 SCR 128, *B.N. Nanjudappa v. T. Thimmiah*, (1972) 1 SCC 409, in paragraph 15 of Umadevi's judgment as well.

8. Let us refer to paragraph 15 and 16 of Umadevi's judgment in this context. Necessity of keeping in mind the distinction between regularization and conferment of permanence in service jurisprudence has also been highlighted by this Court by referring to the following passages from *R.N. Nanjundappa's* case, which reads as follows:-

*"If the appointment itself is in infraction of the rules of **if it is in violation of the provisions of the Constitution illegality cannot be regularized. Ratification or regularization is possible of an act which is within the power and province of the authority but there has been some non compliance with procedure or manner which does not go to the root of the appointment.** Regularization cannot be said to be a mode of recruitment."*

Further Constitution Bench referred to in *B.N. Nagarajun's* case in Para 16 of the judgment and stated as follows:

*"We have, therefore, to keep this distinction in mind and proceed on the basis that **only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized and that it alone can be regularized** and granting permanence of employment is a*

*totally different concept and cannot be equated with regularization."*

11. In view of the judgments of Hon'ble Apex Court in the case of State of Karnataka Vs. Uma Devi (supra) and Satya Prakas and others Vs. State of Bihar (supra), law is now well settled that casual labour has no right to seek regularization. In the instant case, even the claim of working of applicants as casual labour for substantial period of time has not been proved.

12. Considering all the facts and circumstances of the case, claim of applicants cannot be accepted. Accordingly, T.A. is dismissed. No order as to costs.

**(Justice Bharat Bhushan)**  
**Member (J)**

**HLS/-**