

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 1149/2013

Reserved on: 09.09.2015
Pronounced on: 14.09.2015

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)

1. Gopal Singh S/o Shri Umed Singh
 2. Shaithan Singh Chouhan
S/o Shri Kalyan Singh Chouhan
 3. Toyanath Jaysee S/o Shri Kulpati Jaysee
 4. Mangulal Perteti S/o Shri Harlal Perteti
 5. Raj Kumar Mishra S/o Shri Shiv Prasad Mishra
 6. Sahdeb Mukhija S/o Shri Baran Mukhia
 7. F. Rajmani Singha S/o Late Shri F. Raj Babu Singha
 8. Kakkeria Raghu S/o Shri Mogili
 9. Kommineni Anil Kumar S/o Kommineni Veerabadra Rao
 10. Arjun Kumar Tamang S/o Shri Mandhabdur Tamang
 11. Jitander Singh Rathore s/o Sh. Bhanwar Singh Rathore
 12. Shri Ratan Das S/o Late Shri Gopal Chandra Das
 13. C. Selvam S/o Shri P. Chinnaiah
 14. Ajay Rawat S/o Shri Shiv Prasad Rawat
 15. Sukhdev Naryan Surve S/o Shri Narayan Hirman Surve
 16. Santosh Yashwant Kudlakar S/o Shri Yashwant A.
Kudalkar
 17. Devendra Narayan Ikhar S/o Shri Narayan Gopalrao Ikhar
 18. Randhir Kumar S/o Shri Ram Bahadur Chaudhary
 19. Kishore Kumar Muzumdar
s/o Kumod Muzumdar
- (All the Applicants have been working in Nehru Yuava Kendra Sangthan as Daily Wage Drivers)
- Mailing Address**
C/o Shri Umed Singh
R/o 5/129, Dakshin Puri, Adedkar Nagar,
New Delhi.
- ...Applicants

(By Advocate: Shri U. Srivastava)

Versus

Union of India through

1. The Secretary,
Ministry of Youth Affairs & Sports,
Govt. of India, Shastri Bhawan,
New Delhi.
2. Nehru Yuva Kendra Sangathan
Through the Director General,
Scope Minar, Laxmi Nagar,
New Delhi.
3. The Secretary,
Ministry of Personnel, Public Grievances & Pension,
Department of Personnel & Training,
North Block, New Delhi.
4. The Secretary,
Ministry of Law & Justice,
Shastri Bhawan,
New Delhi.
5. The Secretary,
Ministry of Finance,
Department of Expenditure,
North Block,
New Delhi.

....Respondents

(By Advocate: Shri Faiyaz Khalid for Shri Hailal Haider).

O R D E R

By Hon'ble Mr. P.K. Basu, Member (A):

The applicants, who are working as daily wage drivers in the Nehru Yuva Kendra Sangathan [NYKS], were engaged during the year 1999-2000. Through this OA, the applicants have prayed for regularization of their services with all other consequential benefits.

2. The case of the applicants is that the Board of Governors (BoG), NYKS in its meeting held on 02.02.2010 had deliberated upon the service matters of 26 daily wage drivers in NYKS and decided to form a Committee to look into their service matters

and suggest necessary measures. The Committee gave its recommendation on 20.05.2011. The Committee found that out of 26 daily wage drivers, only 6 fulfilled the qualifications as per the Recruitment Rules (RRs) at the time of their initial deployment. The other 20 daily wage drivers did not meet the eligibility criteria as per RRs. It also noted that none of these daily wage drivers were appointed on sanctioned posts. The posts were only sanctioned *ex post facto* in the year 2007 i.e. after 6-7 years of their deployment as daily wage drivers. However, the Committee was of the view that since the posts were sanctioned *albeit ex post facto*, it could safely be taken that the posts against which the drivers were working on daily wages are sanctioned posts. Regarding 20 daily wage drivers, who did not meet the eligibility criteria as per RRs, the Committee recommended as follows:-

“18...These 20 daily wage drivers have given the best of their services during the last more than 10 years. As such their case needs to be considered with empathy. However, for formulating a view for their regularization, being against the existing policy/instructions/established law, the Committee recommends an appropriate measure to consult the nodal Ministries, i.e., Department of Personnel & Training, Ministry of Law and Ministry of Finance, Department of Expenditure, for necessary advice.”

3. The applicants also brought to our notice letter dated 22.07.2013 and a self-contained note on regularization of 26 daily wage drivers dated 17.07.2013 by which NYKS had written to the Ministry of Youth Affairs & Supports to grant relaxation in the educational qualifications and experience for regularization

of services of these 26 daily wage drivers. The applicants' claim is that thereafter they have been approaching the respondents time and again, but no decision has been taken in their case. The applicants further contend that now sufficient vacancies are available in the NYKS to adjust them. The learned counsel for the applicants also relied upon the Tribunal's decision in case of **Maman Singh & Ors. V/s. Union of India & Ors.** [OA Nos. 3003/2012 and OA No.3118/2012 decided by a common order dated 20.05.2014] in support of the applicants' claim.

4. The learned counsel for the respondents state that in **Secretary, State of Karnataka & Ors. Vs. Umadevi & Ors.** [AIR 2006 SC 1806], the Hon'ble Supreme Court has dealt in depth on this issue and held as under:-

“36...it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible...In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of

opportunity enshrined in Article 14 of the Constitution of India.

xxx

xxx

xxx

43...a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.”

It has been further stated by the respondents that in ***U.P. State Electricity Board V/s Pooran Chandra Pandey & Ors.*** [(2007) 11 SC 92] a two-judge bench of the Supreme Court had, while considering the decision of the Constitution Bench in ***Umadevi's*** case (supra), suggested that the said decision cannot be applied to a case where regularization has been sought for in pursuance of Article 14 of the Constitution and that the same is in conflict with the judgment of seven-judge Bench in ***Mrs. Maneka Gandhi Vs. Union of India & Anr.*** [(1978) 1 SCC 248]. The decision in Umadevi's (supra) was followed by the Hon'ble Supreme Court in ***Official Liquidator Vs. Dayanand & Ors.*** ((2008) 10 SCC 1] while holding that the respondents in that case were not entitled to absorption against the sanctioned posts in Group 'C' of the Department of Company Affairs, Government of India, as of right. In fact, the Supreme Court thought it fit to clarify that the comments and observations made by the two-judge bench in Pooran Chandra Pandey's case (supra) should be read as obiter and the same should neither be treated as binding by the High Courts, Tribunals and other judicial foras nor they

should be relied upon or made basis for bypassing the principles laid down by the Constitution Bench in Uma Devi's case (supra).

5. Learned counsel for the respondents has, therefore, argued that the decision in **Umadevi's** case (supra) is squarely applicable in the instant case and, as such, the OA is liable to be dismissed.

6. It would be seen from the facts of the case that the applicants were initially taken on daily wages without any sanctioned posts being available. The BoG, NYKS decided to examine their matter and a Committee was formed. The Committee made certain recommendations which were placed before the concerned Ministry. However, as is clear from the judgment of Umadevi's case (supra), this issue has been discussed threadbare by the Hon'ble Supreme Court and a ratio laid down. According to this judgment, the applicants have no right to regularization nor do the respondents have a duty to regularize them.

7. As regards the Tribunal's decision in **Maman Singh & Ors. V/s. Union of India & Ors.** (supra), though it related to regularization of casual labourers, yet the issue involved was to grant temporary status to the applicants therein with a further direction to consider regularization in terms of the decision in **Umadevi's** case (supra) for those who have completed ten years of service as on 10.06.2006. Therefore, we find the facts and

circumstances quite different and it cannot be *ipso facto* applied in the present case.

8. In view of the above discussion, we are of the opinion that there has been no illegality in the stand of the respondents that the instant case is squarely covered by the decision of the Hon'ble Supreme Court in ***Umadevi's*** case (supra) and, in view of that, regularization of the applicants cannot be claimed as a matter of right and no cause of action, therefore, arises. The instant Original Application is, therefore, dismissed with no order as to costs.

(P.K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

/Ahuja/