

**Central Administrative Tribunal
Principal Bench**

OA No.2173/2013

Reserved on : 09.09.2015
Pronounced on : 15.09.2015

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

1. Poonam Sudan
D/o Sh. Vidhya Sagar
R/o 29/A, Gali No.1,
East Guru Angad Nagar,
Laxmi Nagar 110 092.
2. Shama Rani
D/o Sh. Vidhya Sagar
R/o 29/A, Gali No.1,
East Guru Angad Nagar,
Laxmi Nagar 110 092.

.... 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 Advocates : Shri R. Ramachandran with Ms. Lakshmi
Gaurang and Sh. S. Kumar Mishra)

: O R D E R :

P. K. Basu, Member (A) :

Both the applicants in this case were appointed by the respondents on 06.11.2001- Applicant No.1 as an Assistant and Applicant No.2 as a Stenographer. These appointments were purely on contract basis under National Reconstruction Corps, a scheme on its pilot phase, purely on contract basis for a maximum period of six months or till the scheme exists, whichever is earlier. It was further stipulated that until and unless further reviewed, the contractual appointment would expire on the last date of the month in which the term completes six months.

2. Learned counsel for the applicants stated that the applicants have been continuing with the respondents ever since. They have been raising their demand for regularisation in their services and ultimately the grievances of the applicants were placed before the Board of Governors (BOG), Nehru Yuva Kendra Sangathan (NYKS) in its meeting held on 02.02.2010. The BOG decided that a committee may be

formed by the DG to examine the issue and to recommend the process for regularisation/confirmation of their services in NYKS and to identify suitable positions/posts for their regularisation/confirmation. The BOG also granted necessary sanction for age relaxation of these employees.

3. The committee considered the cases of three such contractual employees, namely two applicants in this case and one other. However, the third one, in the meanwhile, resigned from NYKS. The committee submitted its recommendation on 20.05.2011, which is as follows:-

“3. Report of the Committee

All the three employees, (now two of the employees since the third has resigned from NYKS) possessed adequate educational as well as technical qualification. They were appointed on contract through a proper laid down procedure by a duly appointed Selection Committee. Their appointment on contract though regular was purely against projects and not against any sanctioned post in NYKS.”

The committee examined these two cases and noted that they were contractual staff hired against a project and not against any sanctioned post of NYKS. The committee was guided by the judgments of Hon'ble Supreme Court in the case of **Secretary, State of Karnataka vs. Umadevi** (CA No.3595 of 1999 decided on 10.04.2006 Constitutional Bench) and **Madhyamik Shiksha Parishad, UP vs. Anil Kumar Mishra and Other** (AIR 1994 SC 1638) and finally recommended that it would be appropriate to seek advice of Department of

Personnel & Training, Ministry of Finance, Department of Expenditure and Ministry of Law for making out the applicants' case of regularization in NYKS keeping in view their nearly ten years of contractual service in the organization.

4. The applicants' grievance is that thereafter they have approached the respondents time and again but without any result. In fact, it is stated that in the meanwhile, instead of considering and finalising the case of applicants, the applicants have been verbally informed that the respondents have changed the mode of their appointment through placement/outsourcing agency w.e.f. 06.07.2013.

5. Learned counsel for the applicants' main argument is that the applicants have been working with the respondents for almost 12 years satisfactorily, and that they were recruited after following formalities like written examination followed by interview and despite the recommendations of the committee in May, 2011, the respondents are not taking action, which is unjust, malafide and against the principles of natural justice. He has also placed reliance on the case of **Jacob M. Puthuparambil & Ors. vs. Kerala Water Authority & Ors.** JT 1990 (4) SC 27 in which the Hon'ble Supreme Court has held as under:-

“9. India is a developing country. It has a vast surplus labour market. Large-scale unemployment offers a matching opportunity to the employer to exploit the needy. Under such market conditions the employer can dictate his terms of employment taking advantage of the absence of the bargaining power in the other. The unorganised job seeker is left with no option but to accept employment on take-it-or-leave-it terms offered by the employer. Such terms of employment offer no job security and the employee is left to the mercy of the employer. Employers have betrayed an increasing tendency to employ temporary hands even on regular and permanent jobs with a view to circumventing the protection offered to the working classes under the benevolent legislations enacted from time to time. One such device adopted is to get the work done through contract labour. It is in this backdrop that we must consider the request for regularisation in service.”

6. The respondents relied on the judgment of ***Uma Devi*** (supra) and particularly paras 36 & 43 of the judgment in which the Hon’ble Apex Court has 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.”

“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.”

7. It has further been argued by learned counsel for the respondents that in ***U. P. State Electricity Board vs. Pooran Chandra Pandey and Ors.*** (2007) 11 SCC 92, a two judge

bench of the Supreme Court had, while considering the decision of the Constitution Bench in ***Uma Devi*** (supra), suggested that the said decision cannot be applied to a case where regularisation has been sought for in pursuance of Article 14 of the Constitution and that the same is in conflict with the judgment of the seven Judge Bench in ***Mrs. Maneka Gandhi vs. Union of India (UOI) and Anr.*** (1978) 1 SCC 248. The decision in ***Uma Devi's case*** was followed by the Hon'ble Supreme Court in ***Official Liquidator v. Dayanand and Others*** (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, Govt. 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***.

8. It is, therefore, argued that the applicants have no enforceable legal right to be permanently absorbed, nor do the respondents have a legal duty to make them permanent. It is argued that the judgment of Hon'ble Apex Court in ***Uma Devi***

(supra) is squarely applicable to the instant case and, the OA is fit to be dismissed.

9. In rejoinder, Learned counsel for the applicants further pointed out that in case of drivers appointed on ad hoc basis, the NYKS had sent a proposal to the Ministry of Youth Affairs and Sports regarding relaxation in the educational qualification and experience for regularization of their services vide note dated 17.07.2013 and letter dated 22.07.2013.

10. The respondents placed before us a letter of Ministry of Youth Affairs and Sports dated 19.03.2015 addressed to the NYKS, wherein, again attention was drawn to the judgment of **Uma Devi's** case (supra) and the following was advised:-

“3..... However, wherever ad hoc promotion have been resorted to against a post in consideration of its functional/operational requirements, it may be clearly specified that ad hoc appointment does not bestow on the person a claim for regular appointment and the service rendered on ad hoc basis in the grade concerned also does not count for the purpose of seniority in that grade and for eligibility for promotion to the next higher grade. However, persons appointed on ad hoc basis to a grade are required to be replaced by persons approved for regularly appointment by direct recruitment, promotion or deputation as the case may be at the earliest opportunity and in no case such officers should be regularized.

4. In view of the above, it is again intimated that there is no change in the stand of GOI as filed in counter replies in aforementioned cases.”

11. We have heard learned counsel for the parties and perused the relevant records.

12. It is an admitted fact that both the applicants were appointed purely on contract basis in a project for a limited period of time. They were not appointed against any sanctioned post. Therefore, the respondents have consistently been stating that according to the judgment of ***Uma Devi*** (*supra*), such appointment cannot be regularised. Neither do the applicants have any right to be regularised, nor the respondents have any legal duty to regularise them.

13. In view of the above, we are of the opinion that the judgment in ***Uma Devi's case*** (*supra*) holds the field and the respondents are perfectly justified in the stand taken by them. We, therefore, see no merit in the OA and the same is dismissed. No costs.

(P. K. Basu)
Member (J)

(V. Ajay Kumar)
Member (A)

/pj/