

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 3360/2013

New Delhi, this the 8th day of November, 2016.

HON'BLE MR. P.K. BASU, MEMBER (A)

1. Vijay Ram,
S/o Shri Tek Ram,
Qtr. No.1731, GPO Complex,
Kashmere Gate,
Delhi-110 006.
2. Sumer Singh (SC),
S/o Shri Ram Kumar,
H.No.414, Sector 9,
R.K. Puram, New Delhi-110 022.
3. Arun Kumar (OBC),
S/o Shri Babu Ram,
Village Kanoja,
Post : Muradnagar,
Distt. Ghaziabad,
U.P. 201 206.
4. Harish Kumar (SC)
S/o Shri Kiran Pal Singh,
C-20, Amar Colony,
East Gokal Puri,
Delhi-110 094.

.. Applicants

(By Advocate : Shri Susheel Sharma)

Versus

1. Union of India through
The Secretary,
Ministry of Water Resources,
Shram Shakti Bhawan,
Rafi Marg, New Delhi-110 001.

2. Director of Co-ordination and General Section,
Government of India,
Ministry of Water Resources,
Shram Shakti Bhawan,
Rafi Marg, New Delhi-110 001.
3. Under Secretary/Section Officer,
Government of India,
Ministry of Water Resources,
Shram Shakti Bhawan,
Rafi Marg, New Delhi-110 001. .. Respondents

(By Advocate : Shri A.K. Singh)

ORDER (ORAL)

The applicants are functioning as daily wagers in the respondents' office and according to Annexure A-1 have completed more than 10 years of service with the respondents. The claim of the applicants is that their services be regularised giving them age relaxation against the existing vacancies.

2. The learned counsel for the applicant, first of all, stated that similar order of regularisation of daily wage employees have been made by the Department of Personnel & Training (DoPT) and also Ministry of Finance. In this regard, office order dated 04.01.2013 issued by the Ministry of Finance has been produced, which indicates that 21 daily wagers have been appointed to the post of Multi Tasking Staff (MTS), Group 'C' in the Department of Revenue.

3. It is further stated that similarly the DoPT vide order dated 16.12.2011 has regularised the services of S/Shri Minto, Rajesh Kumar and Shri Raj Kumar.

4. The learned counsel placed reliance on the judgment of the Hon'ble High Court in **Ritu Kushwaha and others vs. Union of India and others** in WP(C) No.7808/2012 dated 11.11.2014, in which the Hon'ble High Court have examined similar issue brought before it and took note of the judgment of the Hon'ble Supreme Court in **Secretary, State of Karnataka & Others vs. Umadevi & Others**, (2006) 4 SCC 1; the argument of the respondents that there are no longer any Group 'D' post after the 6th CPC report and only Group 'C' posts and, therefore, the petitioners in that case could not claim their regularisation as MTS, which is a Group 'C' post, which posts have to be filled through Staff Selection Commission (SSC). Having considered all these aspects, the Hon'ble High Court held as follows:

"13. Having heard learned counsel for the parties and perused the impugned order, and the materials placed on record before the CAT, we are of the view that the impugned order cannot be sustained as, in our view, the claim for regularization made out by the petitioners is completely justified in the facts of the case. It is not in dispute that the petitioners were recruited initially as daily wagers after interview. Their names were drawn from the Employment Exchange. All of them rendered more than ten years of casual service. Consequently, they are entitled to be considered for regularization in terms of the directions issued by the Supreme Court in **Umadevi** (supra) under a scheme, to be framed by the respondents. There can be no doubt that but for the fact that the 6th CPC report led to abolition of Group-D posts, and their merger with the post of MTS in Group-C, the case of the petitioners for regularization would have been positively considered. The primary reason given by the

respondents is that on account of the abolition of Group-D posts and their conversion/ merger to Group-C posts of MTS - which are required to be filled through the SSC upon fulfillment of the eligibility norms, the case of the petitioners for regularization cannot be considered.

14. In our view, this reasoning is fallacious. The petitioners are not seeking recruitment to Group-C posts in an open recruitment process. These petitioners may not even be eligible to apply in response to any such recruitment process as all of them may be overage by now, and most of them may not even possess the minimum educational qualification of Matriculation. The petitioners fall in an altogether different class. They are seeking regularization of their services on account of having rendered over ten years of casual service. It is not the respondents' case that they did not meet the educational qualification required of them, to be recruited against Group-D posts of Safaiwalas/ Labourers. Merely because, in the meantime, the Group-D posts stand abolished, it does not mean that their right to be considered for regularization would be defeated. Such class of casual employees would have to be considered for regularization upon completion of ten years of continuous service by applying the same criteria of educational qualification as was applicable to them at the time of initial recruitment as casual employees. The conversion of Group-D posts into Group-C posts of MTS is an act of the respondents, and if the effect of regularization is that they would be entitled to the pay scale and benefits available for Group-C posts, so be it.

15. It is rather shocking and surprising that, on the one hand, the DOP&T sought to reject the cases of the petitioners when respondents No.1 & 2 favourably recommended the same for regularization, on the other hand, the DOP&T itself proceeded to regularize several casual employees, who were similarly placed as the petitioners. There is absolutely no justification for adoption of these double standards. It appears that the DOP&T does not practice what it preaches.

16. We also find from the record that scores of other casual employees have since been regularized by granting benefit of the judgment of the Supreme Court in Umadevi (supra). The Ministry of External Affairs had issued office order dated 10.09.2013 regularising the services of 44 casual employees as MTS. Similarly, 21 daily wagers were regularized as MTS on 04.01.2013 by the Ministry of Finance, Department of Revenue. On 27.01.2009, the Ministry of Finance, Department of Economic Affairs issued an office order regularizing the services of 5 casual labourers as Peons. Ministry of Power regularized the services of 12 casual employees - as is evident from their reply given to a query under the Right to [Information \(RTI\) Act](#), dated 10.06.2013. The Ministry of Information & Broadcasting regularized the services of 24 casual employees - as is evident from their reply given to a query under the [RTI Act](#), dated 25.06.2013. Similar orders have been issued for regularization

by the Ministry of Home Affairs on 15.02.2010 in respect of 13 casual employees.

17. We are of the view that there is no substantial difference in the case of the petitioners with that of Smt. Rajbala. Merely because Smt. Rajbala was appointed on compassionate grounds, does not cast any greater obligation on the respondents to regularize her services, in comparison with the petitioners. She was directed to be regularized as & when a vacancy became available. That decision was accepted by the respondents. The respondents cannot discriminate and treat the petitioners differently from Smt. Rajbala.

18. We have already noticed that the stand of the respondent before the CAT was that at the time of closing of recruitment year 2010-11, there were 37 vacancies of MTS, for which a requisition had been sent to the SSC. In response, SSC had sent dossiers of 24 qualified candidates. From the counter-affidavit, it appears that the said process has not been completed. Pertinently, this Court while issuing notice in this petition on 17.12.2012 directed maintenance of status quo with regard to the petitioners. The said order has continued to operate. Therefore, it appears that there are sufficient number of regular vacancies available, against which the services of the petitioners could be regularized.

19. In view of the aforesaid discussion, we allow the writ petition and quash the impugned order of the Tribunal. We further direct that the respondents shall consider the cases of each of the petitioners for regularization in terms of their policy/ scheme framed for regularization in the light of the judgment of the Supreme Court in **Umadevi** (supra). There shall be no order as to costs.

5. Learned counsel for the respondents has raised two objections:

(i) In the light of **Umadevi** (supra) judgment, the respondents cannot now regularise the services of the applicants.

(ii) DoPT vide O.M. dated 30.04.2010 have abolished all Group 'D' posts and redesignated them as MTS (Group 'C'). Accordingly, the Recruitment Rules for the post of MTS have been amended and

candidates between age group of 18 to 25 years with minimum qualification as Matriculation or equivalent or ITI pass can be appointed. He further contended that the DoPT through the same O.M. has clarified that henceforth there shall be no recruitment in Group 'D' posts.

6. Heard the learned counsel for both the sides and perused the judgment produced by the applicant's counsel.

7. In **Ritu Kushwaha** (supra), the Hon'ble High Court, while dealing with a similar matter, had examined all three issues, viz. (a) that the judgment of the Hon'ble Supreme Court in **Umadevi**'s case does not permit regularisation; (b) that the recruitment rules do not permit for appointment through regularisation; and (c) the DoPT instructions that Group 'D' posts are abolished and MTS is a Group 'C' post and the recruitment has to be done through SSC. After considering all the pleas, Hon'ble High Court allowed the writ petition and directed to reconsider the cases of each of the petitioners for regularisation in terms of their policy/scheme for regularisation in the light of the judgment of the Hon'ble Supreme Court in **Umadevi** (supra).

8. The learned counsel for the respondents has raised the objection that the DoPT has subsequently withdrawn the regularisation of three employees, viz. S/Shri Minto, Rajesh

Kumar and Shri Raj Kumar and, therefore, argued that in the light of this withdrawal order, the judgment in **Ritu Kushwaha**'s case would not be applicable as the judgment had been passed based on the fact that the DoPT had regularised the three persons. However, the fact remains that even if we ignore the DoPT regularisation, 21 employees of Finance Department have been regularised. The reasoning, why the objection raised by the learned counsel for the respondents are not acceptable, has been discussed and answered in the judgment of **Ritu Kushwaha**'s case by the Hon'ble High Court. Therefore, in case these applicants' services are not regularised, this would amount to discrimination and violative of Article 14.

9. We, therefore, allow the O.A. and direct the respondents to consider the cases of each of the applicants for regularisation in terms of their policy/scheme framed for regularisation in the light of the judgment of the Hon'ble Supreme Court in **Umadevi** (supra), within 90 days from the date of receipt of a certified copy of this order. No order as to costs.

(P.K. Basu)
Member(A)

/Jyoti/