

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**Original Application No.100/3695/2016
With
MA No. 100/3515/2016**

**Reserved on: 17.05.2017
Pronounced on: 01.06.2017**

**Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Ms. Praveen Mahajan, Member (A)**

Rahul Kumar S/o Shri Chaman Lal, aged 39 years appx., Group-C
r/o 6/86, Village Jherea Gaon, Delhi Cantt-10

.....Applicant

By Advocate: Mr. Shrigopal Aggarwal

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Commandant, Army Dental Centre (R&R), PIN-900106, Delhi Cantt.-10.

.....Respondents

By Advocate : Mr. Hanu Bhaskar

ORDER

Per Hon'ble Ms. Praveen Mahajan, Member(A):

By filing the present OA, the applicant has prayed to:-

- (i) direct the respondents to continue to employ the applicant directly under the respondent No.2 and not to replace him by any fresh appointment,
- (ii) consider the case of the applicant for regularization against the future vacancy as he is well experienced person selected through proper process,
- (iii) allow any other relief which this Hon'ble Tribunal deem fit under the facts and circumstances of the case and

(iv) dispose of applicant's representation dated 30.09.2016 on merit.

2. Facts of the case in brief are that in the year 2010 the respondents issued advertisement for the post of Housekeeper. Pursuant to this, the applicant was selected by the Board of Officers for a period of 11 months on ad-hoc basis. On 15.05.2010, the applicant joined the service at Army Dental Hospital (R/R), Delhi Cantt. at a consolidated salary of Rs. 4500/- in terms of appointment letter dated 15.05.2010 (Ann.A/2). The terms and conditions of the appointment letter dated 15.05.2010 included renewal/extension and termination of service. The respondents further extended/renewed his appointment vide letter dated 18.04.2011 and 20.02.2013 on expiry of term/contract (Ann.A/3). The respondents did not issue renewal of appointment letter after 20.02.2013, however, the applicant continued to serve as House Keeper till 31.05.2016. Thereafter the respondent No.2 converted the applicant's appointment to that of through a contractor and the applicant was directed to mark his attendance on a separate sheet. It is stated that a senior colleague of the applicant who was similarly placed is already absorbed in the post of Ward Sahayika in regular pay scale with all benefits as available to a regular employee. The applicant filed a representation dated 30.09.2016 (Ann.A/1) to reconsider his case for direct employment under respondent No.2, which is still not disposed of. On 01.06.2016, the

respondents informed the applicant to mark his attendance in a different register meant for employees who are outsourced. The respondents did not serve any advance notice to change the terms and conditions of his job as required under the terms and condition of appointment. As per the information received under RTI Act, 2005, the applicant has been outsourced and now he is working under the Contractor w.e.f. 1.5.2016 (Ann.A/4). It is submitted that ever since his appointment is outsourced w.e.f. 1.06.2016, he has apprehension that his services could be terminated. That on 30.09.2016, the applicant has submitted his request to Commandant, Army Dental Centre (R&R) to consider his case, for regularization of his post, in view of his long sincere service. There exists a vacancy of Housekeeper which is of permanent nature. In the year 2013, the respondents took steps for creation of post of Ward Sahayika only for the reasons best known to them and it is evident from the advertisement (Ann.A/5) that the official working as Ward Sahayika on ad-hoc basis was selected/absorbed for the said post. Aggrieved by the arbitrary action on part of the respondents, the applicant has filed the present OA.

3. In reply to the OA, the respondents have raised preliminary objection to the effect that the applicant has never been appointed by the Government, and thus, he is not a Government servant. Since the applicant is not holding a civil post under the

Union of India, thus the Tribunal lacks jurisdiction to entertain this OA, Further, it is stated that the applicant is at present an employee of private contractor, M/s M.K.Enterprises on the date of filing the OA. The EPF, ESI and other legal benefits and dues of the applicant are being deposited by the said contractor and other persons employed by him. Therefore, the respondents are not liable to engage him or regularize his services. The OA filed by him is liable to be dismissed as the applicant is not covered by any scheme of the Government for regularizing his services as he was never an employee of the Government.

The respondents submit that respondent No.2 has regular uniform personnel on its sanctioned strength as Safaiwala/Housekeeper and there are 2 posts of Safaiwala (Naik) and 6 posts of Safaiwala (Sepoy/L Naik). There is no post or sanctioned strength of Safaiwala/Housekeeper in a Civilian Post and that too on a permanent basis. To augment the facilities, civilians are employed on contractual basis for which some Command Welfare Fund (CWF) is made available to the Unit for hiring them for the said purpose. Respondent No.2 received certain funds from the CWF for engagement of civilian Housekeeper/Safaiwala on contract basis and the applicant was engaged vide agreement dated 17.05.2010 wherein it was clearly stated that his engagement/appointment is purely temporary for a period of 11 months on a consolidated salary of Rs. 4500/- per

month. As per the agreement it was stipulated that he would not be entitled for any other allowances including gratuity or bonus or compensation, PF, Insurance or any medical facilities. His further extension was subject to the requirement of the Hospital, and, his services could be terminated at any time, without assigning any reason, subject to either party paying/foregoing one month salary in view of the notice. The applicant duly signed the said agreement. This arrangement continued with the applicant by way of agreement/appointment letter, signed on 18.04.2011, 19.03.2012, 20.02.13, 20.01.14, 20.12.2014 and 19.11.2015 on the same lines. The renewal of the agreement/appointment was after giving break in service with subsequent hike in salary. The applicant lastly worked with respondent No.2 till May, 2016. By this time the CWF had lapsed and respondent No.2 could not further engage the applicant. Meanwhile, the Integrated HQ of MOD (Army) sanctioned some fund for augmentation of manpower for outsourcing various services in ADC (E&E). Thus, the respondent No.2 entered into an agreement with M/s M.K.Enterprises on 23.05.2016 for hiring the services of different persons for which separate agreements were entered. The applicant approached the contractor and the contractor employed the applicant w.e.f. June, 2016 to October, 2016. The monthly payments etc. were made by the contractor and thereafter it appears that either the applicant left the work of

the contractor of his own accord, or, the contractor might have terminated the services of the applicant, to which set of circumstances, the respondents are not a party.

According to the respondents, the applicant was appointed on contractual basis which was extended from time to time. He was not appointed as per any selection procedure. As far as post of Ward Sahayika is concerned, initially the same was also contractual but later on in the year 2013, the Peace Establishment of the Unit were revised by the IHQ of MOD and the post of Ward Sahayika was created/authorised. In these terms the said post was to be filled up. The applicant has annexed the copy of the said advertisement in his OA. The advertisement is of the Ward Sahayika and is not an advertisement for his post. The applicant was engaged on contractual basis since 17.05.2010 as Housekeeper for a period of 11 months. His appointment was extended as respondent No.2 was receiving the grant in aid from the Higher Authorities. However, when the same lapsed in May, 2016, the services of the applicant were disengaged. As per the appointment letter dated 19.11.2015 the period of appointment was for a period of 6 months i.e. till May, 2016. Thus, there was no occasion for any grievance on part of the applicant. The applicant was fully aware that his extension was only till May, 2016 and thereafter his services were disengaged. The applicant chose to

join the contractor. The same was done by the applicant out of his own sweet will, and as per the consent of the contractor.

4. In rejoinder to reply, while reiterating the averments made in the OA, the applicant has stated that there were two posts of casual workers created at the time of opening of Army Dental Centre on ad-hoc basis. One post was named as Ward Sahayika and the other was named as Housekeeper. In the year 2013, the respondents took necessary steps to regularize the post of Ward Sahayika but did nothing to regularize the post of Housekeeper for reasons best known to them, which amounts to hostile discrimination. The post of Housekeeper is of permanent nature. The need of Housekeeper which is an important part of Army Dental Centre could and should remain. The respondents have given step motherly treatment to the post of Housekeeper by not having taken necessary steps for regularization thereof in the year 2013 as was done in the case of Ward Sahayika. In support of his averments, the applicant has relied upon para-44 of the judgment in the case of **Secretary, State of Karnataka & Ors. vs. Umadevi & ors.**, JT 2006 (4) SC 420.

5. Heard learned counsels of both the parties and perused the record.

6. The learned counsel for the applicant contended that there were two posts. One was of “**Ward Sahayika**” and the other was “**Housekeeper**”. In the year 2013, the respondents have taken

steps to regularize the post of Ward Sahayika but not taken such steps for the post of Housekeeper. Thus the applicant has been discriminated against. He emphasizes that as per the conditions of appointment, an advance notice was required to be given to him, but this was never done and his services were terminated without giving any notice in advance.

7. Per contra, the contention of the learned counsel for the respondents is, that the applicant was not holding a civil post under the Union of India, thus, at the outset, this Tribunal has no jurisdiction to entertain the OA in the first place. Further, he submitted that there is no post of civilian Housekeeper and the sanctioned posts are for Combatant Uniformed Housekeeper Personnel only. He informed the Bench that the job of the Housekeeper is not of a permanent nature. The civilians are kept on contractual basis as long as the grant is received, and when the grant lapses, the services of the contractual person can be dispensed with. After dis-engagement, the applicant willingly and knowingly joined services under contractor, to which, the respondents are not party. Since prayer for regularisation is not based on any valid or legal grounds, hence, the OA needs to be dismissed.

8. Considered the rival contentions of the parties. As far as allegation of discrimination is concerned, the applicant cannot claim, as a matter of right that the respondents should have taken

steps to regularise the post against which he was working, merely because the other post of Ward Sahayika was regularised. It is the prerogative of the respondent authorities to regularise the post according to administrative requirements. The applicant was working under the contractor at the time of filing of the OA. His prayer to direct the respondents to continue to employ him under respondent No.2 and not to replace him by any fresh appointment lacks merit and is not supported by any valid provision of law. The services of the applicant logically were dependent on the requirement of the Hospital. We cannot fault the respondents for having dispensed with the services of the applicant as per their requirement, since the applicant did not have any legal right to continue permanently on the said post.

9. A perusal of the appointment letter for the post of Housekeeper shows that ad-hoc appointment was given to the applicant on certain conditions namely:-

(a) Nature of appointment is purely temporary for period of 11 months from the date of your physically reporting for duty.

(b) Pay scale:- A consolidated salary of Rs. 4500/- (Rupees Four Thousand Five hundred only) per month will be paid to you. No other allowances/ overtime/ terminal gratuity/ bonus/ compensation will be admissible. A proportionate deduction for the unauthorised absence if any would be made on the recommendation of Administrative Officer. No provident fund or insurance is admissible. No medical facilities will be provided by this Dental Centre.

(c) Working hours:- 0700h to 1100h and 1400h to 1700h daily except Wednesday and Saturday. Wednesday and Saturday will be half working day i.e. 0700h to 1300h.

(d) Leave: Total of 08 days casual leave will be admissible in a year. Leave cannot be granted for more than 03 days at a time subject

to prior approval by the administrative authorities. However, the same can be extended at the discretion of the sanctioning authority.

(e) Reporting Channel: You will report directly to the Adm Officer for your entire administrative requirement.

(f) Dress Code/duties: You will adhere to the dress code as specified by the hospital authorities during working hours. You will also perform all the professional or any other duties as assigned to you by the Administrative Officer.

(g) Discipline and conduct: You will follow all the rules and regulations as laid down by the hospital authorities from time to time.

(h) Renewal/Extension: The further extension of your service is subject to requirement by the hospital. The terms and conditions of service are also subject to renewal at the discretion of the appointing authority. In case further extension to be considered necessary a fresh letter of appointment will be issued with the revised terms and conditions if any, and will not be considered to be in continuation to the previous service.

(i) Termination of service: Your service is liable to be terminated at any time without assigning any reasons by the appointing authority. You will also be at liberty to leave the service at your own discretion at any time. However, one month notice will be required to be served upon the other party by the party desiring to do so. Either party can also do so by paying/foregoing one month's salary in lieu of notice.

(k) On joining of the duty you will have to sign an agreement with the appointing authority specifying terms and conditions.

(l) You will make your own arrangement for accommodation and transport.

In case the appointment offered is acceptable to you, please report to the Administrative Officer alongwith acceptance letter in writing on or before 17th May 2010 by 0830h. Also being judicial stamp paper of Rs. 10/- and copies of your educational certificates attested by a gazetted officer. In case you fail to report on the above date it will be presumed that you are not interested in the above appointment and this appointment letter be treated as cancelled.

It is clear that the applicant was appointed purely on ad-hoc and temporary basis without having any right of regularisation. This appointment was extended/renewed from time to time for 11 months and lastly for 6 months vide letter dated 19.11.2015, according to the availability of funds and requirement of the

respondent department. Thereafter the services of the applicant were not extended and he joined the services of the contractor. In the letter of appointment, the clause relating to termination of service provides as under:-

“(i) Termination of service: Your service is liable to be terminated at any time without assigning any reasons by the appointing authority. You will also be at liberty to leave the service at your own discretion at any time. However, one month notice will be required to be served upon the other party by the party desiring to do so. Either party can also do so by paying/foregoing one month’s salary in lieu of notice.”

From the above clause, it is clear that the services were liable to be terminated, with one month’s notice. From perusal of the pleadings, it appears that no notice was given to the applicant, which was a condition, preceding termination of his service.

10. The learned counsel for the applicant heavily relied upon the judgment in the case of Secretary, State of Karnataka and Others vs. Uma Devi and Others, 2006 (4) SCC 1. It is not understood how the applicant is taking refuge/benefit of this ruling. The judgment in the case of **Uma Devi** puts an end to the practice of temporary appointments and thereafter regularization of such temporary employees. It was directed therein to take steps to regularize the services of the irregularly appointed persons as a one-time measure in respect of personnel, who have worked for ten years or more in duly sanctioned posts. The case of the applicant does not fall in this category at all.

11. In a recent judgment in the case of **Ish Rani vs. Union of India and Ors.**, reported in 2017 SCC Online Del 7675, the

Hon'ble High Court of Delhi has dealt with a similar controversy.

The relevant paras of the judgment reads as under:-

“3. The issue in the present case is covered against the petitioner in terms of five judgments of the Supreme Court and which are Secretary, State of Karnataka and Others Vs. Umadevi and Others 2006 (4) SCC 1, Official Liquidator Vs. Dayanand and Others (2008) 10 SCC 1, National Fertilizers Ltd. and Others Vs. Somvir Singh (2006) 5 SCC 493, Kendriya Vidyalaya Sangathan and Others Vs. L.V. Subramanyeswara and Another (2007) 5 SCC 326 and State of Orissa and Another Vs. Mamata Mohanty (2011) 3 SCC 436.

4. All the aforesaid five judgments of the Supreme Court with the relevant paragraphs have been referred to by this Court in the judgment dated 10.11.2016 in W.P. (C) No. 10368/2016 titled as Kumar Mayank Vs. Delhi Technological University and Another. The relevant paras of the judgment in the case of Kumar Mayank (supra) are paras 2 to 7 and the same read as under:-

“2. It is now over 10 years since the of passing of the judgment by the Constitution Bench of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi (3) and Others 2006 (4) SCC 1 and which judgment effectively puts to an end the „industry“ created of temporary appointments and thereafter regularization of such temporary employees. The Supreme Court has made it abundantly clear in Umadevi's case (supra) that before appointing of persons on a regular/permanent basis there have to exist recruitment rules or specific eligibility criteria laid down for the appointments, there must be sanctioned posts, there must be vacancies in the sanctioned posts, and finally there must be issued advertisements for filling the posts; not as temporary or contractual posts but as permanent posts; so that there should be a level playing field of competition with respect to prospective appointees. Candidates can also be called from the lists of employment exchanges. Umadevi's case (supra) has laid down the following ratio:-

“(I) The questions to be asked before regularization are:-
 (a)(i)Was there a sanctioned post (court cannot order creation of posts because finances of the state may go haywire), (ii) is there a vacancy, (iii) are the persons qualified persons and (iv) are the appointments through regular recruitment process of

(b) A court can condone an irregularity in the appointment procedure only if the irregularity does not go to the root of the matter.

(II) For sanctioned posts having vacancies, such posts have to be filled by regular recruitment process of prescribed procedure otherwise, the constitutional

mandate flowing from Articles 14, 16, 309, 315, 320 etc is violated.

(III) In case of existence of necessary circumstances the government has a right to appoint contract employees or casual labour or employees for a project, but, such persons form a class in themselves and they cannot claim equality(except possibly for equal pay for equal work) with regular employees who form a separate class. Such temporary employees cannot claim legitimate expectation of absorption/regularization as they knew when they were appointed that they were temporary inasmuch as the government did not give and nor could have given an assurance of regularization without the regular recruitment process being followed. Such irregularly appointed persons cannot claim to be regularized alleging violation of Article 21. Also the equity in favour of the millions who await public employment through the regular recruitment process outweighs the equity in favour of the limited number of irregularly appointed persons who claim regularization.

(IV) Once there are vacancies in sanctioned posts such vacancies cannot be filled in except without regular recruitment process, and thus neither the court nor the executive can frame a scheme to absorb or regularize persons appointed to such posts without following the regular recruitment process.

(V) At the instance of persons irregularly appointed the process of regular recruitment shall not be stopped. Courts should not pass interim orders to continue employment of such irregularly appointed persons W.P.(C) No.9109/2016 Page 4 of 25 because the same will result in stoppage of recruitment through regular appointment procedure.

(VI) If there are sanctioned posts with vacancies, and qualified persons were appointed without a regular recruitment process, then, such persons who when the judgment of Uma Devi is passed have worked for over 10 years without court orders, such persons be regularized under schemes to be framed by the concerned organization.

(VII)The aforesaid law which applies to the Union and the States will also apply to all instrumentalities of the State governed by Article 12 of the Constitution”.

3.The aforesaid ratio of the Supreme Court can be culled out from the following paragraphs of the judgment of the Supreme Court in Umadevi's case (supra):-

12. In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the Union or of the State Government cannot but be recognized and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognized and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme.

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xxx"

12. In the light of the ratio decided in the judgment as referred to above, the applicant is not entitled to any regularisation as his appointment was for a fixed period, extendable, on need basis and availability of funds. But since the services of the applicant have been dispensed without any notice, in contravention to the condition of the appointment letter, therefore, the respondents are liable to pay one month's salary to the applicant. Accordingly, the respondents are directed to pay one month's salary to the applicant in lieu of the notice period as per the condition (i) stipulated in the appointment letter. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

13. The OA stands disposed of in above terms. No costs.

In view of the order passed in OA, no separate order is required to be passed in MA No.3515/2015, which is accordingly disposed of.

(PRAVEEN MAHAJAN)
Member (Administrative)

(RAJ VIR SHARMA)
Member (Judicial)

/Rawat/