

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.3197/2014

M.A. No.2749/2014

M.A. No.2750/2014

M.A. No.2748/2014

Reserved on : 13.01.2017

Pronounced on : 19.01.2017

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

1. Ramvir Giri,
S/o Shri Sukhbeer Singh,
R/o 176/6, Okhla Village Jamia Nagar,
New Delhi-110025
(Aged 40 years)
(Daily Wage Chowkidar in MCD).
2. Ravinder,
S/o Shri Mahabeer Singh,
R/o Primary School P.H. 1,
J.J. Colony, M.P. Khadar,
New Delhi-110076
(Aged 40 years)
(Daily Wage Chowkidar in MCD).
3. Ashok Kumar Singh,
S/o Shri Radha Shyam Singh,
R/o 401, Sec-2, Sadiq Nagar,
New Delhi-110049
(Aged 43 years)
(Daily Wage Chowkidar in MCD).
4. Basant Kumar,
S/o Shri Ramashankar,
R/o 279, J.J. Colony,
P.H.-3, M.P. Khadar,
New Delhi-110076
(Aged 39 years)
(Daily Wage Chowkidar in MCD).

.. Applicants

(By Advocate : Shri Ajesh Luthra)

Versus

1. South Delhi Municipal Corporation,
Through its Commissioner,
Civic Centre, Minto Road,
New Delhi-02.
2. The Director (Education),
South Delhi Municipal Corporation,
23rd Floor, Civic Centre, Minto Road,
New Delhi-02.

.. Respondents

(By Advocate : Mrs. Kusum Sharma)

ORDER

Heard the learned counsel for both the sides and perused the pleadings.

2. The applicants are Daily Wager Chowkidars working in South Delhi Municipal Corporation. They had approached this Tribunal in T.A. No.223/2009, which was disposed of vide order dated 02.02.2012 with a direction to the respondents to examine the claim of the applicants as per the scheme of regularization followed by them to regularize the services of daily wage workers, keeping in view the decisions relied upon by learned counsel appearing for applicants and also the decision of the Hon'ble Supreme Court in **Uma Devi's** case.

3. The applicants had approached this Tribunal by filing CP No.581/2012, which was dismissed vide order dated 12.02.2014 but liberty granted to the applicants to agitate the matter against the speaking order dated 14.03.2013 separately.

4. According to the directions of the Tribunal, the respondents passed speaking order dated 14.03.2013, which was as follows:

“The department was in process to examine the matter in depth meanwhile the applicant file another application in the Hon’ble Tribunal vide CP(C) 581/2012 titled Ramvir Giri and others Vs. Shri Manish Gupta, Commissioner, SDMC and others.

It is submitted that in the department, there are three types of chowkidars working in the schools of SDMC. They are:

1. Rest Reliever daily wager Chowkidars (initial stage)- who are engaged to work in the leave vacancy of a regular chowkidar.
2. Daily Wager Chowkidar – who are engaged on regular basis as daily wager chowkidar against a vacant post without giving break, and
3. Regular Chowkidars”

Whereas **these applicants in the present TA were initially engaged as leave substitute chowkidars and fall under the first category of rest reliever daily wager chowkidars (leave substitute). These applicants were given status of Daily Wagers chowkidars of 89-89 days without break on 06/06/2007 during the year 2007-2008.**

The Corporation **vide its regularization policy, the services of those persons engaged** on Daily Wager regular basis having their appointment as daily wager regular basis (i.e. category number (2) **on or before 10/04/2006 without any break are to be regularized.**

Therefore they cannot be considered for regularization as per phase manner policy in existence.”

5. The present O.A. has been filed in pursuance of that liberty granted to them with the following prayer:

- “(a) Quash and set aside the impugned order dated 14.3.2013 placed at Annexure A/1
- (b) Direct the respondents to further consider the applicants for regularization and consequently regularize them w.e.f. the date when their juniors have been regularised
- (c) Award all consequential benefits as admissible to regular basis chowkidars including pay parity, seniority etc. and
- (d) direct the respondents to fix the applicants pay appropriately and release all arrears arising thereof

- (e) award costs of the proceedings and
- (f) pass any other order/direction which this Hon'ble Tribunal deem fit and proper in favour of the applicants and against the respondents in the facts and circumstances of the case."

6. The grounds on which the claim has been made by the applicants is that the applicants were engaged on regular basis as daily wager Chowkidar against a vacant post without break much prior to 2006. In this regard, the applicant No.1, Shri Ramvir Giri, has annexed with this Application initial appointment letters, in which he is shown to have been appointed against a vacant post of daily wager Chowkidar for the following periods:

Date of Order	Period	Remarks
05.02.2001	27.01.2001 to 06.02.2001	Leave Substitute
12.02.2001	07.02.2001 to 10.02.2001	Leave Substitute
20.02.2001	12.02.2001 to 17.02.2001	Leave Substitute
28.02.2001	21.02.2001 to 25.02.2001	Leave Substitute
28.02.2001	26.02.2001 to 28.02.2001	Leave Substitute
22.03.2001	12.03.2001 to 21.03.2001	Leave Substitute
09.05.2001	01.05.2001 to 06.05.2001	Leave Substitute
11.05.2001	07.05.2001 to 10.05.2001	Leave Substitute
09.05.2001	01.05.2001 to 06.05.2001	Leave Substitute
07.06.2001	11.05.2001 to 20.05.2001	Leave Substitute
02.07.2001	23.05.2001 to 31.05.2001	Leave Substitute
18.06.2001	05.06.2001 to 14.06.2001	Leave Substitute
11.07.2001	15.06.2001 to 30.06.2001	Leave Substitute
21.09.2001	06.07.2001 to 31.07.2001	Leave Substitute
08.10.2001	06.08.2001 to 31.08.2001	Leave Substitute
16.10.2001	06.09.2001 to 30.09.2001	Leave Substitute
07.11.2001	06.10.2001 to 26.10.2001	Leave Substitute
07.11.2001	27.10.2001 to 31.10.2001	Leave Substitute
28.11.2001	06.11.2001 to 26.11.2001	Leave Substitute
10.12.2001	28.11.2001 to 30.11.2001	Leave Substitute
31.12.2001	06.12.2001 to 31.12.2001	
30.01.2002	02.01.2002 to 14.01.2002	Leave Substitute
04.02.2002	16.01.2002 to 31.01.2002	Leave Substitute
14.03.2002	07.02.2002 to 20.02.2002	
19.04.2002	21.02.2002 to 28.02.2002	
06.05.2002	01.03.2002 to 25.03.2002	
29.05.2002	27.03.2002 to 30.03.2002	Leave Substitute
06.05.2002	01.04.2002 to 22.04.2002	
29.05.2002	24.04.2002 to 29.04.2002	Leave Substitute
30.05.2002	01.05.2002 to 27.05.2002	
12.07.2002	01.06.2002 to 24.06.2002	

31.07.2002	26.06.2002 to 30.06.2002	
31.07.2002	03.07.2002 to 29.07.2002	
04.09.2002	01.08.2002 to 28.08.2002	
23.09.2002	01.09.2002 to 28.09.2002	Leave Substitute
11.10.2002	02.10.2002 to 28.10.2002	Leave Substitute
17.12.2002	01.11.2002 to 28.11.2002	Leave Substitute
17.12.2002	01.12.2002 to 30.12.2002	Leave Substitute
09.01.2003	02.01.2003 to 30.01.2003	Leave Substitute
17.02.2003	01.02.2003 to 28.02.2003	Leave Substitute
27.03.2003	01.03.2003 to 29.03.2003	Leave Substitute
24.04.2003	01.04.2003 to 30.04.2003	Leave Substitute
12.05.2003	02.05.2003 to 31.05.2003	
26.06.2003	02.06.2003 to 30.06.2003	

In his case, attendance sheets have also been annexed, in which total attendance, year-wise, is shown as follows:

Year/Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2001					29	26	26	26	25	26	23	23
2002	26	24	27	25	24	26	24	27	26	26	27	31
2003	28	26	27	26	28	27	31	31	30	31	26	27
2004	26	29	31	30	31	30	31	31	30	31	30	31
2005	31	28	31	30	31	30	31	31	30	31	30	31
2006	31	28	31	30	31	30	31	31	30	31	30	31
2007	31	28	31	30	31	30	31	31	30	31	30	31
2008	28	25	26	25	27	27	28	27	26	26	26	26
2009	27	24	27	25	27	26	26	27	25	27	26	26
2010	31	27	26	26	27	26	27	27	25	27	26	26
2011	27	24	26	26	27	25	27	26	26	27	25	27

Similarly, for the other applicants, documents have been annexed.

7. The bone of contention is thus whether the applicants were engaged on regular basis as daily wager Chowkidars against a vacant post without break or they were engaged to work in the leave vacancy of a regular Chowkidar. The respondents in their reply to para 4.9 of the O.A., which mentioned the particulars of number of days that the applicants have been engaged and nature of their engagement, as already mentioned above, have reiterated their stand that the applicants were engaged as leave substitute and,

therefore, came under Category-1. The charts also indicate that the applicants indeed were engaged as Leave Substitutes. The form used to issue appointment itself clearly is for leave substitutes. Moreover, in several cases, 'leave substitute' is added for clarity and emphasis. Thus, the documents affirm the contention of the respondents.

8. In view of this, I find that the O.A. lacks merit and it is, therefore, dismissed. No order as to costs.

(P.K. Basu)
Member (A)

/Jyoti/