Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.3823/2012
with
O.A.No.3830/2012

Order Reserved on: 14.07.2016
Order pronounced on 03.08.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Dr. Birendra Kumar Sinha, Member (A)

O.A.No.3823/2012:

Sh. Sanjay Kumar (S.C.)
S/o Ramesh Chand
R/o F-2/449, Sultan Puri
Delhi – 110 086.
Previously Working in the M/o Statistics and P.I.
Sadar Patel Bhawan, Sansad Marg
New Delhi – 110 001. … Applicant

(By Advocate: Mr. G.D.Chawla for Mr. M.L.Chawla)

Versus

1. Union of India
   Through its Chief Statistician and Secretary
   Ministry of Statistics and P.I.
   Sardar Patel Bhawan, Sansad Marg
   New Delhi-110 001.

2. Deputy Director General (Admn.)
   Puspa Bhawan, IIIrd Floor
   Madangir Road
   `C' Wing, New Delhi-110 062.

3. Director General
   M/o Statistics and P.I.
   Sardar Patel Bhawan, Sansad Marg
   New Delhi – 110 001.

4. Assistant Director General (Admn.) DPD, HQ
   164 G.L.T.Road, Mahalnobis Bhawan
   Kolkatta – 700108. … Respondents

(By Advocate: Mr. Satish Kumar)

O.A.No.3830/2012:

Sh. Lalit Kumar (S.T.)
S/o Umrao Lal
R/o P-5-55, Mangol Puri
Delhi
NORTH, West Delhi, Delhi – 110 083.

Previously Working in the M/o Statistics and P.I.
Sadar Patel Bhawan, Sansad Marg
New Delhi – 110 001. … Applicant

(By Advocate: Mr. G.D.Chawla for Mr. M.L.Chawla)

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(By Advocate: Mr. Satish Kumar)

O R D E R

By V. Ajay Kumar, Member (J):

Since the question of law and facts involved in these two OAs are identical, they are being disposed of by this common order. For the sake of convenience, we have taken the facts of OA No.3823/2012.

2. The applicant in OA 3823/2012, on being sponsored by the Employment Exchange was engaged as Casual Worker, initially for a period of 6 months w.e.f. 03.06.2008 in the Data Processing Centre, New Delhi and the same was extended from time to time till 31.05.2012 with a break of three days w.e.f. 01.04.2011 to 03.04.2011. The applicant's OA No.1302/2012 questioning the order dated 30.03.2012 of the respondents whereunder it was proposed to end the service of casual labours and for other relief(s) was disposed of by an order of this Tribunal dated 20.04.2012 by directing the applicant to make a representation and with a further direction to the respondents to consider the same and to pass a speaking order thereon.

3. The respondents in pursuance of the said order considered the representation of the applicant, however, rejected the same vide the impugned order dated 25.07.2012.

4. Aggrieved with the same, OA No.3823/2012, has been filed seeking the following relief(s):

> " 8.1 To quash and set aside Impugned order at Ann. A-1, A-2, A3 and A-4 and direct the respondents to reinstate the applicant with continuity of service and other consequential benefits besides paying the arrears of difference in rate of daily wage; AND

8.2 To pass any other order or orders, direction or directions as deemed fit in the facts and circumstances of the case so as to meet the ends of justice;

8.3 To allow this OA with heavy cost, because the applicant has been dragged into avoidable litigation;"

5. Heard Shri G.D.Chawla for Mr. M.L.Chawla, the learned counsel for the applicant and Shri Satish Kumar, the learned counsel for the respondents, and perused the pleadings on record.

6. The respondents vide their impugned order dated 25.07.2012 given the following reasons in support of their action to reject the claim of the applicant:

"7. Whereas neither the terms nor the conditions of the employment of the applicant nor the existing rules on the issue support the claim of the applicants.

8. Whereas in the case of State of Karnataka v. Umadevi (3), the Constitution Bench considered the question whether the State can frame scheme for regularization of the services of adhoc/temporary/daily wager appointed in violation of the doctrine of equality or the one appointed with a clear stipulation that such appointment will not confer any right on the appointee to seek regularization or absorption in the regular cadre and whether the Court can issue mandamus for regularization or absorption of such appointee and answered the same in negative. Therefore, the deliberate tilted submission of the applicant especially with reference to the above case is not in order.

9. Whereas in Civil Appeal Nos.2129-2130 of 2004 (judgement delivered in 2011), the Supreme Court has reiterated that casual workers cannot claim regularization merely because they have been working for a considerable period of time. It has observed that the law consistently laid down by it was that casual employment terminates when the same is discontinued. In view of this, the applicant has no legal right for regularization.

10. Whereas the DOPT, while deliberating on the provisions of the scheme of 01.09.1993, has issued following clarification vide its OM No.40011/6/2002-Estt(c) dated 6th June, 2002:

"The scheme of 1-9-93 is not an ongoing Scheme and the temporary status can be conferred on the casual labourers under that Scheme only on fulfilling the conditions incorporated in clause 4 of the scheme, namely, they should have been casual labourers in employment on the date of the commencement of the scheme and they should have rendered continuous service of at least one year i.e. at least 240 days in a

> year or 206 days (in case of offices having 5 days a week). We also make it clear that those who have already been given `temporary' status on the assumption that it is an ongoing Scheme shall not be stripped of the `temporary' status pursuant to our decision". In view of the above, the applicant is not entitled to even "Temporary Status" and therefore the question of regularization does not arise."
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> 11. Whereas the Government of India vide DOPT's OM No.AB-14017/6/2009-Estt(RR) dated 12th May 2010 has given the mandate to make recruitment to all non-technical Group `C' posts in PB-1, Grade Pay 1800 in the Ministries/Departments of Government of India and their Attached and Subordinate Offices and therefore, any recruitment, except compassionate appointment on the post of MTS against which the applicant has requested for regularization has to be taken care of by the Staff Selection Commission only and hence the DPD has no way to regularize casual workers against such regular posts.
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> 12. Therefore, in view of the above it is regretted that the applicant's request cannot be acceded to."

7. In short, the respondents would contend that in view of the Constitution Bench decision of the Hon'ble Apex Court in **Secretary, State of Karnataka & Others** v. **Uma Devi (3) & Others** (2006) 4 SCC 1, any appointments made without following the due procedure will not confer any right on such appointees to seek regularization or absorption in the regular cadre and that no Court can issue any mandamus to any authority directing them to regularize the services of any such appointees.

8. Further, it was contended that the Scheme of 01.09.1993 is not an ongoing Scheme and the temporary status can be conferred on the casual labourers under that Scheme only on fulfilling the conditions incorporated in Clause 4 of the Scheme, namely, they should have been casual labourers in employment on the date of the commencement of the Scheme and they should have rendered continuous service of at least one year, i.e., at least 240 days in a year

or 206 days in case of offices having 5 days a week, and that since the applicant has not fulfilled the said conditions, is not entitled for any benefit under the Scheme.

9. The respondents further submit that in view of the latest policy of the Government, the posts of MTS in which the applicant is seeking regularization, have to be filled up by the Staff Selection Commission only and hence, the respondents cannot regularize the casual workers against any such regular post.

10. In **Uma Devi** (supra), the Hon'ble Apex Court observed as under:

> ñ45. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, 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. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. 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.ò

11. The learned counsel for the applicants while acknowledging the effect of the Constitution Bench decision of the Hon'ble Apex Court in **Uma Devi** (supra), however, submits that still the applicants are entitled for regularization of their services in terms of a subsequent decision of the Hon'ble Apex Court in **State of Gujarat and Others** v. **PWD Employees Union & Others,** (2013) 3 AISLJ SC 164. The relevant paragraphs of the same read as under:**Para 6, 10, 23 & 24:**

> "6. The present case pertains to daily wage workers of the Forest Department, who have been in service for about 5-30 years as on 29th October, 2010, of more than 240 days for large number of years, doing full- time work of a perennial nature as stated by the High Court of Gujarat in its judgment dated 29th October, 2010. In the said judgment, the High Court directed the authority to consider the above stated factors while deciding the individual cases for regularization.
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> 10. It is pertinent to mention that by order dated 3rd May, 2008 the Secretary, Forest and Environment Department, inter alia, admits that "the initial entry in the sense of engagement on daily wages does not suffer from any illegality or irregularity and was in consonance with the provisions of the Minimum Wages Act and continues to be so".
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> 23. The decisions in Uma Devi (supra) and A. Umarani (supra) were regarding the question concerning regularization of employees entered by back door method or those who were illegally appointed encouraging a political set up, in violation of Article 14 and 16 of the Constitution of India. We are of the opinion that both the aforesaid decisions are not applicable in the present case i.e. to the members of the respondent- Employees Union for the following reasons:
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> (i) The Secretary, Forest and Environment Department of the State of Gujarat by his order dated 3rd May, 2008 held that initially the entry of the daily wagers do not suffer from any illegality or irregularity but is in consonance with the provisions of Minimum Wages Act. Therefore, the question of regularization by removing procedural defects does not arise.

> (ii) The Gujarat High Court by its judgment dated 29th October, 2010 passed in SCA No.8647 of 2008 while noticing the aforesaid stand taken by the State also held that the nature of work described in the order dated 3rd May, 2008 shows that the daily wage-workers are engaged in the work which is perennial in nature.
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> (iii) The case of A.Uma Rani (supra) related to regularization of services of irregular appointees. In the said case this Court held that when appointments are made in contravention of mandatory provisions of the Act and statutory rules framed therein and in ignorance of essential qualifications, the same would be illegal and cannot be regularized by the State.
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> 24. Thus, the principal question that falls to be considered in these appeals is whether in the facts and circumstances it will be desirable for the Court to direct the appellants to straightaway regularize the services of all the daily wage workers working for more than five years or the daily wage workers working for more than five years are entitled for some other relief."

12. In the aforesaid case, the members of the respondents-Union, were working as daily wage workers for about 5 to 30 years and that they have worked for more than 240 days for large number of years and the work for which they were engaged is in perennial nature. Further, in the said case, the authorities themselves had admitted that the initial entry in the sense of engagement on daily wages does not suffer from any illegality or irregularity and was in accordance with rules. In the present case, the applicants worked only for four years and the work is also not of the perennial nature. Hence, the decision in **PWD Employees Union** (supra), which was passed in the peculiar circumstances of the said case, cannot be made applicable to the applicants' case.

13. In the circumstances and for the aforesaid reasons, we do not find any merit in the OA and the same is dismissed. No costs.

(Dr. Birendra Kumar Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

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