

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.4075/2014

Order Reserved on: 12.01.2016
Order pronounced on 21.01.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri Shekhar Agarwal, Member (A)

Hilter Singh Bisht (sic. Hitler)
Group 'D'
Aged 45 years
S/o Late Mahipal Singh Bisht
R/o RZ-410A/318, Gali No.6
Geetanjali Park
West Sagar Pur
New Delhi – 110 046. ... Applicant

(By Advocate: Sh. Asish Nischal)

Versus

1. Council of Scientific
and Industrial Research
through its Director General
RAFI Marg
New Delhi – 110 001.
2. Indian Institute of Petroleum
Through its Director
Dehradun. ... Respondents

(By Advocate: Sh. C.B.N.Babu)

O R D E R

By V. Ajay Kumar, Member (J):

The brief facts, as narrated by the applicant, are that he joined in the 2nd Respondent-Indian Institute of Petroleum (IIP) on 01.01.1992, as Helper, on contractual basis, through a Contractor, and worked till November, 1995 and thereafter, his services were dispensed with.

2. On his representation, a dispute was referred by the Government of Uttarkhand vide ID No.42/2004 to the Labour Court, Uttarakhand at Dehradun and the same was rejected by Order dated 26.10.2009 after holding that the 2nd respondent-IIP is under the control of the 1st Respondent - Council for Scientific and Industrial Research - and hence, the reference can be made only by the Central Government and not by the State Government.
3. Accordingly, on reference by the Central Government, another ID No.89/2012 was raised before the Central Government Industrial Tribunal-cum-Labour Court, Karkarduma, Delhi and the said ID was disposed of by passing a "no dispute award" as the applicant expressed his willingness to withdraw the ID, by order dated 13.02.2014.
4. Thereafter, the applicant preferred the present OA along with an MA No.2248/2014 seeking condonation of delay.

5. Heard Shri Asish Nischal, the learned counsel for the applicant and Shri C.B.N.Babu, the learned counsel for the respondents and perused the pleadings on record.

6. The learned counsel for the applicant submitted that the delay in filing the OA is required to be condoned as the applicant pursued his case bonafidly before wrong forums.

7. The learned counsel further submits that the applicant completed 240 days and hence entitled for regularization. He further submits that certain others who are similarly placed like the applicant were regularized and hence, he is also entitled for the similar benefit.

8. The respondents while disputing the contention of the respondents that he worked till 1995 prays for dismissal of the OA on the grounds of violation of Sections 20 and 21 of the Administrative Tribunals Act, 1985, i.e., non-availing of the alternative remedy of making representation to the respondents before approaching this Tribunal and the delay in filing the OA respectively, and in view of the decision of the Constitution Bench of the Hon'ble Apex Court in **Secretary, Statement of Karnataka & Others v. Uma Devi & Others**, (2006) 4 SCC 1.

9. Even, according to the applicant, the engagement of the applicant was through a Contractor and for only a limited period of three years. Admittedly, his engagement was not against any existing

vacancy and was not as per the procedure established under law and was also for a very limited period.

10. The Hon'ble Apex Court in **Uma Devi (supra)** held as under:

"43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates."

11. Except contending that some other similarly placed persons were regularised, the applicant has not placed any of the details of their regularization such as dates of their regularization, orders of their regularization or the circumstances or any scheme under which they were considered, the total period they worked and how the applicant is similarly placed like them, etc. In the absence of the same no finding can be given on the said issue. It is also not forthcoming whether the said alleged regularization was before the **Umadevi** case (supra) of the Hon'ble Supreme Court or after the same.

12. In view of the above settled position of law and in the facts of the case, we do not find any merit in the OA. Accordingly, the same is dismissed without any costs.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member (J)

/nsnrvak/