

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00005/2017

DATED THIS THE 26TH DAY OF FEBRUARY, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

Sri N.M. Siddaraju Gowda alias
Siddaraju,
Age: 38 years,
S/o Sri N. Manchegowda,
(Ex GDS Provisional appointee),
Mandya,
Residing at:
H-221-3rd Cross,
Hosahalli,
Hanumagudi Road,
Mandya – 571 401

.....Applicant

(By Advocate Shri P. Kamalesan)

Vs.

1. Union of India,
Represented by
Director General of Post,
Department of Post,
Dak Bhavan,
New Delhi – 110 001.

2. Chief Post Master General,
Karnataka Circle,
Bangalore – 56001.

3. Post Master General,
South Karnataka Circle,
Bangalore – 560 001.

4. Senior Superintendent of RMS,
Q Division,
Bangalore – 560 026.

....Respondents

(By Shri M. Rajakumar, Senior Central Government Counsel)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J))

Heard. Apparently vide the specific input in paragraph 5 of the judgment in Writ Petition No. 1239/2014 dated 11.01.2016 the order of the Tribunal was set aside. Because of its great importance we hereby quote paragraph 5 of the order:

“5. The CAT without considering the service records of the respondent, without verifying as to the nature of work, without verifying as to the number of days on which the respondent has worked in the establishment etc., has proceeded to pass order directing petitioners herein to regularize the services of the respondent. Not only the poverty of the respondent needs to be kept in mind but also the other factors which flow from the reported judgments of the other High Courts and this Court, ought to have been considered by the CAT while passing the order of regularization. Since, we find that the CAT has not assigned acceptable reasons for coming to the conclusion, we deem it proper to set-aside the order passed by the CAT. Accordingly, the order of the CAT stands quashed. However, the petitioners are directed to consider the prayer of the respondent for regularisation of his services in accordance with law as early as possible, but not later than the outer limit of four months from the date of receipt of copy of this order.

*With the above observation, writ petition stands **allowed**.”*

2. There seems to be some lacunae in explaining the matters to the Hon'ble High Court at this point of time because under rules of evidence and its procedure the initial burden stands constant. When the applicant makes allegation, it is upon him to prove that point but the onus of proof is different. The onus will shift like a pendulum depending on the allegations and cross-allegations. Vide Annexure-A3 people like the applicant seems to be engaged but on the specific input that they should not be engaged more than 240 days in a year. Their service will be terminated in time to avoid a claim for regular posting which is the case of the respondents also at this point of time when these people were used for contingent works and they were not given any regular appointment order. We quote Annexure-A3 in full below:

"DEPARTMENT OF POSTS

From:
The Superintendent
RMS 'Q' Division.
BANGALORE-560026

To:
The Sub-Record Officer
RMS 'Q' Division
MANDYA

No.C-114 dated at Bangalore-26, the 12/03/01

Sub: Engagement of outsiders at SRO Mandya.
Ref: RO Lr. No.SK/ML/PTCL/98 dtd 5.3.01.

- - -

The following outsiders can be engaged at SRO Mandya if EDs are not available.

1. *Shri Y.N. Gururaja Rao outsider from PO Mandya.*
2. *Shri Siddaraju -"- -"-*

Hence while engaging these outsiders the following points are to be strictly adhered.

a. While engaging it is to be strictly observed that they are not engaged for a continuous period for more than 4 days in a week or more than 20 days in a month or 240 days in a year.

b. A careful watch should be kept while engaging (including EDs from POs) that nobody is engaged for more than 240 days in a year. The service should be terminated in time to avoid the claim for regular postings.

c. The outsiders have to be arranged in piece-rate basis with required time only instead of giving full time duty.

This is in supersession of orders issued vide Lr. No. B.II/43/VI dated 23-02-2001.

*SUPERINTENDENT
RMS 'Q' DIVISION, BANGALORE-26.*

Copy to:

01. The IRM Q II Sub Dn., Mysore-21.
02. The HRO A/Cs RMS 'Q' Dn., B'lore-26.
03. STA II Acct branch of DO;
04. File.

*SUPERINTENDENT
RMS 'Q' DIVISION, BANGALORE-26."*

Without any doubt, without a regular appointment order no government authority can appoint a person and extract labour from them. So therefore they would say now after filing a Writ Petition that records have not been produced by the applicant. **"Since they have not given any records to the applicant, applicant cannot naturally produce it also."**

3. Therefore the question is whether the illegality will work against the applicant?

Surely it will not because for the very simple reason that all these while the applicant would have been paid, his payment will be noted in the Acquittance Register which is the permanent record. The respondents is the custodian of the said document therefore going by the best evidence principle under the Evidence Act this is to be produced only by the respondents and applicant has no role to produce any of the records.

4. In addition, the respondents admits that applicant had worked therefore the onus of proof has now swing to their court. It is for them to now prove how much time the applicant has worked and to what level and what role granted to him and whether any right flows out of such employment even though it may be

fettered with uncertainty. At this point of time Shri M. Rajakumar, learned counsel for the respondents, submits that he may have worked one or two hours. It may be, we do not know. Only the respondents can highlight this point and say what is the number of hours and the number of days or the number of years the applicant has worked from 2001 to 2012. They cannot shift this burden to some others shoulders. That being so, it appears to us that a very frivolous and vexatious contention have been taken by the respondents.

5. We now, therefore, hold that since there is an admission from the part of the respondents that applicant has worked with them from 2001 to 2010 or 2012 as the case may be and the respondents admits that he was discharged from service and the issue arose for consideration. If the applicant had worked for more than 12 years, under the tenets enunciated under Umadevi judgment of the Constitutional Bench of the Hon'ble Apex Court, the applicant has completed and formalized his rights for consideration. It is the duty of the respondents to challenge it with cogent and verifiable records which they have in their own possession, admittedly. But unfortunately they seem to have raised a contention that applicant must be granted the burden of proving this point which is against them. Fortunately our rules of evidence are very clear on this subject. This is a matter to be proven entirely by the respondents and applicant has no role to play in this matter. Therefore we reiterate the earlier order and state that since the respondents have not complied with their duty, the applicant is eligible for regularization under law.

6. At this point of time, Shri M. Rajakumar, learned counsel for the respondents, submits that applicant had worked only for 9 years. We do not know. This is a fact only known to the respondents and therefore they are the

custodian of this knowledge. Since they have not brought any evidence to prove or disprove the matter other than saying that he has worked for 9 years only, no decision can be taken. The case of the applicant is available from Annexure-A3 and the admitted fact that he was removed from service in 2012 is that he might have worked for 12 years. If there are to be any distinction, the distinction are to be proved by the authority as the connected records is with them. The earlier order is reiterated.

7. At this point of time the learned counsel for the respondents makes one more submission and seeks it to be recorded. He would say that this is an irregular appointment and therefore cannot be sustained. If that be so and matters have started 17 years back, what is the action they have taken against the person who have conducted their function irregularly and if they have obtained labour from all these people how they have shown in their records as having been committed. We will now therefore grant them liberty to take action against the concerned persons if it is warranted under law since it is their wish to do so. If there is a fault on the side of government officer in all these 17 years then let them take action against them but that cannot be countenance on the applicant who has worked even though on irregular basis. Therefore the applicant is eligible for regularization.

8. In view of the frivolous and vexatious contention of the respondents, the OA is allowed with a cost of Rs.25,000/-.

(PRASANNA KUMAR PRADHAN)

MEMBER (A)

(DR.K.B.SURESH)

MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00005/2017

1. Annexure A1 Copy of letter No.PF/KS/EDA/Dlgs/98-99 Dated: 01.11.1998, issued by Post Master, Mandya
2. Annexure A2 Copy of Letter No. C-14/Dated 16.01.2001 of Superintendent RMS Q Division, Bangalore – 560 026
3. Annexure A3 Copy of Letter No. C-114 Dated 12.03.2001 of Superintendent RMS Q Division, Bangalore – 560 026

4. Annexure A4 Copy of representation dated 22.05.2012
5. Annexure A5 Copy of Central Administrative Tribunal, Bangalore Bench order dated 30.10.2013 in OA No. 65/2013
6. Annexure A6 Copy of Hon'ble High Court of Karnataka order dated 11.01.2016 in Writ Petition No. 1239/2014 (S-CAT)
7. Annexure A7 Copy of Duty Particulars of applicant from 2005 to 2011
8. Annexure A8 Copy of Superintendent RMS 'Q' Division, letter No. C-1/CAT/Outsiders/2013 Dated 06.05.2016
9. Annexure A9 Copy of Hon'ble Apex Court order in Union of India Vs. Kesari and Others dated 03.08.2010

Annexures with Reply Statement

Nil

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