

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.438 of 2014

Cuttack this the 16th day of February, 2018

CORAM:

THE HON'BLE SHRI S.K.PATTNAIK, MEMBERA(J)
THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Lalmohan Mohanta, aged about 46 years, S/o. late Debendra Mohanta, Vill:Kuchejudi, Po-Rairangpur, Dist-Mayurbhanj – at present working as Contingent Paid Worker, Rairangpur HO, Mayurbhanj.

...Applicant

By the Advocate(s)-Mr.D.K.Mohanty

-VERSUS-

Union of India represented through:

1. The Director General of Posts, Ministry of Communication, Dept. of Posts, Sansad Marg, Dak Bhawan, New Delhi-1.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, Dist-Khurda-751 001.
3. The Superintendent of Post Offices, Mayurbhanj Division, Mayurbhanj.
4. The Inspector of Posts, Rairangpur Sub-Division, Mayurbhanj.
5. Postmaster, Rairangpur HO, Rairangpur, Mayurbhanj.

...Respondents

By the Advocate(s)-Mr.S.K.Patra

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant was working as a Contingent Paid Worker under the Postmaster, Rairangpur H.O. (Respondent No.5) in the Department of Posts. He had joined as a Contingent Paid Waterman at Rairangpur H.O. on 1.4.1988 and claims that he has been continuously working in that capacity. On 3.1.2013, he

submitted a representation to the Superintendent of Post Offices, Mayurbhanj Division, Mayurbhanj (Res.No.3) praying for conferment of temporary status and regularization (A/7). On 16.2.2013, his representation was rejected by the Postmaster, HSG-I, Rairangpur H.O. (Respondent No.5) informing him that since his working hour is less than 8 hours, he is not entitled to get temporary status. The applicant has filed this O.A. challenging this impugned letter dated 16.2.2013 and has prayed for a direction to respondents to confer temporary status and grant regularization to him retrospectively.

2. The applicant has based his prayer on the ground that he has been continuously working as a Contingent Paid Worker since 1.4.1988 and has become age-barred for any other job. He has completed 240 days in every Calendar Year since his appointment and therefore, his services ought to have been regularized as per the principles of law. Temporary Status has been extended to similarly situated persons and denial of the same to the applicant is a violation of Articles 14 and 16 of the Constitution of India. Non-conferment of temporary status is a clear case of exploitation of labour and is against the settled principles of law.

3. The Respondents in their counter-reply filed on 24.10.2014 submitted that the applicant has been working as a

Contingent Waterman since 1.4.1988 at the Rairangpur H.O. His job is to supply water to thirty staff of Rairangpur H.O. and his working hour is 2 hrs. 24 minutes fixed according to norms of one Waterman in Group-D cadre. The applicant is being paid remuneration on pro rata basis according his workload and since he does not work for at least 8 hours a day, he is not entitled to conferment of temporary status as per the departmental rules and guidelines. The applicant was not recruited through the Employment Exchange and therefore, cannot be conferred with temporary status since his appointment is irregular. There are two other casual labourers who are engaged for more than 8 hours per day and they are eligible for getting exemption or sponsorship from Employment Exchange and are eligible for conferment of temporary status. The Respondents have cited the judgment of the Hon'ble Supreme Court in **Secretary, State of Karnataka vs. Umadevi [2006 AIR SCW 1991]** in which it has been held "employment on daily wages/temporary/contractual employees does not mean permanence in service. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of relevant rules. No right can be founded on employment on daily wages to claim that such employees should be treated on a par with a regularly recruited candidate, and made permanent in employment even assuming

that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis to claim that they have a right to be absorbed in service. They cannot be said to be holder of a posts since a regular appointment could be made only by making appointments consistent with the requirements of Arts. 14 and 16 of the Constitution. The right to be treated equal with the other employees employed on daily wages cannot be extended to a claim for equally treatment with those who are regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules”.

4. We have heard the learned counsels from both the sides and perused the documents submitted by them. During the course of arguments, the learned counsel for the applicant cited order of this Tribunal in O.A.No.227 of 2011 disposed of on 8.5.2012 wherein 15 Casual Mazdoors working in RMS under the Department of Posts were granted relief by this Tribunal. The relevant part of the order reads as follows:

- i) To treat the applicants as part-time casual labourer from 1994 having due regard to instructions/clarification issued by Department of posts vide letter dated 17.5.1989.
- ii) To examine whether the applicants could be made full time by readjustment of

combination of duties as per stipulation in DI Dept. of Posts letter dated 16.9.1992.

- iii) To examine whether the applicants have served for 480 days in a period of 2 years so as to treat them, for the purpose of recruitment, to have completed one year of service as full time casual labourers, as per Department of Posts vide letter dated 11.7.5.1989.
- iv) Accordingly, rank them in priority at Sl.No.(iii) as has been indicated in letter dated 28.1.2011(Annexure-A/6).

5. This order of the Tribunal was challenged by the Respondent-Department before the Hon'ble High Court of Orissa in W.P.C.No.20506 of 2012 and the Hon'ble High Court of Orissa vide judgment dated 05.05.2014 upheld the orders of this Tribunal and dismissed the aforesaid Writ Petition.

6. The issue to be decided in the present O.A. is whether the applicant is entitled for conferment of temporary status in the Department of Posts in view of his engagement as a Contingent Paid Waterman at Rairangpur H.O. with effect from 1.4.1988. The documents show that he was appointed in that capacity vide Memo No.Ch.-ii dated 25.2.1988 on payment of Water Allowance of Rs.250/- per month + D.A. as admissible from time to time. He has been working in that capacity till the filing of the present O.A. The Department of Posts had issued a circular in the Directorate Letter No.45-87SPR I dated 12.4.1991 on the subject of Casual Labourers (Grant of

Temporary Status & Regularization) Scheme which states as follows:

- “1. Temporary status would be conferred on the casual labourers in employment as on 29.11.89 and who continue to be currently employed and have rendered continuous service of at least one year. During the year they must have been engaged for a period of 240 days (206 days) in the case of offices observing five days weeks.
2. Such casual workers engaged for full working hours viz. 8 hours including ½ hours lunch time will be paid at daily rates on the basis of the minimum of the pay scale for a regular Group-D official including DA, DRA, CCA.
3. Benefit of increment at the same rate as applicable to a group D employee would be taken into acct. for calculating per month rate wages, after completion of one year of service from the date of conferment of temporary status, such increment will be taken into acct. after every one year of service subject to performance of qnty. for at least 240 days (206 days in establishment observance five days week) in the year.
4. Leave entitlement will be one day for every 10 days of work, casual leave or any other kind of leave except materiality leave will not be admissible. No encashment of leave is permissible on termination of services for any reason or on the casual labourers quitting service.
5. Maternity leave to full time casual labourers will be allowed as admissible to regular group D employees.
6. 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after regularization as a regular group D official.
7. Conferment of temporary status does not automatically imply that the casual labourers would be appointed as a regular Group D

employee within any fixed time frame. Appointment to Group D vacancies will continue to be done as per the extent recruitment rules, which stipulated preference to eligible to employees.

8. After rendering three years continuous service after conferment of temporary status, the casual labourers would be treated at par with temporary group D employee for the purpose of contribution to general provident fund. They would also further be eligible for the grant of Festival advance/field advance on the same conditions as are applicable to temporary group D employee provided they furnished two securities from permanent Govt. servants of this Dept.
9. Their entitlement to productivity linked bonus will continue to be at the rate applicable to casual labourers.
10. Temporary status does not debar dispensing with the services of a casual labourer after following the due procedure.
11. If a labourers with temporary status commits a misconduct and the same is proved in enquiry after giving him reasonable opportunity, his service will be dispensed with.
12. Casual labours may be regularized in units either then recruitment units also subject to availability of vacancies.
13. For purpose of appointments as regular Group-D official, the casual labours will be alleged age relaxation to the extent of service renders by them as casual labourers.
14. The casual labours can be deployed anywhere within the recruitment unit/territorial circle on the basis of availability of work.
15. The engagement of the casual labourers will continue to be on daily rates of pay on need basis.

16. The conferment of temporary status has no relation to availability of sanctioned regular Group-D posts.
17. No recruitment from open market for Group D posts except compassionate appointment will be done till casual labourers with requisite qualifications are available to fill up the post in question.

Further selection may be taken regard to casual labourers by each units as per the above said scheme. This issues with the approval of Ministry of Finance and concurrence of Integrated Finance vide their Dyh.No.1282-FA/9 dt. 10.4.91”.

7. Subsequent to Umadevi judgment, the Department of Posts, Ministry of Communications had issued a further circular No.66-50/2014-SPBI dated 30.6.2014, the extract of which is reproduced herein below:

- i) Regularization of all the Casual Labourers, who have been irregularly appointed, but are duly qualified persons in terms of statutory recruitment rules for the post and was engaged against a sanctioned post, shall be done if they have worked for 10 years or more but not under the covers of orders of courts or tribunals as on the date of Hon'ble Apex Courts' ibid judgment i.e., 10.04.2006.
- ii) A temporary, contractual, casual or daily wage worker shall not have a legal right to be made permanent unless he/she fulfills the above criteria.
- iii) A Casual Labourer engaged without following the due process or the rules relating to appointment and does not meet the above criteria shall not be considered for their absorption, regularization, permanency in the Department.
- iv) If a Casual Labourer was engaged in infraction of the rules of if his engaged is in violation of the provisions of the

Constitution, the said illegal engagement shall not be regularized”.

8. The applicant has also cited the order of this Tribunal in O.A.No.227 of 2011, which has been upheld by the Hon’ble High Court of Orissa. Paragraphs-5 and 6 thereof are reproduced hereunder for the purpose of clarity and guidance.

“5. Respondent-Department have filed their counter opposing the prayer of the applicants. While they have not disputed working of the applicants as Substitutes in the year 1984 and further engagement as Mazdoors since 1994, it has been submitted that none of the applicants was recruited through the Employment exchange. Further, Respondents have submitted that as per Lr.No.65-24/88/SPB.I Dtd. 17th May, 1989 issued by the Department of Posts, substitutes engaged against absentees should not be disengaged as casual labourers. For the purpose of recruitment to Group D posts, substitutes should be considered only when casual labourers are not available. To substantiate their stand, they have submitted the rank of substitutes as under.

i) NTC Group D officials
 ii) EDAs of the same division.
 iii) Casual Labourers
 iv) EDAs of other division in the same region.
 iv) Substitutes
 vi) Direct recruits through Employment exchange.

6. According to Respondents, there are 25 nos. EDAs(Now GDSMM) in Bhubaneswar RMS and total 93 EDAs (now GDSMM) in the Division are working and awaiting for regularization after serving more than 25 years as EDAs(GDSMM). Bringing to notice of the Tribunal G.I.Deptt. P&T OM No.49014/18/84-Estt© dated 7th May, 1985, it has been submitted that casual employees not recruited through Employment Exchange

are not entitled to be bestowed with temporary status. In so far as grant of temporary status on part-time employee is concerned, it has been submitted that no such status could be conferred on part-time employee”.

9. Respondents have admitted in their counter-reply that the applicant has been working as a Contingent Waterman at Rairangpur H.O. since 1.4.1988 on continuous employment and “he supplies water to 30 staff of Rairangpur H.O.”. The Respondents however, have clarified that applicant’s present working hour is “2 hrs. 24 minutes”. This statement is baffling since a Waterman has to supply water to the staff during the time that the staff work in the office and it cannot be established that the Waterman will supply water only for 2 hrs. 24 minutes and for the rest of the time, the staff in the office will make their own arrangement for having water. The Respondents have quoted “norms of one Waterman in Group-cadre to serving staff of the 100 officers”. It is presumed that since the applicant is serving around 30 staff members, the calculation of 2 hrs. 24 minutes is based on 8 hours for serving 100 staff members ($8 \times \frac{3}{10} = 24 \text{ hours} = 2 \text{ hrs. 24 minutes}$). This defies logic. A Waterman has to stay in the office for full 8 hours whether he served 30 or 100 staff members. This absurd system of calculation of 2 hrs. 24 minutes has been done only to deny the applicant a chance for getting temporary status and eventual regularization. Post Umadevi judgment the

practice of regularization of Casual Labourers is discouraged. However, the applicant has worked continuously since 1988 and at the time of Umadevi judgment he had worked continuously for 18 years. At the time of filing the O.A. the applicant has rendered service for 26 years. Any convoluted argument fixing his working hours as 2 hrs. 24 minutes while stating that he serves water to 30 members of staff is illegal and arbitrary. Recently the Hon'ble Supreme Court in Amarkant Rai vs. State of Bihar & Ors. (Civil Appeal No.2835 of 2015(Arising out of SLP (Civil) No.20169/2013) decided on 13.03.2015), wherein the applicant had served the Ramashray Baleshwar College, Bihar for more than twenty nine years on daily wage basis, passed the judgment in his favour for regularization. The relevant excerpts from the judgment are as follows:

“14.In our view, the exception carved out in para 53 of Umadevi is applicable to the facts of the present case. There is no material placed on record for the Respondents that the Appellant has been lacking any qualification or bear any blemish record during his employment for over two decades. It is pertinent to note that services of similarly situated persons on daily wages for regularization viz. one Yatindra Kumar Mishra who was appointed on daily wages on the post of Clerk was regularized w.e.f. 1987. The Appellant although initially working against unsanctioned post, the Appellant was working continuously since 03.1.2002 against sanctioned post. Since there is no material placed on record regarding the details whether any other night guard was appointed against the sanctioned post, in the facts and circumstances of the case, we are inclined to award monetary benefits be paid from 01.01.2010.

15.Considering the facts and circumstances of the case that the Appellant has served the University

for more than 29 years on the post of Night Guard and that he has served the College on daily wages, in the interest of justice, the authorities are directed to regularize the services of the Appellant retrospectively w.e.f. 03.01.2002 (the date on which he rejoined the post as per direction of Registrar).

16.The impugned order of the High Court in LPA No.1312 of 2012 dated 20.02.2013 is set aside and this appeal is allowed. The authorities are directed to notionally regularize the service of the Appellant retrospectively w.e.f. 03.01.2002, or the date on which the post became vacant whichever is later and without monetary benefit for the above period. However, the Appellant shall be entitled to monetary benefits from 01.01.2010. The period from 03.01.2002 shall be taken for continuity of service and pensionary benefits.

17.The appeal is allowed in terms of the above. No order as to costs”.

10. In the present case, there is nothing on record to dispute the fact that the applicant has been working continuously since 1988. But the calculation of “2 hrs. 24 minutes” having been rejected and the Respondents having admitted that the applicant has been working continuously, we are of the considered view that the applicant should be conferred with temporary status with effect from the date the Temporary Status Scheme has been introduced in the Department treating his service as continuous from 1.4.1988. He will also be entitled to regularization as per rules once temporary status has been conferred upon him. Necessary orders to this effect may be passed by the Respondents within a period of eight weeks from the date of receipt of this order.

11. With the above observation and direction, the O.A. is disposed of with no order as to costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

(S.K.PATTNAIK)
MEMBER(J)

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