

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/501/2017

Cuttack this the 24th day of August, 2018

CORAM:

THE HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Shri Sudarsana Behera, aged about 32 years, S/o.Shri Surendra Behera, At-Plot No.1211, At/PO/PS-Mancheswar, Bhubaneswar, Dist-Khurda-751 017 – working as a Casual Worker in the office of the Zonal Accounts Office, CBDT, Aayakar Bhawan, 5th floor, RajaswaVihar, Bhubaneswar

...Applicant

By the Advocate(s)-M/s.J.M.Pattnaik
C.Panigrahi

-VERSUS-

Union of India represented through:

1. The Secretary (Revenue), Ministry of Finance, Department of Revenue, Central Secretariat, New Delhi-110 001.
2. The Controller General of Accounts, Central Board of Direct Taxes, Mahalekha Niyantarak Bhawan, E-Block, GPO Complex, New Delhi-110 023.
3. The Deputy Controller of Accounts, Government of India, Ministry of Finance, Office of the Central Board of Direct Taxes, Zonal Accounts Officer (CBDT), Bamboo Villa (Annexe) 169, A.J.C.Bose Road, Kolkata-700 014.
4. The Principal Chief Controller of Accounts, Government of India, Ministry of Finance, Office of the Central Board of Direct Taxes, 9th floor, Lokanayak Bhaban, Khan Market, New Delhi-110 003.
5. Principal Chief Controller of Accounts, Central Board of Direct Taxes, Government of India, Ministry of Finance, Department of Revenue, Zonal Accounts Office, Central Board of Direct Taxes, Aayakar Bhawan, 5th floor, RajaswaVihar, Bhubaneswar-751 007.
6. The Zonal Accounts Officer, O/o. the Principal Chief Controller of Accounts, Central Board of Direct Taxes, Government of India, Ministry of Finance, Department of Revenue, Zonal Accounts Office, Central Board of Direct Taxes, Ayakar Bhawan, 5th floor, RajaswaVihar, Bhubaneswar-751 007.

...Respondents

By the Advocate(s)-Mr.B.R.Mohapatra

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant is working as a casual worker in the Office of the Zonal Accounts Officer, CBDT at Bhubaneswar. He was appointed against a Group-D vacant post (which has been re-designated as MTS) since 1.7.2004. He is

aggrieved by the decision of the respondents not to regularize his services in terms of the judgment of the Hon'ble Apex Court in Secretary, State of Karnataka vs. Uma Devi (2006) 4 SCC 1. The applicant claims that he is a Matriculate and has been working continuously since July, 2004. He had approached his superior authorities for regularization which was recommended by the Zonal Accounts Officer vide letter dated 25.2.2009 followed by another letter dated 14.10.2009 to the Controller of Accounts, CBDT, New Delhi. His representation was not considered although he sent further copies of representation. At A/4 is the letter No.ZAO/CBDT/Admn/11-12/796 dated 19.07.2011 by the Zonal Accounts Officer to the Controller of Accounts, O/o. the Principal Chief Controller of Accounts, New Delhi recommending the case of the applicant for regularization. The applicant claims that despite this recommendation no order has been passed for his regularization and therefore, he has filed this O.A. praying for the following reliefs.

- i) To direct the Respondents to regularize the applicant in the post of Gr.D/MTS w.e.f. 30.11.2009 i.e., the date when Gr.D/MTS vacancy was made available due to retirement of the regular incumbent and pay him all his service and financial benefits retrospectively;
- ii) To pass any other order/orders as deemed fit and proper.

2. The applicant has based his prayer mainly on the ground that he has been working as a casual labour ever since his 1st appointment from July, 2004 and has been continuously working as an MTS. Non-regularization of his service by the respondents is therefore illegal and arbitrary. He had submitted a number of representations to the higher authorities for his regularization, but no action has been taken by them nor has he got any relief. He claims that his case is squarely covered by the judgment of the Hon'ble Apex Court in Uma

Devi case (supra). He has already completed more than 10 years of continuous service with the respondents and the issue of providing employment to casual labourers who have put in many years of service is no longer *res integra*.

3. The Respondents in their counter reply filed on 4.5.2018 have contested the claim of the applicant. It is their contention that the applicant was engaged on daily wage basis to perform works of contingent nature in the year 2004 and has been working with intermittent breaks whenever work is available to meet the exigencies. He has not been engaged on regular basis as a Group-D employee or Multi Tasking Staff (MTS) through a formal recruitment process. He was engaged only on daily wage basis to meet the exigency of work of contingent nature. Although the Zonal Accounts Officer, CBDT has written a letter on 19.7.2011, the applicant could not be regularized under the rules and was allowed to continue on daily wage basis till a regular MTS was to be appointed. His application was forwarded by the Zonal Accounts Officer, CBDT, Bhubaneswar to Controller of Accounts for consideration of his request for regularization which is not permissible under the rules. The judgment of the Hon'ble Apex Court in Secretary, State of Karnataka vs. Uma Devi (supra) is not applicable to him since he has not been recruited through a due process nor against a regular vacancy. The respondents have cited the judgment of the Hon'ble Apex Court in State of Himachal Pradesh vs. Suresh Kumar Verma [(1996(1) SC 972)] wherein it has been held that a person appointed on daily wage basis was not an appointee to a post according to rules. Having made rules of recruitment to various services under the State or a class of post under the State, the State is bound to follow the same and to have the selection of candidates made as per recruitment rules. Similarly in Hari Nandanprasad & Anr. Vs. Employer I/R To Management (AIR 2014 SC 1848),

the Hon'ble Apex Court has clearly laid down that in the absence of any unfair labour practice the Labour Court cannot give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of years.

4. The applicant has filed a rejoinder on 9.5.2018 reiterating that on 24/25.2.2009, the Zonal Accounts Officer (Res.No.6) had sent a letter to the Head Office at New Delhi requesting for sympathetic consideration of his case and justifying his claim for regularization. The Zonal Accounts Officer, CBDT, Bhubaneswar also wrote another letter to the Accounts Officer (Admn.), New Delhi on 20.11.2009 for regularization of the applicant's service as against the vacancy of Group-D caused due to the retirement of one Smt.A.R.Barman on 30.11.2009. Again on 19.7.2011 a letter was written by the Controlling Officer of the applicant to the Head Office at New Delhi requesting regularization of his service.

5. We have heard the arguments from both the sides on 13.7.2018. During the course of arguments, learned counsel for the applicant submitted that the applicant in the present O.A. is similarly situated as 15 applicants in O.A.No.915 of 2013 which was disposed by the Division Bench of this Tribunal on 5.2.2018. He also drew our attention to A/2 containing the letter dated 14.10.2009 in which the case of the applicant has been recommended for regularization/temporary status by the officer under whom he was working.

6. We have carefully perused the documents submitted by both the sides. We find that a similar matter has been dealt in O.A.No.915 of 2013 by this Tribunal's order dated 5.2.2018. It is admitted by both the applicant and respondents that the applicant has been working for the last 14 years, since July, 2004. He is a Matriculate. Although the respondents claim that he has

been working intermittently, records show that he is still continuing to work at the Office of Zonal accounts Officer, CBDT at Bhubaneswar. Records also show that on 24/25.2.2009 Zonal Accounts Officer, CBDT, Bhubaneswar had written a letter to the Accounts Officer(Admin.), Office of the Pr. Chief Controller of Accounts, CBDT, New Delhi stating that the office was managing the work with a daily wager Shri Behera (the applicant in the present O.A.). It has been specifically mentioned by the Zonal Accounts Officer that "considering the tremendous pressure from the Department staff side Shri Behera has been working for a long period very sincerely and loyally. It would be highly beneficial if your kindness will consider his case generously for a favourable order. This is for favour of your kind consideration and necessary action". On 14.10.2009, the Zonal Accounts Officer had also written a letter to the Controller of Accounts, CBDT, New Delhi requesting that service of the applicant who has been working as a casual labour since July, 2004 very sincerely and honestly may be considered for regularization and temporary status in the best interest of the Zonal Accounts Office, CBDT, Bhubaneswar. On 19.7.2011, the Zonal Accounts Officer had also written to the Controller of Accounts, CBDT, New Delhi for continuing to engage Shri Sudarsan Behera(the applicant in the present O.A.) on daily wage basis against the vacancy occurred due to retirement of Smt.A.R.Berman till a regular MTS is allocated. On 9.9.2011 the representation of the applicant was forwarded to the CBDT, New Delhi by the Zonal Accounts Officer for necessary action.

7. We find in the order passed by this Tribunal in O.A.No.915 of 2013 dated 5.2.2018, the observation of the CAT, Principal Bench in O.A.No.2012/2013 in order dated 22.4.2014 was extensively quoted as follows:

"12. We have heard the learned counsel for the Applicants Shri S. K. Gupta and the learned counsel for the Respondents Shri Rajinder Nischal. There is no dispute that many of the applicants have been working with respondents as casual labourers for over 10 years. One of them has been working w.e.f. 03.05.1995. He has put in nearly 20 years of casual service. There are others who have been engaged from the years 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005 and 2006. They are still continuing. By the impugned letter dated 09/13.05.2013, the Respondents-CBDT through the CIT(Vigilance) has only observed the CCIT/DGIT regions continue to ignore DOP&T OM's dated 07.06.1998, 10.09.1993, 12.07.1994 and 11.02.2006 with regard to engagement of casual labourers. The OM dated 07.06.1998 has already been extracted in this order. It deals with guidelines in the matter of recruitment of casual workers on daily wage basis. It also contains the provisions for regularization of services of the casual workers subject to the prescribed conditions. It is vide OM dated 10.09.1993 the casual labourers (Grant of Temporary Status and regularization) Scheme of Government of India, 1993 has been issued. It deals with the procedure for granting temporary status to casual labourers and their regularization in service. OM dated 12.07.1994 has been issued by the DOP&T clarifying the various references received by them regarding the aforesaid OM dated 10.09.1993 regarding grant of temporary status and regularization of casual workers. The OM dated 11.12.2006 deals with regularization of qualified workers appointed against sanctioned posts in irregular manner in the light of the judgment of the Apex Court in the case of the Uma Devi(supra). Therefore, the general statement of CIT (Vigilance), CBDT that the CCIT/DGITs have violated any of the aforesaid Office Memoranda in the case of the Applicants are not factually correct and it has been made without any application of mind. Further, it is seen, as observed earlier, that the applicants have been working with the Respondents for fairly long time. Suddenly issuing a direction to CCITs/DGITs that they should ensure that none of the DDOs working in this region make any payments to the directly deployed casual workers in contravention of the Government/DOP&T orders and the judgment of the Supreme Court and bringing the applicants in this OA under the said directions is nothing but arbitrary and illegal. We therefore, quash and set aside the aforesaid impugned letters dated 09/13.05.2013 and 22.05.2013. We also make the stay granted against the operation of the aforesaid orders given on 11.06.2013 absolute. Further, we direct the Respondents to continue to disburse payments/remuneration/wage/payments to the Applicants against their employment as per the standard terms and conditions prevalent and being followed at present.

13. We also make it clear that the applicants who are still working as daily wagers/casual employees shall not be replaced by another set of daily wagers/casual labourers directly or through any other mode unless the disengagement is resorted to on the ground of unsuitability. As regard the prayer of the Applicants for regularization is concerned, we may profitably refer to the judgment of the Apex

Court in Uma Devis Case(supra), the relevant part of which is reproduced as under:-

44.Once aspect needs to be clarified. There may be cases where irregular appointments(not illegal appointments) as explained in S.V. Narayanappa (supra), R.N. Nanjundappa (supra), and B.N. Nagarajan (Supra) and referred to in Paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Government and their instrumentalities should taken steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

8. We also find that in the present O.A., the facts and points of law are similar to the O.A.No.915 of 2013. In the circumstances, the case laws cited by the Respondents will not be applicable in the present case. Following the order passed by the Division of this Tribunal in O.A.No.915/2013 in which one of us was a Member, we adopt the same ratio and following judicial precedent, we direct the respondents to extend the same treatment to the applicant in the present O.A. provided he is similarly placed and eligible for consideration keeping in view his legal entitlement and the departmental norms.

9. The O.A. is disposed of with the above direction with no order as to costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

(A.K.PATNAIK)
MEMBER(J)