

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/570/2011

Jabalpur, this Thursday, the 02nd day of August, 2018

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Kamal Pal, S/o Shri Mool Chand, Date of birth 2.6.1971, R/o H.
No.1500, Near Mastana Hotel, Besie Panchanan Dairy, Ranjhi,
Jabalpur (MP) 482001 **-Applicant**

(By Advocate – Shri Vijay Tripathi)

V e r s u s

1. Union of India through its Secretary, Ministry of Defence (Defence Production), “G” Block, New Delhi – 110011.
2. The Director General of Quality Assurance, Directorate of Quality Assurance (MNE), Department of Defence Production, Room No.31, “G” Block, New Delhi – 110011.
3. Additional Director General of Quality Assurance (MNE), Isapur, Nawabganj, District 24 Pargana North – 743144, (West Bengal).
4. The Controller (CQA) (ME), Aundh Road, Kirki, Pune – 411020 (M/S).
5. Quality Assurance Officer, Quality Assurance Establishment (ME), Khamaria, Jabalpur – 482005 (MP) **- Respondents**

(By Advocate – Shri S.K. Mishra)

(Date of reserving order : 23.04.2018)

ORDER

By Ramesh Singh Thakur, JM.

The applicant is aggrieved by the fact that his services have been terminated from 09.02.2011. He is further aggrieved in not considering his case for regularisation.

2. The applicant has sought for the following reliefs:

- “8.(i) Summon the entire relevant record from the respondents for its kind perusal;
- (ii) Upon holding that the engagement/termination of the applicant from service with effect from 28.2.2011 is bad in law, command the respondents to reinstate the applicant with all consequential benefits;
- (iii) Direct the respondents that after reinstatement of the applicant, the services of the applicant be regularized and he should be paid regular pay and allowances attached to the post of Bhishti/Casual Mazdoor;
- (iv) Any other order/direction may also be passed.
- (v) Award cost of the litigation to the applicant.”

3. Briefly stated facts of the case are that the applicant was engaged as Casual Bhisti/Mazdoo w.e.f. 04.06.1990 in the respondent department through Employment Exchange. The services of the applicant were utilized by issuing appointment letters for specified period (Annexure A-2). The case of the applicant is that he has worked for more than 20 years in the respondent department i.e. from 04.06.1990 to 08.02.2011. He had

approached the respondents to regularise his services. However, no action was taken on his application.

4. The applicant submits that Government of India has framed a policy (Annexure A-5) to grant temporary status and thereafter regularise the services of the Casual Labourers w.e.f. 01.09.1993. Since the applicant is working for more than 20 years against a vacant post, he is also entitled for grant of temporary status and regularisation under the said policy. However, despite the correspondence made by respondent No.5 dated 28.10.2009 (Annexure A-4), no action was taken by the respondents and instead his services have been terminated by engaging contract labour in his place, which is impermissible as per Section 10 of the Contract Labour (Regularisation & Abolition) Act, 1970.

5. The respondents have filed their reply. It has been submitted that for engagement of Casual Labourer/Casual Bhisties, the respondent No.5 had issued letters from time to time to the Employment Officer, District Employment Exchange, Jabalpur, requesting him to send names of suitable candidates for 89 days. The applicant had been engaged as Casual Bhisti for different spell of time. They have also filed the complete details of applicant's

periodical engagement as Casual Bhisti and wages paid to him from June, 1990 to October, 2010.

6. The respondents have further stated that applicant was engaged for a different spell of time as a Casual Bhisti, purely on temporary basis on daily rated wages basis. His engagement was neither regular nor against any sanctioned post. It has also been submitted that as per the OM dated 11.12.2006 (Annexure R-6), the case of the applicant was examined in the light of the direction of the Hon'ble Apex Court in the case of **Secretary, State of Karnataka & Ors. vs. Uma Devi & Ors.** (2006) 4 SCC 1. Since, the applicant could not meet out the conditions for regularisation, as contained in the aforesaid OM, therefore, his case for regularisation was not considered by the respondent department.

7. The respondents have also submitted that vide letter dated 08.11.2007 (Annexure R-5), the Government of India, Ministry of Defence, Department of Defence Production, has issued instructions for hiring of Labourer on contract basis, where requirement of Casual Labourer are recurring in nature. Since, the requirement of Casual Labourer in the respondent department is recurring in nature, therefore, their action for hiring Labourer on contract basis, cannot said to be illegal.

8. In his rejoinder, the applicant has contended that as per the OM dated 11.12.2006 (Annexure R-4), his case was not considered properly by the respondent department. The Hon'ble Apex Court, in the case of **Uma Devi** (supra), has nowhere stated that only the persons, who have completed 10 years of service in the department, without any break, should be considered for regularisation. He has submitted that the instructions dated 08.11.2007 (Annexure R-5), are not applicable to the facts and circumstances of the present case, as the applicant was engaged for the work, which is regular in nature for which contract labourers cannot be engaged.

9. We have heard the learned counsel for the parties and have also gone through the pleadings and documents available on record.

10. It is the case of the applicant that since he has been working in the respondent department from the year 1990 against a sanctioned/vacant post, therefore, his case for regularisation, as one time measure, ought to have been considered properly as per OM dated 11.12.2006. Further, the engagement of contractual labourer in his place is also impermissible in law.

11. It is seen from the record that on the basis of the judgment of the Hon'ble Apex Court in the case of **Uma Devi** (supra), the

DoP&T has issued OM dated 11.12.2006, whereby instructions for regularisation of qualified workers appointed against sanctioned posts in irregular manner, have been issued. The relevant para 2 of the OM reads as under:

“2. A Constitution bench of the Supreme Court in civil appeal No.3595-3612/1999 etc. in the case of Secretary State of Karnataka and Ors. Vs Uma Devi and others has reiterated that any public appointment has to be in terms of the Constitutional scheme. However, the Supreme Court in para 44 of the aforesaid judgement dated 10.4.2006 has directed that the union of India, the state Governments and their instrumentalities should take steps to regularize as a one time measure the services of such irregularly appointed, who are duly qualified persons in terms of the statutory recruitment rules for the post and who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or tribunals. The Apex Court has clarified that if such appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularized.”

12. It is the contention of the respondents that case of the applicant for regularisation was considered by them, as one time measure, in terms of the directions given in the case of **Uma Devi** (supra) and as per the OM dated 11.12.2006, issued by the DoP&T. Since, he did not qualify the conditions for regularisation, therefore, he could not be regularised in the respondent department.

13. The term “one time measure”, while considering the cases for regularisation of Casual Labour/Daily Wager/Ad hoc employees, has been clarified by the Hon’ble Apex Court in the case of **State of Karnataka and Others vs. M.L. Kesari and Others**, (2010) 9 SCC 247. Dealing with the exception contained in para 53 of **Umadevi’s** case (supra), the Hon’ble Apex Court has held as under:

“7. It is evident from the above that there is an exception to the general principles against “regularisation” enunciated in **Umadevi (3)**¹, if the following conditions are fulfilled:

- (i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.
- (ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

8. **Umadevi (3)**¹ casts a duty upon the Government or instrumentality concerned, to take steps to regularise the

services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of courts or tribunals, as a one-time measure. Umadevi (3)¹ directed that such one-time measure must be set in motion within six months from the date of its decision (rendered on 10-04-2006).

9. The term “one-time measure” has to be understood in its proper perspective. This would normally mean that after the decision in Umadevi (3)¹, each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad hoc employees who have been working for more than ten years without the intervention of courts and tribunals and subject them to a process verification as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularise their services.”

14. The applicant has placed on record the letter dated 28.10.2009 of respondent No.5, wherein the details, as asked for, have been sent to respondent No.2. On perusal of the same, it can be seen that the date of appointment of the applicant has been shown as 04.06.1990, as first appointment. In column No.7 of the list, appended with the said letter, it has been mentioned that the applicant fulfills the eligibility conditions for appointment as Mazdoor (US) as per recruitment rules at the time of first appointment. In column No.8, the number of vacancies, as on October, 2009, against which casual employment has been made, has been shown as ‘five’. Further, as per column No.9 of the list,

the reason for not regularising the service of the casual employees, has been given as “Govt. ban on Direct Recruitment”. Thus, it is clear from this annexure that the applicant fulfills the eligibility conditions for regularisation and also there were sanctioned posts against which a casual employment was made, when the case of the applicant for regularisation was considered. Therefore, the stand taken by the respondents, in their reply, to the fact that applicant does not fulfill the conditions for regularisation, as one time measure, is contrary to the document placed at Annexure A-4.

15. Admittedly, the applicant has been working for more than 10 years, without the intervention of any Court of law and fulfills the eligibility conditions for regularisation. Though the appointment of the applicant was not as per the Constitutional scheme of Public Employment, however, the same cannot be said to be illegal for which the benefit of regularisation to the applicant can be deprived of. Therefore, the case of the applicant for regularisation, as one time measure, should have been considered by the respondents in its proper perspective. We also note the fact that the services of the Casual Labourers/Ad hoc employees can be discontinued only when permanent appointment is made. Therefore, the action of the

respondents in discontinuing the services of the applicant by replacing contractual employees, cannot said to be justified.

16. In the result, the O.A is allowed. The respondents are directed to continue the services of the applicant as Casual Labour and to reconsider his case for regularisation from the due date, in view of the observations made herein above as also the law discussed above, within a period of three months from the date of receipt of a certified copy of this order. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

am/-