

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

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**Original Application Nos.290/00100/2015,
290/00151/2015, 290/00152/2015,
290/00153/2015, 290/00154/2015,
290/00155/2015, 290/00196/2015 with MA
No.290/00105/2015, 290/00199/2015 with MA
No.290/00109/2015 & 290/00238/2015 with MA
No.290/00134/2015**

Reserved on : 07.09.2018
Pronounced on : 26.09.2018

CORAM:

HON'BLE MRS. HINA P.SHAH, MEMBER (J)

(1) OA No.290/00100/2015

Sumer Singh S/o Shri Umed Singh Ji, age 42 years, Caste-Rajput, R/o Village Piparli, Tehsil-Luni, District-Jodhpur, Rajasthan. (Hall: Ex-Part-Time Safaiwala at Railway Station Hanuwant, District-Jodhpur).

...APPLICANT

BY ADVOCATE : Mr. S.P. Sharma.

VERSUS

1. The Union of India, through the General Manager, North Western Railways, Headquarters, Jaipur.
2. The Divisional Rail Manager (DRM), North Western Railway Zone, Jodhpur, Rajasthan.
3. The Station Master, Railway Station, N.W. Railway, Hanuwant, District-Jodhpur.
4. Shri Gopa Ram S/o Shri Mana Ram Sen, R/o Village Sarecha, via Luni, District Jodhpur Hall: Part-Time

Sweeper at Railway Station, Hanuwant District-Jodhpur, Rajasthan.

..RESPONDENTS

BY ADVOCATE: Mr. Kamal Dave & Mr. Darshan Jain proxy for Mr. Vinay Jain, for R1 to R3.
None is present for R4.

(2)OA No.290/00151/2015

Narain S/o Shri Banshi Lal @ Bansiya, age 45 years, Caste-Mehtar (SC), R/o Village-Balwada, Tehsil & District Jalore, Rajasthan (Hall: Part-Time Safaiwala at Railway Station Balwara, District-Jalore).

...APPLICANT

BY ADVOCATE : Mr. Mr. S.P. Sharma.

VERSUS

1. The Union of India, through the General Manager, North Western Railway, Headquarters, Jaipur.
2. The Divisional Rail Manager (DRM), North Western Railway Zone, Jodhpur, Rajasthan.
3. The Station Master, Railway Station, N.W. Railway, Balwara, District-Jalore.

...RESPONDENTS

BY ADVOCATE: Mr. Kamal Dave & Mr. Darshan Jain proxy for Mr. Vinay Jain, for R1 to R3.

(3)OA No.290/00152/2015

Dinesh Kumar S/o Shri Shyama Ram, age 22 years, Caste-Mehtar (SC), R/o Village-Indira Colony, Harijan Basti, Mokalsar, District-Barmer, Rajasthan. (Hall: Part-Time Safaiwala at Railway Station Mokalsar, District-Barmer).

...APPLICANT

BY ADVOCATE : Mr. Mr. S.P. Sharma.

VERSUS

1. The Union of India, through the General Manager, North Western Railway, Headquarters, Jaipur.
2. The Divisional Rail Manager (DRM), North Western Railway Zone, Jodhpur, Rajasthan.
3. The Station Master, Railway Station, N.W. Railway, Mokalsar, District-Barmer.

....RESPONDENTS

BY ADVOCATE: Mr. Kamal Dave & Mr. Darshan Jain proxy for Mr. Vinay Jain, for R1 to R3.

(4) OA No.290/00153/2015

Gyanchand S/o Shri Brij Mohan Ji, age 38 years, Caste-Harijan (SC), R/o Near Public Park, Ramdev Temple, Harijan Basti, Merta City, Nagaur, Rajasthan. (Hall: Part-Time Safaiwala at Railway Station Merta City, District-Nagaur).

...APPLICANT

BY ADVOCATE : Mr. Mr. S.P. Sharma.

VERSUS

1. The Union of India, through the General Manager, North Western Railway, Headquarters, Jaipur.
2. The Divisional Rail Manager (DRM), North Western Railway Zone, Jodhpur, Rajasthan.
3. The Station Master, Railway Station, N.W. Railway, Merta City, District-Nagaur.

....RESPONDENTS

BY ADVOCATE: Mr. Kamal Dave & Mr. Darshan Jain proxy for Mr. Vinay Jain, for R1 to R3.

(5)OA No.290/00154/2015

Vasha Ram S/o Shri Kesha Ram, age 50 years, Caste-Mehtar (SC), R/o Village-Serda, Tehsil-Bhinmal, District-Jalore, Rajasthan (Hall: Part-Time Safaiwala at Railway Station Marwar-Bagra, District-Jalore.

...APPLICANT

BY ADVOCATE : Mr. Mr. S.P. Sharma.

VERSUS

1. The Union of India, through the General Manager, North Western Railway, Headquarters, Jaipur.
2. The Divisional Rail Manager (DRM), North Western Railway Zone, Jodhpur, Rajasthan.
3. The Station Master, Railway Station, N.W. Railway, Marwar Bagra, District-Jalore.

...RESPONDENTS

BY ADVOCATE: Mr. Kamal Dave & Mr. Darshan Jain proxy for Mr. Vinay Jain, for R1 to R3.

(6)OA No.290/00155/2015

Banshi s/o Shri Mangi Lal Ji, age 45 years, Caste-Mehtar (SC), R/o Village-Puran, Tehsil-Jaswantpura, District-Jalore, Rajasthan (Hall: Part-Time Safaiwala at Railway Station Marwar-Kori, District-Jalore).

...APPLICANT

BY ADVOCATE : Mr. Mr. S.P. Sharma.

VERSUS

1. The Union of India, through the General Manager, North Western Railway, Headquarters, Jaipur.
2. The Divisional Rail Manager (DRM), North Western Railway Zone, Jodhpur, Rajasthan.
3. The Station Master, Railway Station, N.W. Railway, Marwar Kori, District-Jalore.

...RESPONDENTS

BY ADVOCATE: Mr. Kamal Dave & Mr. Darshan Jain proxy for Mr. Vinay Jain, for R1 to R3.

(7) OA No.290/00196/2015 with MA No.290/00105/2015

Ashok Kumar S/o Shri Late Jawara Ram, aged about 42 years, Caste-Harijan, R/o Raniwada By-Pass Road, Raniwada, District-Jalore, Rajasthan (Hall: Ex-Part Time Safaiwala at Railway Station Raniwada District-Jalore, Rajasthan).

...APPLICANT

BY ADVOCATE : Mr. Mr. S.P. Sharma.

VERSUS

1. The Union of India, through the General Manager, North Western Railway, Headquarters, Jaipur.
2. The Divisional Rail Manager (DRM), North Western Railway Zone, Jodhpur, Rajasthan.
3. The Station Master, Railway Station, N.W. Railway, Raniwada, District-Jalore.

...RESPONDENTS

BY ADVOCATE: Mr. Kamal Dave & Mr. Darshan Jain proxy for Mr. Vinay Jain, for R1 to R3.

(8)OA No.290/00199/2015 with MA No.290/00109/2015

Punma Ram S/o Shri Babu Lal Ji, age 40 years, Caste-Harijan, R/o opposite of Railway Station Gole, Pachpadra District-Barmer, Rajasthan (Hall: Ex-Part-Time Safaiwala at Railway Station Gole (Pachpadra), District-Barmer, Rajashtan).

...APPLICANT

BY ADVOCATE : Mr. Mr. S.P. Sharma.

VERSUS

1. The Union of India, through the General Manager, North Western Railway, Headquarters, Jaipur.
2. The Divisional Rail Manager (DRM), North Western Railway Zone, Jodhpur, Rajasthan.
3. The Station Master, Railway Station, N.W. Railway, Gole, District-Barmer.

....RESPONDENTS

BY ADVOCATE: Mr. Kamal Dave & Mr. Darshan Jain proxy for Mr. Vinay Jain, for R1 to R3.

**(9)OA No.290/00238/2015 with MA No.
290/00134/2015**

Smt. Kamla Devi W/o late Shri Shanti Lal, age 41 years, Caste-Harijan, R/o Village-Serna, Panchayat Samiti Jaswantpura, District -Jalore, Rajasthan (Hall: Part-Time Safaiwala at Railway Station Bheempura, District-Jalore, Rajasthan.

...APPLICANT

BY ADVOCATE : Mr. Mr. S.P. Sharma.

VERSUS

1. The Union of India, through the General Manager, North Western Railway, Headquarters, Jaipur.

2. The Divisional Rail Manager (DRM), North Western Railway Zone, Jodhpur, Rajasthan.
3. The Station Master, Railway Station, N.W. Railway, Bheempura, District-Jalore.

....RESPONDENTS

BY ADVOCATE: Mr. Kamal Dave & Mr. Darshan Jain proxy for Mr. Vinay Jain, for R1 to R3.

ORDER

These are 9 Original Applications, wherein common question of facts and law is involved, therefore, the same are being disposed of by this common order.

2. For the sake of convenience, the facts and reply of OA No.100/2015 are being referred.
3. The applicant in this OA has prayed for reinstatement on the post of Safaiwala and consequently for grant of temporary status for the services rendered as part-time Sweeper from 1993 to 2014 and thereafter to consider him for regular pay scale with payment of all arrears. He has also prayed that he may be declared as casual labour in terms of Clause 2001 of the Railway Establishment Manual with all consequential benefits and to extend the same relief to the applicant as has been granted by the Hon'ble High Court in D.B.Civil Writ Petition No.7230/2004 Baiju vs. Union of India and Ors., decided on 19.02.2014.

The basic facts of the case, as stated by the applicant, are as under:-

The applicant in OA No. 100/2015 is 8th standard pass and bonafide resident of Jodhpur. He has worked continuously for 21 years and therefore, deserves to be considered for grant of temporary status with regular pay scale as admissible to regular Sweeper in Group-D service. In 1969, the Railway Labour Tribunal had given a decision pertaining to the status of casual labour wherein it was directed that casual labour completing 120 days would be entitled for grant of temporary status. Subsequently, the Railway Board also issued a circular dated 31.7.1973 and 21.3.1974 whereby it was notified to all concerned that those who completed 120 days of continuous working would be entitled for grant of temporary status (Ann.A/2 and A/3).

Subsequently, a circular dated 23.6.1992 was issued by the railways wherein it was decided that those casual labours who have been granted temporary status would be entitled to all privileges as applicable to Group-D regular employees. The applicant in the present OA came to be appointed as local Safaiwala at Hanuwant Railway Station in Jodhpur district by the Station Master on 14.10.1993 as

part-time Sweeper. He was paid salary of Rs. 60/- per month. After having completed 120 days of service on the post of Safaiwala, the applicant submitted representation dated 9.12.1995 whereby he prayed for grant of temporary status. Since no action was taken by the respondents, the applicant represented to the Hon'ble Rail Minister by his representation dated 26.11.1996. In the year 1997 vide order dated 8.1.1997 (Ann.A/7), the Railway Board took a policy decision whereby part-time Safaiwala/substitute have been directly engaged by the railway, such Safaiwala/substitutes may be recruited as Safaiwala, subject to their qualifying the prescribed medical examination board approve of age relaxation. Accordingly, the DRM, Jodhpur undertook the exercise of screening of such part-time Safaiwala for the purpose of making them regular and information was sought from all concerned individuals in a specified proforma and in consequence to this, the applicant had also provided information through his duly filled proforma dated 3.3.1997 (Ann.A/8). Since no concrete decision was taken by the DRM, Jodhpur though the concerned individuals had submitted necessary information as required, they submitted another representation along with experience certificate dated

17.7.2003. Inspite of making representations, when no decision was taken, the applicant agitated the matter through their union and a list was prepared by Manager (Commercial) of such identical part-time employees and forwarded the same vide letter dated 28.2.2005 to DRM, Jodhpur.

Thereafter the Railway Board undertook process for recruitment of regular Safaiwala but the respondent DRM did not proceed to fill up the post either by regularization or by regular recruitment process. It is his contention that though at the time of their appointment as part-time Safaiwala, they were paid Rs. 60/- per month but subsequently the said amount was enhanced to Rs. 250/- per month from July, 1997, which can be perused from the payment slip. It is their contention that payment made to them as part-time Safaiwala was complete exploitation and lot of injustice has been caused to them and the same is in violation of Article 23 and 39 (d) of the Constitution of India. Though they have worked for several years but rather still they are denied temporary status which is in complete violation of Clause 2001 of the Railway Establishment Manual. The applicant and other applicants working as part time Sweeper at 43 different railway

stations of North West Railway, Jodhpur have also sent a joint representation to the Hon'ble Railway Minister, New Delhi seeking his intervention in the matter. The applicant states that the present applicant and other part-time Sweepers working for a number of years when sought regularization, their services were terminated by oral orders without giving any opportunity of hearing and without complying with the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. The present applicant and such part-time Sweepers have raised industrial dispute before the Labour Commissioner (Central) at Ajmer through railway employees union. The conciliation proceedings were held, but the same failed as the Central Govt. did not refer the dispute to adjudication.

The applicant further stated that on one hand the respondent railways have granted the benefit of regularization to Parcel Porters of Lucknow zone who approached the Labour Commissioner, but the respondents have done lot of injustice to the present applicant though he was working as part-time sweeper for umpteen number of years but still he has neither been granted temporary status nor considered for regularization. It is his plea that in an identical matter wherein prayer was made by the

applicants for grant of temporary status and for payment of regular pay scale before CAT-Jaipur Bench, though the same was dismissed, but the Hon'ble Rajasthan High Court in the case of **Baiju vs. Union of India and Ors.** allowed the Writ Petition No.7230/2004 filed by the applicant and vide order dated 19.2.2014 quashed and set-aside the order of the Tribunal dated 2.8.2004 and also the order dated 16.8.1994 passed by respondents and held that the applicant therein be declared as a casual labour in terms of clause 2001 of the Railway Establishment Manual and that he is entitled to consequential benefits including temporary status and regular pay scale. Therefore, the claim of the present applicant is that he is similarly placed as Baiju, he is covered by the said judgment of the Hon'ble High Court and therefore he may be granted relief as granted by the Hon'ble High Court in the case of **Baiju** (supra). The applicant further states that since after the decision of the Hon'ble High Court, he served legal notice dated 14.3.2014 to the respondents to consider his case for grant of regular pay scale after regularizing the services on the post of Safaiwala, the respondents in a revengeful manner dispensed the services of the applicant by an oral order on

12.7.2014 which was in violation of the mandatory provisions of Section 25-F of I.D. Act, 1947.

4. After issue of notice, the respondents have filed reply dated 20th July, 2016 raising preliminary objection that the present case deserves to be rejected on the principle of constructive res-judicata. It is the submission of the respondents that the applicant has already raised grievance pertaining to his engagement as part-time Sweeper since 1993 and his alleged retrenchment in 2014, and preferred a petition before the Labour Commissioner (Central), Ajmer. His conciliation proceedings failed and the dispute was not referred for adjudication and since he failed to get any relief, cannot now invoke the jurisdiction of this Tribunal u/s 19 of the Administrative Tribunals Act, 1985. As he has already availed the remedy under Industrial Disputes Act way back in 2008 and as the present OA is filed in the year 2015, therefore, he is trying to overcome the hurdle of delay and laches merely on the ground that he is seeking identical relief as provided in the case of Baiju (supra) which cannot be permitted. It is the case of the respondents that the applicant has availed the remedy under Industrial Disputes Act, 1947. There were conciliation proceedings which had failed and the applicant being

satisfied by the same did not raise any challenge against the same and now he is filing the present OA, which is grossly belated as per Section 21 of the Administrative Tribunals Act, 1985. The case is also barred by the principles of res-judicata as the applicant has already availed the remedy under Industrial Disputes Act.

The respondents further submit that the applicant worked as part-time Safaiwala from July, 2007 to June, 2014. No record is available with the respondents prior to 2007. As per record, the applicant has not worked for the period which has been stated in the OA. He was neither engaged on regular basis nor he was working on regular basis but in fact he was working only for 1-2 hours as and when required by the Station Master and payment was made from imprest cash on day to day basis. The respondents state that the applicant does not fall under the definition of casual labour as per para 2001 of IREM and therefore, he is not entitled for any temporary status. The circulars referred to by the applicant are not applicable in the present case. It is further submitted that he was never paid scheduled rate or time scale of pay. Since the applicant was appointed as per requirement basis, hence, he is not entitled for temporary status on completion of 120 days of

service as per para 2001 (ii) and (iii) of the IREM. He was never appointed regularly but was appointed by the Station Master as and when there is a requirement to clean the station and therefore, it is clear that he was not working as a casual labour in the respondent department and there is no question of he being entitled for grant of temporary status or for being giving the opportunity of screening. On the question of regularization of Parcel Porters, it is the plea of the respondents that their case cannot be compared with the present applicant, therefore, the same is not applicable in the present case. Pertaining to the case of **Baiju**, the respondents stated that admittedly, mere judgment in a case does not automatically extend the benefit even if the facts are similar, but in the present case, facts are also totally different as the petitioner therein was appointed as a local Safaiwala on 18.4.1979 and was continuously working. His case was forwarded for grant of temporary status on 15.4.1987, but when no action was taken, he filed OA No.46/1994 which was decided on 3.2.1994 with a direction to decide his representation dated 28.7.1993. He was discontinued from service vide order dated 16.08.1994. The said OA was filed in the year 1994 and the matter was with this Tribunal and the Hon'ble High Court, but in the present

matter, the facts are not same. The applicant slept over his rights. Though conciliation proceedings failed in the year 2008, he approached this Tribunal only in the year 2015 for redressal of his grievance. It is clear that as per Section 21 of the Administrative Tribunals Act, the applicant should have approached this Tribunal well within time, but in the present case he approached only in the year 2015. The Hon'ble Apex Court in a catena of judgments have held that persons who are not vigilant over their rights cannot be granted identical relief as granted to the similarly situated persons. The judgment in a particular case does not automatically extend the benefits. As the applicant is seeking same relief as granted by the Hon'ble High Court in the case of **Baiju** stating that he is similarly situated person and since the said judgment has already been implemented by the respondents, the applicant states that he is also therefore, entitled for the said relief. This principle cannot be accepted. It is submitted that the case of Baiju, for the reasons mentioned above, cannot be compared with that of the present applicant.

5. The applicant has filed rejoinder reiterating the averments made in the OA. The applicant has stated that though the nomenclature in the CAT-Jaipur Bench was that

of local Safaiwala, the applicant was also local Safaiwala, therefore, he is covered by the judgment of the Hon'ble High Court passed in the case of Baiju. The applicant has further stated that since there is denial of his regularization and payment of regular salary, it is a recurring cause of action and therefore, the plea of limitation does not apply in the present case. It is also his plea that question of res-judicata does not arise as the conciliation proceedings before the Labour Commissioner were not heard and decided finally on merits. It is further his contention that though his nomenclature was that of part-time Safaiwala, but he was working as a regular Sweeper and, therefore, it is incorrect on the part of the respondents to state that they were paid money from the imprest cash on day-to-day basis without there being any documentary proof for such payment. The applicant has also denied that he is part-time Safaiwala as he was also serving as a local Safaiwala and working since 1993 and, therefore, he is entitled for grant of temporary status, regular pay scale and for further regularization.

6. Heard Shri S.P.Sharma, counsel for the applicant and Shri Kamal Dave along with Shri Darshan Jain, proxy

counsel for Shri Vinay Jain for the respondents and perused the material available on record.

7. It is the plea of the applicants that the matter which was adjudicated before the Labour Commissioner did not attain finality as the reconciliation proceedings which were held on 8th September, 2008 and other days, failed and the case was not referred for adjudication before the Industrial Tribunal and since the decision of the Labour Court had not attained finality before the Labour Court/Industrial Tribunal, the plea of res-judicata raised by the respondents cannot substantiate. On the plea of limitation raised by the respondents, the applicants state that they have regularly approached the respondents time and again and it is delay on the part of the respondents to regularize their services after putting a number of years of service and, therefore, as the same is a recurring cause of action, there is no question of delay in approaching the Tribunal as they are seeking regular pay scale and grant of temporary status along with regularization. It is their plea that they are identically placed as that of **Baiju's** case and, the respondents may be directed to grant the same relief as granted in Baiju's case.

In support of their contentions with regard to equal pay, temporary status, regularization, recurring cause of action and on the principle of res-judicata, the applicants have relied upon the following judgments:-

1. State of Punjab vs. Jagjit Singh, AIR 2016 page 5176 Para No. 53 to 58
2. Satyanarayan Swarnkar vs. State of Rajasthan (SB Civil Writ Petition No.21459/2017 decided on 23.11.2017 by Rajasthan High Court at Jaipur.
3. Smt. Uji Devi vs. State of Rajasthan (D.B.Civil Appeal (Writ) No.883/2015 decided on 17.4.2018, by the Hon'ble Division Bench of Rajasthan High Court, Jodhpur
4. Durga Ram Vs. State of Rajasthan (SB Civil Writ Petition No.96/2014 decided on 18.5.2018)
5. Smt. Chandna Devi vs. State of Raj. (SB Civil Writ Petition No.11029/2011 decided on 28.05.2014
6. State of Rajasthan vs. Chandna Devi (DB Special Appeal Writ No.42/2015 decided on 19.02.2016
7. State of Maharashtra and Anr. vs. National Construction Company, Bombay and another (1996) AIR (SC) 2367
8. Basic Shiksha Parishad & Ors. vs. Smt. Sugna Devi and Ors., (2004) AIR (SC) 1214
9. M.R.Gupta vs. Union of India & Ors., (1996) AIR (SC) 669
10. Union of India and Ors. vs. Tarsem Singh, (2008) 8 SCC 648
11. Maharaj Krishan Bhatt & Ors. vs. State of Jammu & Kashmir, (2008) 9 SCC 24,
12. Nihal Singh & Ors. State of Punjab & Ors. (2013) AIR (SC) 3547
13. Bharat Singh vs. Union of India, (2016) 8 SCALE 684
14. Amarkant Rai vs. State of Punjab & Ors. (2015) 8 SCC 265
15. Sudarshan Rajpoot vs. U.P.State Road Transport Corporation (2015) 2 SCC 317
16. Sandhya vs. State of Maharashtra (2014) 8 SCALE 210,

17. Yashpal vs. UOI (2017) AIR (SC) 680.
18. State of UP and Anr. vs. Jagdish Saran Agrawal & Ors. (2009) 1 SCC 689

8. The respondents state that the applicants were part time workers and they cannot be compared with temporary or casual workers and, therefore, they have no right to claim regularization. It is their plea that when they first approached the Labour Commissioner (Central) and when the conciliation proceedings failed, for the same relief they have approached this Tribunal, therefore, the plea of res-judicata remains as on failure of conciliation proceedings their remedy lies with Hon'ble High Court and not before this Tribunal. They have also raised the plea that for the delay in filing the OA, the applicants have not filed any Misc. application (except OA No.196/2015, 199/2015 and 238/2015) for condonation of delay in approaching this Tribunal and merely by submitting that it is a recurring cause of action, the delay cannot automatically be condoned. Therefore, the OA filed by the applicants deserves to be rejected on this ground alone.

The respondents have relied upon the following judgment in support of their contentions:-

1. Krishna Prashad Gupta vs. Controller Printing and Stationary, (1996) 1 SCC 69 para 22 & 45

2. Ajay D. Panalkar Vs. Management of Pune Telecom Department (1997) 11 SCC 469, para 4 & 5
3. Ramesh Chand Sharma vs. Udhamp Singh Kamal (1999) 8 SCC 304, para 7
4. Nohar Lal Verma vs. Dist. Co-Op Central Bank (2008) 14 SCC 445, para 27,28,29 & 32
5. U.P.Gram Panchayat Adhikari Sangh vs. Daya Ram & Saroj (2007) 2 SCC 138 para 35
6. Secretary, State of Karnataka & Ors. vs. Ume Devi (3) & Ors. (2006) 4 SCC 1, para 35,53 and 55
7. Union of India vs. A.S.Pillai (2010) 13 SCC 448, para 20 and 21
8. State of Rajasthan Vs. Daya Lal (2011) 2 SCC 429, para 11 and 12
9. Secretary to Government School Education Department Chennai vs. R.Govinda Swami (2014) 4 SCC 769, para 7&8
10. Secretary to the Govt. Vs. A.Singamuthu AIR (2017 SC 1304, para 16 & 17
11. State of U.P. vs. Arvind Kumar Srivastava, (2015) 1 SCC 347, para 24
12. S.S.Balu & Anr. Vs. State of Kerala & Ors. (2009) 2 SC 479, para 18
13. A.P.Steel Re-Rolling Mills Ltd. vs. State of Kerala (2007) 2 SCC 725, para 16, 17 & 40
14. UP Jal Nigam and Anr. vs. Jaswant Singh & Anr. Para 6,12, & 13

9. As far as the judgments cited by the applicants relating to equal pay for equal work are concerned, the same cannot be applied in the present case. None of the judgments cited by the applicants deal with the question of part-time casual worker, as the engagements in question are not made against any sanctioned post or against any vacancy, but the same are made only on need basis. The judgment referred by the applicants in the case of **Jagjit Singh, Satyanarayan Swarnkar, Smt. Uji Devi, Durga**

Ram, Smt. Chandna Devi (cited supra) cannot be applied to the facts and circumstances of the present case as these relate to daily wages/fixed remuneration as well as persons appointed on contract. In some cases the nature of work was considered by the Hon'ble High Court and relief was accordingly granted. As far as the judgment pertaining to similarly situated persons is concerned, the ratio of **Maharaj Krishan Bhatt** (cited supra) cannot be applied to the present issue as in that case some set of persons were regularised whereas the other set of persons were not regularised though representations were made on the same day by all the persons. Pertaining to the question of regularization, none of the judgments cited by the applicants can be made applicable in the present case. In case of **Nihal Singh**, the appointments were not part-time, but were appointed as Special Police Officer under Police Act, 1861 with the privileges provided under the Police Act, 1961 and, therefore, their services were regularized. Pertaining to the judgment of **Bharat Singh and Yash Pal** (supra), they were in relation to the Parcel Porters/Porters where a scheme itself for regularization is provided by the Government. As per **Amarkant Rai's** case, the said appellant was appointed on daily wage basis, but not on

part-time basis and the facts of that case were different from the present one. Pertaining to the judgment of **Sudarshan Rajpoot**, the facts and circumstances of the case were totally different. So far the judgment of **Sandhya**, her services were ordered to be regularised since she was appointed on the basis of recruitment rules of the Govt. of Maharashtra and she was in the waiting list. All the judgments pertaining to the submissions of the applicants on recurring cause of action also are not applicable in the facts and circumstances of the cases in hand, as appointment itself of these persons are not on any sanctioned post, nor the same are as per the recruitment rules or as per the statute. Therefore, comparing the cases on the ground that these applicants are getting lesser pay cannot help the applicants as it is not a case of recurring cause of action. As far as the judgments pertaining to res-judicata is concerned, these cannot be compared to the present cases, as the applicants herein have failed in their grievance, before the Labour Commissioner and for the same relief they are approaching this Tribunal.

10. As far as the judgments relied upon by the respondents on vigilant and non-vigilant, it is very clear that the persons who slept over their rights and wake up

from the slumber cannot get the similar benefit as those persons had already raised their grievance at earlier stage and after knowing that the relief has been granted to similar group of persons, the present applicants have approached the Tribunal after a long period. So the question of claiming parity to that of the judgment of **Baiju** does not arise in the present case, **Baiju** has raised his grievance at the relevant time. When no action was taken by the competent authority for granting temporary status, he preferred OA No.46/1992 and thereafter OA No.491/1994. The second OA was finally decided on 23.7.1999 against which Writ Petition No.2271/2002 was filed and that was partly allowed vide order dated 6.11.2003 remitting the matter back to the Tribunal. The said OA was heard by the Tribunal afresh and decided vide order dated 2.8.2004 against which DB Civil Writ Petition No.7230/2004 was filed and the same was decided on 19.2.2014.

As far as the judgments pertaining to constructive res-judicata is concerned, the judgment in **Krishna Prasad Gupta** as well as **Ajay D. Panalkar** are very clear, that this Tribunal has no jurisdiction to adjudicate the findings of

the Industrial Tribunal once the remedy under the Industrial Disputes Act is availed.

11. The main question to be dealt with in respect of the present applicants is whether the applicants who are/were part-time workers, their services can be regularised or they can be afforded temporary status or regular pay scale. As held by the Apex Court time and again in several judgments, it is evident that the present applicants are part-time workers and they have neither been appointed after undergoing due process of selection nor they have been appointed against any sanctioned post. Working on a post for a number of years cannot be a ground for regularization of service of the applicants. Also sympathy and sentiments cannot be a ground for passing any order in the absence of any legal right. Therefore, there cannot be any direction for absorption/regularization or permanent continuance of part-time employees.

In the case of **UP Gram Panchayat Adhikari Sangh vs. Daya Ram Saroj & Ors.** (2007) 2 SCC 138, in Para 35 has observed as under:-

"35. The High Court has also directed that the part-time Tube-well Operators shall be treated as permanent employees under the same service

conditions as the Tube-well Operators as far as practicable. This directions runs in the teeth and guidelines of the Constitution Bench judgment in Secretary, State of Karnataka & Ors. vs. Uma Devi (3) and Ors. (2006) 4 SCC 1. In fact, on this score alone the decision of the Division Bench of the High Court deserves to be set aside."

In **Secretary to Government, School Education Department Chennai vs. Thiru R.Govindaswamy and Ors.**, (Civil Appeal Nos. 2726-2729 of 2014 (Arising out of SLP (C) Nos. 5681-5684/2014) @ CC.19326-19329/2013), decided on 21.2.2017, the Hon"ble Apex Court in para 5, 6 & 7 observed as under:-

"5. The issue involved here remains restricted as to whether the services of the part-time sweepers could have been directed by the High Court to be regularized. The issue is no more res integra.

In State of Karnataka & Ors. v. Umadevi & Ors., AIR 2006 SC 1806, this Court held as under:

"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. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequal 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."

6. In *Union of India & Ors. v. A.S. Pillai & Ors.*, (2010) 13 SCC 448, this Court dealt with the issue of regularisation of part-time employees and the court refused the relief on the ground that part-timers are free to get themselves engaged elsewhere and they are not restrained from working elsewhere when they are not working for the authority/employer. Being the part-time employees, they are not subject to service rules or other regulations which govern and control the regularly appointed staff of the department. Therefore, the question of giving them equal pay for equal work or considering their case for regularisation would not arise.

7. This Court in *State of Rajasthan & Ors. v. Daya Lal and Ors.*, AIR 2011 SC 1193, has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under:-

"8(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Article 14 and 16 should be scrupulously followed and Court should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

- (ii) Mere continuation of service by a temporary or ad hoc or daily wage employee, under cover of some interim orders of the court would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order or regularisation in the absence of a legal right.
- (iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointment subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.
- (iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.
- (v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principal of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.

In **Secretary to Govt. Commercial Taxes and Registration Department, Secretariat and Anr. V.**

An.Singamuthu, AIR 2017 SC 1304, the Hon'ble Apex Court in para 16 and 17 observed as under:-

16. The learned single Judge of the High Court, while allowing the writ filed by the respondent extended the benefit of the said G.O. Ms. No.22 dated 28.02.2006 and directed the appellants to grant regularization of respondent's service from the date of completion of ten years of service with salary and other benefits. The learned Judge failed to take note of the fact that as per G.O. Ms.No.22 dated 28.02.2006, the services of employees working in various Government departments on full time daily wage basis, who have completed more than ten years of continuous service as on 01.01.2006 will be regularized and not part time Masalchis like the respondent herein. In G.O. Ms.No.84 dated 18.06.2012, the Government made it clear that G.O.Ms.No.22 dated 28.02.2006 is applicable only to full time daily wagers and not to part time daily wagers. Respondent was temporarily appointed part time worker as per Tamil Nadu Finance Code Volume (2) Appendix (5) and his appointment was completely temporary. The respondent being appointed as part time Masalchi, cannot compare himself to full time daily wagers and seek benefit of G.O. Ms.No.22 dated 28.02.2006. The single Judge also failed to consider that the Government did not grant regularization of services of any part time employee on completion of ten years of his service as envisaged under the G.O. Ms.No.22 dated 28.02.2006.

17. The learned single Judge erred in extending the benefit of G.O. Ms. No.22 dated 28.02.2006 to the respondent that too retrospectively from the date of completion of ten years of service of the respondent. The respondent was appointed on 01.04.1989 and completed ten years of service on 31.03.1999. As rightly contended by the learned senior counsel for the appellants, if the respondent is to be given monetary benefits from the date of completion of ten years of service, that is from 01.04.1999 till the date of his regularization that is 18.06.2012, the financial commitment to the State would be around Rs.10,85,113/- (approximately) towards back wages

apart from pension which will have a huge impact on the State exchequer. That apart, the learned senior counsel for the appellant submitted that in respect of Registration Department, about 172 persons were regularized under various G.Os. and if the impugned order is sustained, the Government will have to pay the back wages to all those persons from the date of completion of ten years in service and this will have a huge impact on the State exchequer. Since the impugned order directing regularization of the respondent from the date of completion of their ten years would adversely affect the State exchequer in a huge manner, the impugned order cannot be sustained on this score also.

12. Looking towards the matter in four corners and in view of the ratio of the aforesaid judgments, as far as prayer for temporary status, regular pay scale and regularization of the applicants are concerned, it is very clear that since the said appointments of the applicants were/are not as per rules and also as the same are not against any sanctioned posts, the claim of the applicants for regularization or grant of temporary status or regular pay scale does not appear to be justified as the regularization in the absence of any legal right does not hold good. Merely working for a number of years do not give a right to the applicants for seeking regularization of their services as the same is violative of the Constitutional Scheme. Even otherwise, the applicants were/are part-time casual labours and they cannot compare themselves with full time casual labours.

13. As far as the issue of limitation is concerned, it is clear that the applicants have approached this Tribunal beyond the period as prescribed u/s 21 of the Administrative Tribunals Act, 1985. The applicants (except applicant in OA No.152/2015) have earlier approached the Labour Commissioner in 2008 and thereafter have approached this Tribunal in the year 2015 for redressal of their grievance. The delay in approaching this Tribunal cannot be automatically condoned. Though, in three OAs, the applicants have filed Misc. Applications, but they have not put forth any convincing grounds for the delay to be condoned. The Hon'ble Apex Court in the case of State of Uttranchal vs. Shri Shiv Charan Singh Bhandari, 2014 (2) SLR (SC) 688, Isha Bhattacharya vs. Management Committee of Tools, 2014 (1) SLJ (SC) 20 and Union of India vs. M.K.Sarkar, 2009 (6) SLR 756 has held that the issue of limitation should be considered with reference to the original cause of action and not with reference to passing of any order. Therefore, no fresh cause of action accrues for reviewing dead or time barred claim. As per the ratio of the aforesaid judgments, all the OAs are liable to be dismissed on the ground of limitation, but in the interest of justice, the matters are also considered on merit.

14. In view of discussions made in the aforesaid paragraphs, all these OAs are dismissed on the ground of limitation and also on merit. The MA Nos. 105/2015, 109/2015 & 134/2015 are also accordingly dismissed. No order as to costs.

(HINA P.SHAH)
MEMBER (J)

R/