

(Reserved on 28.09.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the **11th** day of **October** 2018

Original Application No. 331/000018 of 2016

Hon'ble Mr. Gokul Chandra Pati, Member – A

Ajay Kumar, S/o Shri Hari Charan, aged about 33 years, R/o 17
E.C. Road, Survey Colony, Q. No. T-1-10, Dehradun .

. . .Applicant

By Adv: Shri Ashish Srivastava

V E R S U S

1. Union of India through Secretary, Ministry of Science and Technology, Government of India, New Delhi.
2. Surveyor General, Office of the Surveyor General of India, Hathi Barkala Estate, Dehradun - 248001.
3. Director Digital Mapping Centre, Survey of India, Dehradun.

. . . Respondents

By Adv: Shri L.M. Singh

ORDER

The applicant has filed this OA seeking the following main reliefs:-

- “i.quash the order dated 25.02.2015 and 04.06.2015 passed by respondent No. 2 (Annexure Nos. A-1 and A-2 to the compilation No. I).*
- ii.to direct the respondents to regularize the service of the applicant as regular Sweeper in the department taking into consideration his long service as contingent paid employee.”*

2. The applicant's case is that he was working as a Safaiwala in the office of the respondents department since 2000 on contingent basis and his services were utilized in the office of the respondent no. 2 on the basis of need. He was issued certificate (Annexure A-3) showing his engagement since the year 2000, with some artificial break in service. Copy of the attendance register showing his name is at Annexure A-4 to the OA. It is claimed that the applicant has become entitled for regularization of his services, which was not considered by the respondents , as stated in para 4.5 and 4.6 of

the OA. It is also stated that the respondents issued notice to recruit Sweeper by direct recruitment and the applicant was allowed to participate. But the post was filled up from open market.

3. It is further stated in para 4.8 of the OA that the respondents regularized other contingent sweepers, but the applicant's case was not considered, for which he submitted representation on 6.12.2013, 21.2.2014 and 28.3.2014 (Annexure A-6). In reply, the respondents issued the impugned orders dated 25.2.2015 (Annexure A-2) and dated 4.6.2015 (Annexure A-1), rejecting the representation of the applicant on the ground that there is no rules for regularization of the persons being engaged on contract basis. These orders have been impugned in this OA mainly on the following grounds:-

- As per the casual labour (grant of temporary status and regularization) scheme issued from time to time, the daily wage workers are eligible for benefits under the scheme subject to fulfillment of the eligibility criteria. The applicant claims that his case was not considered although he fulfilled such eligibility criteria (para 4.12 and 4.13 of the OA).
- The DOPT OM's dated 7.6.1988, 10.9.1988, 12.7.1994 and 11.12.2006 regarding regularization of daily wagers have been ignored by the respondents, as stated in para 4.14 of the OA.
- No action was taken in pursuance to the judgment in Uma Devi case for regularization of the applicant (para 4.15 & 4.16 of the OA).
- The applicant's case was not considered although the respondent no. 2 recommended his case for consideration (para 4.21 of the OA).
- The payment of salary to the applicant shown in the attendance sheet shows that he was paid on monthly basis, which implies that he was engaged on regular basis, not on contract basis (para 4.22 of the OA).

4. The respondents have filed their Counter Affidavit (in short CA) stating the following points:-

- The applicant was engaged on daily wage basis and details of his engagement are furnished in the letter dated 6.4.2016 (Annexure CA-1). He was mainly engaged for gardening work as and when required on daily wages. He was never engaged against the regular post of Safaiwala. He was engaged for seasonal/casual work as per the DOPT OM dated 7.6.1988

and has never completed 206 days of work in a calendar year as stated in para 4,5,6,13,14,15 of the CA.

- The applicant has not furnished any evidence to prove that he had worked as a Safaiwala in the office of the respondent no. 3.
- The certificates issued to the applicant by the officers were issued in their personal capacity and they were not authorized to issue such experience certificate (para 8 of the CA).
- The applicant had appeared in the test for sweeper, but failed.
- Casual Labour (Grant of Temporary Status and Regularization) Scheme as per the DOPT OM dated 10.09.1993 will not be applicable to the applicant as it was a one-time scheme applicable to the casual labour who was on the roll when the scheme was launched as held in the case of Mohal Pal case SLP (Civil) No. 2224/2000 and it is not an ongoing scheme and the applicant had not been engaged for more than 206 days during any calendar year (para 12 and 36 of the CA).
- Hon'ble Supreme Court in the case of National Fertilizer Ltd. vs. Somvir Singhand has held that any recruitment in violation of the rules would render them to nullity. In the case of Surinder Prasad Tiwari vs. U.P. Rajya Krishi Utpadana Mandi Parishad, it was held that it would be improper for the Courts to direct regularization of daily wagers/temporary or contractual employees not appointed following procedure (para 11 and 16 of the CA).
- Reference to the judgments in the following cases have also been made in the CA in favour of the respondents' case:-
 - i. Judgment of Hon'ble Supreme Court dated 17.01.1986 in the case of Surinder Prasad Tiwari Vs. U.P. Rajya Krishi Utpadan Mani Parishad
 - ii. Judgment of Hon'ble Supreme Court in the case of National Fertilizer Ltd. Vs. Somvir Singh
 - iii. State of Bihar & ors. Vs. Project Uchcha Vidya Shikshak Sangh & ors – (2006) 2 SCC 545
 - iv. Secretary, State of Karnataka & Ors. Vs. Umadevi & Ors – AIR 2006 SC 1806
 - v. State of Punjab Vs. Surjit Singh – (2009) 9 SCC 514
- The applicant has not exhausted the departmental remedies and the OA is also barred by section 20 of the AT Act, 1985 (para 55 of the CA).
- The casual labourers engaged specifically for seasonal or intermittent work which is not of full time nature. Hence, there is no question of regularization as per the judgment in Uma Devi case. There is no provision for regularization of

service of a person engaged on daily wage basis for seasonal intermittent works.

5. The applicant has filed the Rejoinder on 12.4.2017 enclosing copy of the attendance register received from the respondents. The averments made in the OA are reiterated. It is stated that the applicant has been forcefully disengaged verbally even after issue of the interim order by this Tribunal.

6. Heard learned counsel for the applicant, who reiterated the facts of the case and submitted that the letter dated 6.4.2016 enclosed with the CA clearly shows that the applicant was engaged for more than 206 days during the year 2015-16. He further argued that the impugned order has wrongly mentioned the applicant's engagement to be contractual, where as the copies of the attendance register enclosed by the applicant with the Rejoinder show that the applicant was paid on the basis of daily wage rate. He also pointed out that in para 15 of the CA, the nature of work of the applicant was mentioned to be casual, where as in the impugned order it is mentioned to be contractual.

7. Learned counsel for the respondents was also heard. He submitted that the OA suffers from non-joinder of essential party as the office in which the applicant was engaged was not mentioned and he was never engaged by the respondent no. 3. The Scheme of 1993 of the DOPT was a one-time scheme which is not applicable to the applicant. It was further submitted that the applicant was not engaged against any vacant post and that as explained in the Counter Affidavit, the applicant is not entitled for any relief prayed for in the OA.

8. I have considered the pleadings on record as well as the submissions of the leaned counsels of both the parties. The dispute between the parties on following points/issues is required to be settled in this case:-

- Nature of engagement of the applicant, which is stated to be seasonal and casual as per the respondents and against a regular nature of work as contended by the applicant.
- Applicability if the benefit of the DOPT scheme for regularization of casual workers to the case of the applicant.

- Applicability of the benefit of regularization as per the judgment of Hon'ble Apex Court in the case of Uma Devi (supra).
- Validity of the impugned orders dated 25.2.2015 and 4.6.2015 passed by the respondents reject the claim for regularization of services of the applicant.

9. Regarding the first issue listed above, the applicant in para 4.2 of the OA has contended that he had to regularly work as a Safaiwala in all sections in the respondents' office and to prove it, he had enclosed copy of the attendance sheet with the OA as well as with the Rejoinder. On the other hand, the respondents, in the impugned orders, have stated that the applicant was engaged on contract basis. In the CA, it is averred that the applicant was engaged for some seasonal and day to day work for cutting of bushes, cleaning of campus and gardening work on daily wage basis and he was never engaged against regular post of Safaiwala. The applicant was engaged as a daily wage employee as per the DOPT guidelines in the OM dated 7.6.1988 (vide para 13 of the CA) and he was not engaged against any work of regular nature. It is stated in the CA that the applicant never completed 206 days of service in any calendar year. Hence, there is no provision for regularization for the employees like the applicant. It is seen from the details of engagement furnished in letter dated 6.4.2016 (Annexure-I to the CA) that during the period of about 10 months from June, 2015 to March, 2016, the number of days in which the applicant was engaged was 267 days, with an average engagement for about 26 days per month. Copy of the attendance sheets enclosed by the applicant with the Rejoinder also show similar average engagement of the applicant. Hence, the contentions of the respondents that the applicant was engaged for seasonal work and his total engagement had not exceeded 206 days in any calendar year, are incorrect and not as per the documents on record. However, the applicant's contention that he was engaged as a sweeper is not supported by any of these documents. It is clarified that the experience certificates enclosed by the applicant are not relied upon in view of the fact that these were issued by the concerned officers in their personal capacity and these are not official records. On the other hand, the respondents have not furnished any document to prove their contention that the

applicant was engaged for work which was purely seasonal in nature. Hence, the reply to the first point in para 8 above, is that the applicant was engaged as a daily wage casual employee almost for all the working days in a month and not for seasonal nature of work as contended by the respondents in the CA.

10. Regarding the applicability of the DOPT scheme for granting temporary status and regularization of casual labour, it is contended by the respondents in para 36 of the CA that the DOPT Scheme dated 10.9.1993 was a one time scheme applicable for the casual labourers who were on roll as on the date of issue of circulation of the said Scheme and it is not an ongoing scheme as decided by Hon'ble Apex Court in Mohan Pal case in SLP(Civil) No. 2224/2000. It is seen that the DOPT OM dated 16.10.2014 states as under:-

“The undersigned is directed to say that Casual Labourers (Grant of Temporary Status & Regularization), Scheme of Government of India, 1993, circulated vide DOPT OM No. 51016/2/90-Estt(C) dated 10.09.1993, stipulated conditions for grant of temporary status and regularization of services to the persons recruited on daily wage basis in the Central Government Offices as on 10.09.1993. It was held in the Mohan Pal Case SLP (Civil) No. 2224/2000 that the Scheme of 1-9-93 is not an ongoing Scheme and the temporary status can be conferred on the casual labourers under that Scheme only if they were in employment on the date of the commencement of the scheme and they should have rendered continuous service of at least one year i.e. at least 240 days in a year or 206 days (in case of offices having 5 days a week). The Scheme inter-alia provided for regularization of CL-TS against Group 'D' posts.”

Hence, it is clear that the DOPT Scheme in this regard was applicable to the casual labourers who were engaged as on the date of commencement of the Scheme i.e. as on 10.9.1993. Hence, the applicant, who was engaged from 2000 as per the averments in the OA, will not be covered under the said Scheme of DOPT for regularization of the services of the applicant.

11. The respondents in para 18 of the CA have averred that in accordance with the judgment of Hon'ble Apex Court in the case of Secretary, State of Karnataka & Ors. vs. Umadevi & Ors., AIR 2006 SC 1806, the regularization is to be done under the statutory rules and casual labour/temporary employee cannot claim any right to regularization. It is noticed that even after the judgment in Umadevi case in 2006, the respondents have continued to engaged

the applicant till 2016 as the letter dated 6.4 2016 attached to the CA would reveal. It is seen that in the said judgment, there is provision for regularization in respect of irregularly appointed persons who were working for more than 10 years as temporary/casual employee and as the applicant had not completed 10 years of service as on 2006, he will not be eligible under these orders. Hence, in reply to the point no. 3 of the para 8 is that the applicant will not be entitled to the benefit of regularization in accordance with the judgment in Umadevi case. Third point/issue of the para 8 above is replied accordingly.

12. In view of the above discussions, it is noted that there is no rule or scheme under which the services of the applicant can be regularized. Without such a scheme in place, the applicant will not be eligible for regularization in view of the legal principles laid down in Umadevi case. In this case, Hon'ble Apex Court has held as under:-

“11. In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the Union or of the State Government cannot but be recognized and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognized and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for courts whether acting under [Article 226](#) of the Constitution or under [Article 32](#) of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme.”

It is not the case of the applicant that he was appointed as per the rules applicable following the constitutional provisions. Hence, in absence of any rule or policy decision on the issue, this Tribunal cannot direct to regularize the services of the applicant.

13. As discussed in para 9 of this order, the applicant was engaged by the respondents almost on all working days in a month since the year 2000. But as stated in para 39 of the Rejoinder, the applicant was disengaged in spite of the interim order, which has not been contradicted by the respondents. The para 39 of the applicant's Rejoinder states as under:-

“.....in view of the departmental rules as well as the law laid down by the apex court regarding regularization of the service of the government servant, the applicant who has rendered 16 years of service in the department deserve to be regularized. However, the respondents in gross violation of rules and law laid down by the apex court are obstinate to disengage him with regardless of the interim order passed by this court in favour of the applicant.”

14. It is seen that the interim order dated 24.2.2016 was vacated vide order dated 19.10.2016, for which the applicant's counsel has filed a recall application which is pending. The interim protection allowed to the applicant vide order dated 24.2.2016 stated as under:-

“.....Accordingly, I direct the respondents that if the applicant is working today as a Safai Karmchari which is a post /job needed on regular basis, the applicant be allowed to continue to work, in the same capacity as he has been working with the respondents since 2000, till the next date of listing.....”

15. In the circumstances, although it is not possible to grant the relief of regularization of services of the applicant for the reasons mentioned above, but taking into consideration of the fact that the applicant was being engaged for more than 15 years as a daily wage labourer and in the interest of justice, the OA is disposed of with a direction to the respondents to continue to engage the applicant on the same terms and conditions, which were applicable to the applicant as on 24.2.2016 (the date of passing of the interim order), if there is a need to engage a casual labourer or if the respondents have engaged any fresh casual labourer after disengaging the applicant, as alleged in para 39 of the Rejoinder. The OA is disposed of accordingly. No costs.

(Gokul Chandra Pati)
Member – A

Anand...