

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

CIRCUIT BENCH AT SRINAGAR

OA No. 062/00340/2018

Pronounced on : 28.11.2018

Reserved on : 13.11.2018

**CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MRS.P. GOPINATH, MEMBER(A)**

Mohd Aashiq Hussain Ganie (Aged 51 years) S/o Sonauallah Ganie R/o
Brinty Batpora, District Anantnag Kashmir working as Gramin Dak Sewak
posted as Sub Post Office, Dialgam.

.....Applicant

BY ADVOCATE: **Sh. Mutahar-Ah. Makhdoomi**

VERSUS

1. Union of India through Secretary, Department of Posts Government of India (Dak Bhawan), New Delhi.
2. Chief Postmaster General Circle J&K, Srinagar, J&K State
3. Senior Superintendent of Post Offices, Srinagar Division, J&K State
4. Assistant Superintendent of Post Offices, Anantnag, J&K State.

.....Respondents

BY ADVOCATE: **Sh. Satinder Singh**

ORDER

MRS. P. GOPINATH, MEMBER(A):-

1. The applicant was provisionally appointed as a Gramin Dak Sevak in 1996 against a newly sanctioned post. The applicant had been working against the post till 12.06.2015 for 21 years. In these 21 years, his provisional appointment has not been regularized. Applicant had filed a

civil suit before the Court of Sub Judge, Anantnag which was disposed of on 31.07.2015 with the observation that the respondent department is a Central Government office and therefore, covered under the CAT Act. The petitioner was allowed to withdraw the aforesaid suit with the liberty to file the same before the appropriate authority.

2. The petitioner also submits that he has been covered by the Postal Life Insurance Scheme and has been paying the monthly premiums through deductions made from his allowances.

3. The applicant filed SWP No. 1803/2015 which was disposed of on 12.10.2017 with the following order:-

“Be that as it may, the Hon’ble Supreme Court in case State of Karnataka versus Uma Devi reported in 2006 (4) SCC 1, has held that in case appointment, if irregular, the services of an employee can be regularized by way of one time measure.

In view of the law laid down by Hon’ble Supreme Court in Uma Devi supra and in the fact situation of the case of the petitioner, I deem it appropriate to dispose of the writ petition with a direction to the Competent Authority to consider the claim of the petitioner for regularization of his services in view of the law laid down by the Constitutional Bench of the Hon’ble Supreme Court in the case of Uma Devi supra by a speaking order and in accordance with rules which may be applicable to the case of the petitioner within a period of two months from today.”

4. Following the order of the High Court, the respondents passed Annexure A-1 impugned order. In the said Annexure A-1, the respondents submit that the applicant was engaged as a stop gap arrangement as the original incumbent of the post was absent from duty and hence his appointment is not an regular appointment. We also note that no regular process was followed for his engagement and therefore, the applicant does not come within the purview of directions of the Hon’ble Supreme Court in

Secretary, State of Karnataka Vs. Uma Devi, 2006(4) SCC Page

14. Hence, the applicant’s services were terminated.

5. Heard counsel for the applicant & respondents and perused written submissions made. We find that the engagement of the applicant for a period close to 21 years on the ground that a regular incumbent is absent from duty as stated by respondents, does not hold water. If the original incumbent was absent for such a long time, his services could have been terminated on the grounds of absconding from duty. Keeping the applicant on tenterhooks by engaging him on a provisional basis for such a long period by allowing the original incumbent to hold a lien on the post, appears to be a clear case of injustice to the applicant. It is a little difficult to believe that stop gap arrangement has been allowed to continue for such an inordinately long period. We are also of the view that whereas the Apex Court in Uma Devi (Supra) has laid down the law in the matter of granting regularization to persons engaged on temporary basis, the case of the applicant is one of being engaged against a regular post, may be on temporary basis. But the fact is that a post was available & respondent failed to fill it on a regular basis and allowed a recalcitrant official to hold lien on the post.

6. Applicant places reliance on the following case law:-

- (i) Nihal Singh & Ors. Vs. State of Punjab & Ors., (2013) 4 SCT 469
- (ii) Shravan Kumar Jha Vs. State of Bihar : Ram Sewak Sharma, 1991 (Supp.1) SCC 330
- (iii) Gajanan L. Pernekar Vs. State of Goa & Anr., 1999 AIR (SC) 3262

7. Respondents in the reply statement give a detailed account of how a GDS is required to be appointed, a procedure which they did not follow for 21 years of applicant's engagement. If they were aware of the procedure, why did they not follow it for the inordinate period of applicant's engagement. Nowhere, do the respondents submit or argue why the

procedure of appointment was not followed in respect of the applicant against the vacant post he was temporarily engaged and worked against from the year 1996 to 2017. It would also be, far-fetched to believe that the applicant was substituting vice a person absent from duty for 21 years.

8. For the foregoing reasons, we quash the impugned order Annexure A-1 and direct the respondents to regularize the services of the applicant as GDS Mail Packer at Sub Post Office Khanabal w.e.f. the date of his engagement. OA is allowed in these terms. No order as to costs.

(P. GOPINATH)
MEMBER (A)



(SANJEEV KAUSHIK)
MEMBER (J)

Dated:
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