

.1.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00251/2015

Thursday, this the 28th day of February, 2019

CORAM:

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

Smt.K.M.Kala,
w/o Nandan,
Aged 44 years,
Command Stadium Labourer,
(Saffaiwala), Naval Aircraft Yard,
Kochi.

....Applicant

(By Advocate Mr.Brijesh Mohan)

V e r s u s

1. The Flag Officer Commander-in-Chief,
Naval Base,
Kochi – 682 004.

2. The Union of India,
represented by its Secretary,
Ministry of Defence,
New Delhi – 110 001.

3. The Officer in Charge,
Command Stadium,
Naval Base,
Kochi – 682 004.

....Respondents

(By Mr.N.Anil Kumar, SCGSC for Respondents)

This application having been heard on 20th February, 2019 the Tribunal
on 28.02.2019 delivered the following :

.2.

ORDER

HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER

OA No.251/2015 is filed by Smt.K.M.Kala seeking the following reliefs:

- i) Call for the records leading to Annexure A3 and set aside the same.
 - ii) Direct the respondents to regularise the service of the applicant with all consequential benefits including arrears of salary.
- And
- iii) Such other and further reliefs as this Hon'ble Tribunal may find just and proper.

2. The applicant is working as Saffaiwala in the Commands Stadium for maintenance and cleaning since 1994. Persons identically situated like applicant were regularised in service pursuant to the direction of Hon'ble High Court of Kerala as per Annexure A1 order. However, the applicant submitted a request for regularising in service and the same was rejected by impugned order dated 11.06.2008 (Annexure A3). The same was challenged in W.P.(C) No.37498/2008 which was dismissed as per Annexure A4 order. A Division Bench of Hon'ble High Court, in view of Hon'ble Supreme Court in **L.Chandra Kumar Vs. Union of India (1993 (3) SCC 261)** held that the remedy of the applicant is to approach this Tribunal under Section 19 of Administrative Tribunal Act, 1985 and thus the present application is filed.

3. There were four Malis along with the applicant working in the Stadium.

.3.

They were also not regularised in service, therefore they filed OA No.170/1996 before this Tribunal and the Tribunal held that the application is not maintainable before it. They went in appeal before the Hon'ble Supreme Court and the Apex Court confirmed the Tribunal's decision. Thereafter, they filed OP No.11247/1990 before the Hon'ble High Court of Kerala and the High Court allowed their prayer for regularisation in service by judgment dated 24.09.1994. The said decision is reported in **1994 (2) KLJ 923** and the appeal preferred by the department was dismissed by the Hon'ble Supreme Court. Thereafter they were regularised in service. The applicant was under the belief that the respondent would regularise her services being similarly situated. However, her services were terminated against which she filed Writ petition before Hon'ble High Court of Kerala. Ultimately, same was disposed of by the Judgment dated 14.03.2008 directing the Respondent-1 therein to take appropriate action on representation dated 20.05.2003 submitted by the applicant in the list of similarly situated persons. Applicant has filed C.P.No.983/2008, in the meanwhile her representation was considered and an order dated 11.06.2008 was issued rejecting her claim. Thereafter, the applicant filed W.P.(C) NO.37498/2008 before the Hon'ble High Court (Annexure A4). The Hon'ble High Court as per judgment dated 23.02.2010 rejected the Writ petition. In the said order the Hon'ble High Court had directed the respondents to continue to engage the applicant as Saffaiwala. The applicant further submitted that the Division Bench of the Hon'ble High Court held that the remedies of the applicant lies with the CAT, in view of the

.4.

the judgment of Hon'ble Supreme Court in **L.Chandra Kumar vs. Union of India**. Irrespective of dismissal of the Writ petition the applicant was given liberty to approach CAT. Feeling aggrieved by this, the applicant filed the present OA.

4. Notices were issued. Shri N.Anilkumar, SCGSC appeared on behalf of the respondents and filed reply statement. The respondents submitted that the services of a casual labour who is engaged without conducting the selection process cannot be regularised. Therefore, the applicant is not appointed against a sanctioned post, is being paid out of non-public fund and not engaged after following the procedure prescribed for appointment to Government service, is not entitled to claim regularisation in service. They cited Constitution Bench of **State of Karnataka and others Vs. Umadevi and others**, in which it was held that unless the appointment is in terms of the relevant Rules and after a proper competition among qualified persons, it would not confer any right on the appointee. It was held that if the appointment is a contractual appointment, the same comes to an end at the end of the contract and that if the engagement was on daily wage or casual basis the same would come to an end when it is discontinued. The Apex Court has also held that merely because a temporary employee or a casual wage worker is continued for a long time beyond the term of his/her appointment, he/she will not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not done following a due process of selection as envisaged in

.5.

the relevant Rules. Hence the applicant is not entitled to claim regularization in service as she has no legal right for regularisation and pray for dismissal of the OA.

5. Heard the Counsel for the parties at length and perused the records. A short question raised in this OA by the applicant is that despite working for a long time of 24 years, the applicant is still working on the strength of the order passed by Hon'ble High Court of Kerala and still continuing. The respondents has submitted that Smt.Kala has not been engaged as casual labour against the Government sanctioned post. During the year 1975, the Sports Stadium was constructed by Southern Naval Command, Kochi. Since the Stadium was constructed by using the non-public funds, no post was sanctioned by the Government for its maintenance. Thus the applicant cannot claim for regularisation on the basis of the judgment passed by the Hon'ble Apex Court in **Umadevi's case**

6. The concern of the Hon'ble Supreme Court is that the back door appointment should be restrained. One should come forward to compete for an appointment to regular post. At the same time Hon'ble Apex Court has held that who have worked for ten years or more service in duly sanctioned post but not under the cover of orders of the Courts or of Tribunal and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned post that required to be filled up, in cases where temporary

.6.

employees or daily wagers are being now employed. The process must be set in motion within six months from this date, is the clear direction of the Hon'ble Apex Court and that one time process shall be undertaken which the Naval department has failed to take up. The Kerala High Court in its initial order dated 20.03.2002 in the matter of the Flag Officer Commanding In-Chief and others Vs. K.A.Joseph, Sports Mali and others categorically observed that first and second respondents factually admitted that petitioners had been in service continuously for decades. Even after the Stadium and sports grounds were handed over to M.E.S. Authorities they were allowed to continue as Sports Malis for the maintenance and upkeep of the Stadium and sports ground. Sports ground and sports stadium are owned by the Southern Naval Command which is an instrumentality of the State and owned and controlled by the Central Government. The mode of payment whether it is from non-public funds or otherwise is not the concern of the petitioners. It was for the first and second respondents to take appropriate steps to render continuity in the service of the petitioners since they have put in a number of years of service. Respondents have no case that their services are not satisfactory. Their services were also found to be very essential for the maintenance of the Stadium and as well as to upkeep the sports ground. The Stadium and sports ground were established by the instrumentality of the Central Government and not by the private management. Mere fact that the same is maintained by non-public fund does not mean that the petitioners are not entitled to get permanent absorption in service. We found that the judgment of Kerala High

.7.

Court dismissed the Writ petition.

7. After considering the rival contentions and the judgment passed by the Hon'ble High Court in the **W.A.No.5/1995 dated 20.03.2002 – The Flag Officer commanding In-Chief and Ors Vs. K.A.Joseph and Ors.**, where the Hon'ble High Court had directed to regularise the four applicants (Malis) as Group 'D' employees and ordered therein to pay minimum scale of pay from the date of filing the Writ petition i.e., 10.12.1990, which was upheld by the Division Bench of Kerala High Court. The applicant was unfortunate by not joining the said petitioners who filed their case before the Hon'ble High Court and got favourable order, though she is similarly situated and worked as Saffaiwala for more than 2 decades. Though the Hon'ble Apex Court has prohibited the back door entry against the relevant Rules of selection but has given one time relaxation for the employees who have worked more than ten years or so, as one time measure. The job performed by the applicant is permanent in nature and was not even considered by the respondents even after the dictum of Hon'ble High Court of Kerala. The respondents ought to have been considered her for regularisation as one time measure as directed by the Hon'ble Apex Court in **Umadevi's** case. Taking into consideration the peculiar facts and circumstances of the case, this Tribunal holds that the applicant is similarly situated employee with those, whose services were regularised pursuant to the judgment of Hon'ble High Court of Karnataka. The applicant should also be given similar treatment and regularise her service against Group 'D' post and

.8.

similar benefits like fixation of pay at the minimum of pay scale of Group 'D' should be given to her as well from the date of filing of this OA i.e., 18.03.2015, as per the order in the Flag Officer Commanding In-Chief Vs. K.A.Joseph and others, within a period of three months from the date of receipt of a copy of this order. OA is disposed of with no order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

sd

List of Annexures in O.A. No.180/00251/2015

1. **Annexure A1** – True copy of the judgment dated 20.03.2002 in W.A.No.5/1995 (A) of the Hon'ble High Court of Kerala.
2. **Annexure A2** – True copy of the judgment dated 14.03.2008 in W.P.(C) No.20656/2003(H) of the Hon'ble High Court of Kerala.
3. **Annexure A3** – True copy of the Order dated 11.06.2008 issued by the 1st respondent.
4. **Annexure A4** – True copy of the judgment dated 23.02.2010 in W.P. (C) No.37498/2008 (L) of the Hon'ble High Court of Kerala.
5. **Annexure A5** – True copy of the judgment dated 07.11.2014 in WA No.465/2010 of the Hon'ble High Court of Kerala.
6. **Annexure R1** – Copy of Hon'ble Tribunal order dated 01 Jul 1997.
7. **Annexure R2**– Copy of Hon'ble Tribunal order dated 14 Nov 2008.
