

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00017/2016

Date of Order: 12.04. 2019

THE HON'BLE MRS. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE MR. NEKKHOMANG NEIHSIAL, ADMINISTRATIVE MEMBER

1. Sri Bishnu Hoon Choudhury
Son of Late Bijoy Kumar Hoon Choudhury,
Resident of Nabapally, Malugram
P.S. Silchar Sadar, District Cachar, Assam.
2. Nizamuddin Laskar
Son of Late Sanjit Ali Laskar
Resident of Tupkhana, Part-I
Masimpur BSF, Near R.P. Gate
P.O. Arunachal, District Cachar
Assam, Pin – 788025
3. Nirmal Ch. Das
C/o Kamala Das
Son of Late K.R. Das
Resident of Rongpur Karatigram
Nabapally, P.O. Rongpur-788009
District – Cachar, Assam.

...Applicants

By Advocates: Mr. B. P. Sinha & Ms. N. Das

-Versus-

1. The Union of India
Represented by the Secretary
Ministry of Urban Development
'C' Wing, Nirmal Bhawan, New
Delhi-11, India.
2. The Chief Engineer (NEZ) II
CPWD, Gandhigram, Agartala-12
Tripura.

3. The Superintending Engineer
Silchar Central Circle, CPWD
Melaroad, Silchar-2, Cachar
Silchar, Assam.
4. The Executive Engineer, Silchar
Central Circle, CPWD, Silchar-2
District Cachar, Assam.
5. The Assistant Engineer, Silchar
Central Sub-Divisional-IIA & I
CPWD, Silchar-3, District Cachar
Assam.

...Respondents

By Advocate: Mr. S. K. Ghosh, Addl. CGSC

ORDER

MANJULA DAS, MEMBER (J):

Being aggrieved for non-consideration/ regularisation of their services after granting temporary status, the applicants has approached this Tribunal by filing the instant O.A. seeking the following reliefs:

- | | |
|--------|--|
| “8.(1) | That the engagement on direct work-order expired on 30.06.2015, same may be continued as has been there for last more than 20 years. |
| 8.(2) | That regularization of their services, after granting of temporary status to the applicant on Direct Work-Order Basis. |
| 8.(3) | Status –quo may be maintained before the position upto 30.06.2015, same may be extended till finalization of the present petition and may not be disengaged/disturbed the applicants from their respective services. |
| 8.(4) | The Order of this Hon'ble Tribunal, which was passed on 10.08.2015 to consider the case of |

the petitioner as per law laid down by the Apex Court in the Case of Uma Devi (Supra).

8.(5) Costs.

8.(6) Such any further relief or reliefs as to this Hon'ble Court may deem fit and proper."

2. The brief facts narrated by the applicants are that in order to support their respective families being a member of very poor family, they have engaged direct, work order, daily wage basis in the Central public Works Department under the office of the Superintending Engineer, Silchar Central Circle, Silchar-3 on 01.01.1994. Since then they have been working without any interruption or break. Time and again, the applicants approached before the respondent authorities regarding the regularization of their services in temporary status. The respondent authorities also assured the applicants that their grievances would be taken care of and accordingly the applicants have been engaged on work order. Since all the applicants have been completed more than 20 years w.e.f. 01.01.1994, they were under bonafide belief that their prayers would be considered. Some letters of correspondence have also taken place amongst the respondent authorities. But the Assistant Engineer, Silchar Central Sub-Division-II, CPWD, Silchar-3 have made it clear through a work order that engagement on work order going to be completed on 30.06.2015. The applicants finding no other options approached before the Hon'ble Gauhati High Court vide

W.P.(C) No. 3849/2015 but same has been dismissed on 27.07.2015 for want of jurisdiction and directed to file before appropriate forum.

3. Thereafter, the applicants approached this Tribunal vide O.A. No. 04/00279/2015 and this Hon'ble Tribunal vide order dated 10.08.2015 disposed of the said O.A. and directed the respondent authorities to consider the comprehensive representation to be made by the applicants as per the ratio laid down by the Hon'ble Apex Court in the case of **Secretary, State of Karnataka and Ors. Vs. Uma Devi and Ors. (2006) 4 SCC 1 at para 53, page 42**. Accordingly, the applicants filed a comprehensive representation, highlighting their grievances before the respondent authorities on 20.08.2015. On being received, the said comprehensive representation along with the order of this Tribunal, passed an order on 28.10.2015 by the Superintending Engineer stating that the applicants are ineligible for regularization in service. Hence the instant O.A. has been preferred by the applicants against the said order dated 28.10.2015.

According to the applicants, since they have completed more than 20 years, therefore, they ought to have been conferred temporary status by regularising their services in terms of 'Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of the Government of India, 1993'. But the department has not considered their case for regular appointment also. But they have been still continuing.

4. The respondents have filed their written statement on 20.05.2016 and stated that

a) The CPWD is Department of Govt. of India under Ministry of Urban Development and is engaged in construction and maintenance of Government buildings. The CPWD executes the works on the basis of contract tenders or contract work orders etc. through various registered as well as non-registered contractor as per the registered limits of individual contractors.

b) That the statement made by applicant that they were put on work order as daily wage labourer under CPWD is hereby denied. The applicants have wrongly represented themselves as daily wage labourer under the Central Public Works Department (CPWD). Their true position with the CPWD was as Contractor rather than the daily wage labourer. The applicant and two other applicants are contractor in CPWD who were given contract work order on open quotations to provide the particular services under specific conditions, rate and period. The applicant are working as contractor and the contracts work order were awarded separately for providing the services of drivers and clerical cum typist work after call of open quotations vide various Notice Inviting Quotations (NIQ). The copy of such contract work orders is enclosed at (Exhibits No.1, 2 and 3). The exhibit No. 1, 2 and 3 clearly establish without any doubt that the position of the applicants were contractor and not of daily wage labourer.

c. According to the respondents, the applicants have also misled this Tribunal by wrongly claiming themselves that they were working with CPWD under Executive Engineer, Silchar Central Division since 01.01.1994. The date mentioned by applicants as 01.01.1994 for award of initial first contract work order by Executive Engineer, Silchar Central Division to three applicants is incorrect. The applicants have themselves asserted this fact that the contract work orders were awarded to them (as per CPWD's record submitted by two applicants during the meeting on 12.10.2015 with Superintending Engineer, Silchar Central Circle) to Shri. Nizam Uddin

Lashkar as on 01.10.1994 and Shri Nirmal Chandra Das as on 30.06.1994 (Exhibits No. 2 and 3). According to the respondents, all the applicants are intentionally misleading the authority by citing wrong date of contract work order which they have got it as contractor.

d) That the applicants were contractor and not daily wage labourer and therefore question of continuous period of service for their regularisation does not arise. Moreover, the statement made by applicants that they have continuously appointed by Executive Engineer is denied as applicants had not established their continuity in contract work order since 01.01.1994 (cited date is wrongly mentioned by applicants) till date 30.06.2015 in CPWD by providing any legal documents in support for number of years of work and days per year. As explained above para, the applicants were contractors and the contract work order was issued to them time to time for specified work.

e. The Hon'ble Supreme court in the case of Union of India and others Vs Shri. Mohan pal and others, SLP (civil) 3168 of 2002 has held that the scheme of 01.09.1993 of DOPT is not an ongoing scheme. The copy of judgement is enclosed as (Exhibits No-8). The Court has stated that "However, we make it clear that the Scheme of 01.09.1993 is not an ongoing scheme and the 'temporary' status can be conferred on the casual labourers under that Scheme only on fulfilling the conditions incorporated in Clause 4 of the Scheme, namely, they should have been casual labourers in employment as 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)." As already stated in above para, the scheme is not applicable to the applicant being a contractor. They were neither casual workers on muster roll nor they were on roll on date of commencement of scheme i.e. 01.09.1993 made them ineligible as well.

f. The respondent have relied on and tried to even comply with the Hon'ble Supreme Court Judgement in Umadevi case, Para 44 "of duly qualified persons in duly sanctioned vacant post

might have been made and the employees continued to work for 10 years or more but without the interventions of order of court or tribunals. The question of regularization of the service of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgement. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a onetime measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed.

g. As held by Supreme Court, the essential requirement is that there should be vacant post against which the person to be regularised working. There is no post of the Drivers in Silchar Central Division against which the applicant have engaged in work orders. The sanctioned strength in Silchar Central Division is detailed in the (Exhibits No-9). As detailed in exhibit-8, there is no post of Motor lorry Drivers and all four post of Lower division clerk are occupied and no vacant post of lower division clerk in Silchar Central Division. Hence it is submitted to Hon'ble court that the applicants are not entitle for regularisation due to non-fulfilment of essential condition of entitlement of engaged against sanctioned duly vacant post as there is no vacant post of Lower division clerk as well no post of MLD in Silchar Central Division against which the work order issued to the applicants.

5. We have heard Mr. B.P. Sinha, learned counsel for the applicant and Mr. S.K. Ghosh, learned Addl. CGSC for the respondents. Perused the pleadings and materials placed on record. The main issue is disputed status of the applicants whether they are casual labourers or contract workers. In the earlier O.A. No.

040/00279/2015, this Tribunal vide order dated 10.08.2015 had directed the respondents to consider the comprehensive representation of the applicants within a period of three months after affording them an opportunity of personal hearing. The respondent authorities vide their order No. 55/SCC/2015-16/713 dated 28.10.2015 after giving opportunity, considered their representation and rejected the representations of the applicants and recorded amongst others as under:-

"The applicants were engaged from time to time through work order after collecting quotations and were working as contractors for all purpose. Thus it is stated that said guidelines as above which have been laid down by the Hon'ble Supreme Court forbids to being such contractual/casual labourers in permanent establishment unless they are selected through regular selection process for Group 'C'/'D' posts. Group 'C'/'D' posts are to be filled with extant recruitment rules. Since the applicants were engaged on work order basis after collecting quotations, but not recruited through regular selection process, they cannot be considered for regularization."

6. As such, this is the second round of litigation, as brought out above. The issue is basically about the dispute over the status of the applicants whether they are casual labourers or contract workers. On going through the entire records and pleadings submitted by both the parties, it is observed that the applicants are basically relying on the internal communications between the respondent authorities, particularly letter No. 10(1)SCC/2014-15/783 dated 28.11.2014 from the Superintending Engineer, Silchar Central Circle and another letter No. 10(1)/SCC/2014-15/315 dated

13.06.2014 from the Executive Engineer (P) to the Deputy Director General, Coordination Circle (ER), CPWD, Nizam Palace, Kolkata as well as another letter No. 10(1)/SCC/2015-16 dated 29.05.2015 from the Assistant Administrative Officer, Silchar Central Circle, CPWD, Silchar to the Chief Engineer (NEZ)II, C.P.W.D., Gandhigram, Agartala.

7. The respondent authorities in their written statement at para 3(e) has denied the status of the applicants including the validity of the letters quoted by them in the internal communication as under:-

"Moreover, they have relied on Annexure-A, which was wrongly issued by SE by suppressing the facts that they have got the contract work order as contractor. The Annexure A document has been issued without enclosure of any document which certifies that the claimants were the daily wage labourers. A per the Exhibit No. 1, 2 and 3 it is already established that they were contractors and cannot be given treatment and benefits which are laid down by the apex court."

8. In addition to this explicit written denial, the respondent authorities also enclosed the following documents:

- (a) Work Order No. WO/AE/SCSD-III/05-06/9 dated 30.06.2008, (Exhibit No. 1) issued to Sri Bishnu Hoom Choudhury;
- (b) Work Order No. 28/WO/AE/SCSD-I/94-95 dated 1/4.10.1994 (Exhibit No. 2) issued to Nizam Uddin Laskar;
- (c) Work Order No.17/WO/AE/SCSD-1/94-95 dated 30.06.1994 (Exhibit No. 3) issued to Sri Nirmal Ch. Das;
- (d) Copy of letter of Sri Nizam Uddin Laskar dated 12.10.2015 for payment of 52 items/Nos. Work Order; and

- (e) Copy of letter of Sri Nizam Uddin Laskar dated 14.10.2015 for payment of 41 items/Nos. of Work Order.

9. During the hearing, it was specifically pointed out to the learned counsel for the respondents that the Administrative Officer vide his letter No. 10(1)/SCC/2015-16/356 dated 29.05.2015 proposed/recommended for regularisation of three applicants. However, learned Addl. CGSC for the respondents vehemently opposed this proposition on the plea that the Administrative Officer is not a competent authority to consider the request of the applicant. It was only his own personal recommendation and does not change the status of the applicants as contract workers.

10. Considering the above picture and after careful consideration, it is found that the applicants have failed to establish themselves as **Casual Labourers** to get any benefits under the Scheme for which they prayed for. The O.A. is therefore, liable to be dismissed.

11. Accordingly, O.A. stands dismissed. No order as to costs.

(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)