IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

Original Application No. 20/995/2016

Reserved on: 19.03.2019
Pronounced on: 25.03.2019

Between:

T. Mohan Kumar, S/o. Ram Rao,
Age: …, R/o. D. No. 62-8-10,
Sriharipuram, Malkapuram (PO), Visakhapatnam.

… Applicant

And

1. The Chief of Naval Staff,
Naval Headquarters, North Block, New Delhi – 110 011.

2. The Chief of Naval Staff,
Integrated Head quarter (Navy),
North Block, New Delhi – 110 011.

3. The Flag Officer Commanding in Chief,
Eastern Naval Command, Visakhapatnm.

4. Base Victualling Officer,
Base Victualling Yard, Naval Base, Visakhapatnam – 530 009.

… Respondents

Counsel for the Applicant … Mrs. Anita Swain
Counsel for the Respondents … Mrs. Megha Rani Agarwal, Addl. CGSC

CORAM:
Hon'ble Mr. B.V. Sudhakar ... Member (Admn.)

ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. The OA has been filed for non grant of temporary status on par with juniors.

3. Applicant is working for the respondents organisation as casual labourer (in short "***CL***") since 25.12.1991. Based on DOPT memo dt 10.9.1993 respondents have issued the memo dt 14.10.1993 for grant of temporary status to CLs who satisfy the condition of being on the roll of the respondents as on the

date of the memo and should have put in a continuous service of 240 days in an year. On the basis of the cited memo, Casual labourers working for the respondents were granted temporary status by the respondents on their own and on orders of the Judicial forums. Initially 14 employees filed OA 4/1995 for grant of temporary status which was allowed and upheld by the Hon'ble High Court and the Hon'ble Supreme Court. Subsequently two more OAs 264/2000 & 256/2000 filed were allowed and orders thereon have been implemented by the respondents. Being aware of this development applicant represented for grant of temporary status on par with his juniors but was not considered. Applicant did file monthly details of the 253 days for which he worked for the respondents in the year 1992. While his case was not being considered other colleagues and juniors to the applicant have approached the Tribunal in OAs 1660/2003, 34/2007, 264/2000 and 256/1999 which were allowed. Respondents implemented the orders of the Tribunal and gave temporary status. Later they were also regularised. In fact the 4th respondent has recommended to the 3rd respondent on several occasions for considering the case of the applicant since he was discriminated with reference to his juniors. However, it was not considered vide lr. dt 23.12.2015 by the 2nd respondent in view of Hon'ble Supreme Judgment in Uma Devi case and DOPT orders on the subject. Aggrieved over the same the OA has been filed.

4. The contentions of the applicant are that the rejection of the request of the applicant for temporary status is against DOPT memo dt 10.9.1993.Similarly placed employees were granted the benefit but not the applicant thereby he was discriminated. The action of the respondents is against Articles 14, 16 & 21 of the Constitution.

5. Respondents state that the applicant and others were engaged as casual labourers on daily wages basis and that they were not issued any appointment orders against any regular posts. As per Hon'ble Supreme Court verdict in Uma Devi regularisation and granting of temporary status is contrary to the rules and law. However, based on DOPT memo of 10.9.1993 some of the casual labourers who fulfilled the requisite conditions have been granted temporary status vide their letters dt.19.11.1998 and 20.11.2001. Further the issue being 15 years old it is time barred. Respondents claim that the applicant was engaged from April 2001 as casual labourer and not from 1991. The applicant was not granted temporary status since he worked for less than 240 days in 2001 and 2002. Applicant did file OA 47/2003 and as directed by the Tribunal his representation was examined and rejected as per rules. Respondents clarify that in OA 1336/2000 the Tribunal has only directed to give preference to the existing casual labourers over their juniors and fresher's while engaging them as daily wage labourers. The case of the applicant was even taken up with the integrated Head quarters on 12.2.2013 but of no avail. Later the applicant request for temporary status was once again examined by a Board of officers and rejected on 19.9.2013. The only option open to the applicant is to apply for the vacancies advertised in Group D cadre and try his luck.

6. Heard both the counsel and went through the documents and material papers submitted in detail.

7. I) Respondents have claimed that the applicant is working for them since 2001. They claim that he has worked for less than 240 days in 2001 and 2002. In sharp contrast the applicant has enclosed certificates issued by the respondents in 1991 and 1992 indicating that he worked that he worked for 20 days in 1991 and 253 days in 1992. The reply statement has been silent about

these certificates. Hence in the absence of any rebuttal of the certificates by the respondents it necessarily has to be concluded that the applicant has been working for the respondents from 1991. Now let us examine the plea of the applicant by applying the provisions of the DOPT memo dt 10.9.1993 which reads as under:

1. This scheme shall be called "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993."

2. This Scheme will come into force w. e. f. 1.9.1993.

3. This scheme is applicable to casual labourers in employment of the Ministries/Departments of Government of India and their attached and subordinate offices, on the date of issue of these orders. But it shall not be applicable to casual workers in Railways, Department of Telecommunication and Department of Posts who already have their own schemes.

4. Temporary Status

(i) Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this OM and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week).

(ii) Such conferment of temporary status would be without reference to the creation/availability of regular Group `D' posts.

(iii) Conferment of temporary status on a casual labourer would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on need basis. He may be deployed anywhere within the recruitment unit/territorial circle on the basis of availability of work.

(iv) Such casual labourers who acquire temporary status will not, however, be brought on to the permanent establishment unless they are selected through regular selection process for Group `D' posts.

The applicant has been working since 1991 and he has produced authentic record that he worked in the year 1992 for more than 240 days. The applicant has represented that on 28.9.2002 that his juniors namely Sri Tata Babu, Sri Gnaneswar Rao and Sri Rani Reddy were granted temporary status. The 4th respondent has recommended the applicant for grant of temporary status on 23.4.2013,12.2.2013, and 5.2.2013. Such recommendation would not be made

unless the conditions are fulfilled. Respondents have also not produced any evidence stating that the applicant did not work for them since 1991 till 2001. However, the applicant could cull out and produce the record for 1991 and 1992 even at this date. Therefore it would be fair to consider that he continued to work for the respondents from 1991 onwards. The logic is that employment in respondents organisation is not only secure but presents the employees a sense of great pride, dignity and respect. Moreover, respondents organisation being labour intensive the future prospects are bright even to those who start at the lowest level. Therefore one who steps in would not like to step out from the respondents organisation. Whenever, there is a doubt in regard to an issue between the employer and the employee, as per law the benefit of doubt is given to the employee. In the present case applicant claims that he has been continuously working for the respondents from 1991 and has produced records for 1991 and 1992 whereas the respondents claim that he is working from 2001 without contradicting the records produced by the applicant. Hence the benefit has to be given to the applicant. Moreover, applicant was taken as a casual labourer by the respondents. There is no dispute on this count. Applicant has worked for more than 253 days in 1992 as per the certificates issued by the respondents and continued to work thereon. Therefore the conditions stipulated in DOPT memo dt 10.9.1993 have been fully satisfied. In addition the case of the applicant has been strengthened by the 4th respondent recommending the cause of the applicant for temporary status. Therefore, there is no reason as to why the applicant should not be considered for temporary status along with his colleagues and juniors.

II) The impugned order does not contain details as to why the applicant was not considered. Every decision has to be based on reason. Otherwise such an

order would tantamount to be construed as arbitrary. Essential elements of a speaking and a reasoned order are the context, considerations, contentions and conclusions. Respondents order of rejection dated 23.12.2015 does not contain these elements. Hence such an order is as good as not being issued. Honourable Apex Court has summarised the deficiency, if the order is not a speaking one and what its impact would be in the case of **Markand C. Gandhi Vs. Rohini M. Dandekar Civil Appeal No. 4168 of 2008** decided on 17.07.2008. The essentiality of a sufficiently reasoned order was rieterated by Hon'ble Apex Court in the case of Sher Bahadur Vs. Union of India, 2002 (7) SCC 142 by observing that *"The mere fact that the enquiry officer has noted in his report, "in view of oral, documentary and circumstantial evidence as adduced in the enquiry", would not in principle satisfy the rule of sufficiency of evidence."*

The order dt 23.12.2015 of the respondents is similar to the one indicated in the Hon'ble Supreme Court in the judgment cited supra and therefore lack the force of law.

III) Another interesting aspect to be noticed is that the respondents took a verbatim stand in OA 1617 of 2013 as has been taken in the instant OA, but in the said OA their contention was not agreed to and the applicants there in were ordered to be given temporary status on 16.9.2015. The Tribunal order is as under:

> "11. On basis of the aforementioned facts and circumstances and owing to the fact the 3 applicants in this case are similarly situated to the applicants in the cited cases, we accordingly direct respondents to grant temporary status and consequently regularize the services of the applicants on par with the juniors with all consequential benefits , as per rules, within a period of three months from the date of receipt of a copy of this order."

A similar order on the above lines was given on 15.9.2000 in OA 264/2000 by this Tribunal in a similar issue. Further in OA 256/1999 Sri

Bangaraju who worked for 219 days in 1997, 235 days in 1998 and 60 days in 1999 was granted temporary status vide respondents order dated 3.10.2001. Respondents have admitted that 98 casual labourers vide their orders dated 19.11.1998 and 24.7.2014 were granted temporary status. When a coordinate bench has decided the issue in favour of the applicant the same has to be honoured as per the Hon'ble Supreme court judgment in Sub-Inspector Rooplal v. Lt. Governor, (2000) 1 SCC 644 wherein it was held as under:

> " At the outset, we must express our serious dissatisfaction in regard to the manner in which a coordinate Bench of the tribunal has overruled, in effect, an earlier judgment of another coordinate Bench of the same tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the tribunal was of the opinion that the earlier view taken by the coordinate Bench of the same tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law form the foundation of administration of justice under our system. This is a fundamental principle which every Presiding Officer of a Judicial Forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again that precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts. A coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement. This Court in the case of Tribhuvandas Purshottamdas Thakar v. Ratilal Motilal Patel, [1968] 1 SCR 455 while dealing with a case in which a Judge of the High Court had failed to follow the earlier judgment of a larger Bench of the same court observed thus:
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> > "The judgment of the Full Bench of the Gujarat High Court was binding upon Raju, J. If the learned Judge was of the view that the decision of Bhagwati, J., in Pinjare Karimbhai's case and of Macleod, C.J., in Haridas`s case did not lay down the correct Law or rule of practice, it was open to him to recommend to the Chief Justice that the question be considered by a larger Bench. Judicial decorum, propriety and discipline required that he should not ignore it. Our system of administration of justice aims at certainty in the law and that can be achieved only if Judges do not ignore decisions by Courts of coordinate authority or of superior authority. Gajendragadkar, C.J. observed in Lala Shri Bhagwan and Anr, v. Shri Ram Chand and Anr.

Thus a binding precedent has been laid by this Tribunal in OAs referred to above by delivering a verdict favourable to the applicant. Hence the relief sought by the applicant has to be given as was granted to those in the OAs cited supra.

IV) Besides, applicant being similarly situated like his colleagues/juniors who were granted temporary status and when he is working from an year predating the others, it is incomprehensible as to why the case of the applicant was consistently negated particularly in the face of records submitted by the applicant. For a similarly situated employee the benefit granted to others has to be extended without forcing him to go over to the court. Hon'ble Supreme Court has observed so in the following cases:

i. Amrit Lal Berry vs Collector Of Central Excise, (1975) 4 SCC 714 :

"We may, however, observe that when a citizen aggrieved by the action of a Government Department has approached the Court and obtained a declaration of law is his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the Department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to Court."

ii. Inder Pal Yadav Vs. Union of India, 1985 (2) SCC 648:

"…those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment if not by anyone else at the hands of this Court."

iii) V CPC report, para 126.5 – Extending judicial decision in matters of a general nature to all similarly placed employees:

We have observed that frequently, in cases of service litigation involving many similarly placed employees, the benefit of judgment is only extended to those employees who had agitated the matter before the Tribunal/Court. This generates a lot of needless litigation. It also runs contrary to the judgment given by the Full Bench of Central Administrative Tribunal, Bangalore in the case of **C.S. Elias Ahmed & Ors Vs. UOI & Ors, (OA 451 and 541 of 1991),** wherein it was held that the entire class of employees who are similarly situated are required to be

given the benefit of the decision whether or not they were parties to the original writ. Incidentally, this principle has been upheld by the Supreme Court in this case as well as in numerous other judgments like G.C. Ghosh V. UOI [(1992) 19 ATC 94 (SC)], dt. 20.07.1998; K.I. Shepherd V. UOI [(JT 1987 (3) SC 600)]; Abid Hussain V. UOI [(JT 1987 (1) SC 147], etc. Accordingly, we recommend that decisions taken in one specific case either by the judiciary or the Government should be applied to all other identical cases without forcing other employees to approach the court of law for an identical remedy or relief. We clarify that this decision will apply only in cases where a principle or common issue of general nature applicable to a group or category of Government employees is concerned and not to matters relating to a specific grievance or anomaly of an individual employee."

IV) In a latter case of **Uttaranchal Forest Rangers' Assn (Direct Recruit) Vs. State of UP (2006) 10 SCC 346,** the Apex Court has referred to the decision in the case of **State of Karnataka Vs. C. Lalitha, 2006 (2) SCC 747**, as under:

"29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently."

The action of the respondents in denying temporary status to the applicant who is similarly placed like his colleagues and his juniors referred to above is a gross violation of the observations of the Hon'ble Supreme Court cited supra. Therefore the order of the respondents in rejecting the request of the applicant for temporary status has to be construed as illegal.

V) Respondents have taken objection on the ground that the name of the applicant was not forwarded by the employment exchange as required by DOPT memo dt 10.9.1993. The stance of the respondents is incorrect because employment exchange is one of the channels to sponsor eligible candidates. It would be proper to appreciate that the act also did not envisage so. In fact the The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959

was enacted to ensure equal opportunity for employment seekers. Though this Act may not oblige an employer to employ only those persons who have been sponsored by employment exchanges, it places an obligation on the employer to notify the vacancies that may arise in the various departments and for filling up of those vacancies, based on a procedure. It is possible that there may be candidates who may have the qualification but could not be considered since they were not sponsored by the employment exchange. This in a way adversely impacts the right to equal opportunity for employment. Hence Hon'ble Supreme Court has observed that along with candidates who have been sponsored by Employment Exchange it would be proper to consider candidates from the open market as well. A few of the important judgments on the subject are extracted here under to drive home the point that the respondents stand that only those who are sponsored by the employment exchange are to be considered for granting temporary status is untenable.

i)Hon'ble Apex court has observed in Union of India and others Versus Miss Pritilata Nanda reported in CIVIL APPEAL NO.5646 OF 2010 as under:

> The only question which arises for consideration in this appeal filed by the Union of India and four functionaries of South Eastern Railway against the order of the Division Bench of Orissa High Court is whether respondent - Miss Pritilata Nanda, who is physically handicapped, could be denied appointment on Class III post despite her selection by the competent authority only on the ground that she did not get her name sponsored by an employment exchange.
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> In the first place, we consider it necessary to observe that the condition embodied in the advertisement that the candidate should get his/her name sponsored by any special employment exchange or any ordinary employment exchange cannot be equated with a mandatory provision incorporated in a statute, the violation of which may visit the concerned person with penal consequence. The requirement of notifying the vacancies to the employment exchange is embodied in the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 (for short, `the 1959 Act'), but there is nothing in the Act which obligates the employer to appoint only those who are sponsored by the employment exchange.

ii) Further in Union of India v. N. Hargopal (1987) 3 SCC 308, this Court examined the scheme of the 1959 Act and observed:

"It is evident that there is no provision in the Act which obliges an employer to make appointments through the agency of the Employment Exchanges. Far from it, Section 4(4) of the Act, on the other hand, makes it explicitly clear that the employer is under no obligation to recruit any person through the Employment Exchanges to fill in a vacancy merely because that vacancy has been notified under Section 4(1) or Section 4(2). In the face of Section 4(4), we consider it utterly futile for the learned Additional Solicitor General to argue that the Act imposes any obligation on the employers apart from notifying the vacancies to the Employment Exchanges."

"It is, therefore, clear that the object of the Act is not to restrict, but to enlarge the field of choice so that the employer may choose the best and the most efficient and to provide an opportunity to the worker to have his claim for appointment considered without the worker having to knock at every door for employment. We are, therefore, firmly of the view that the Act does not oblige any employer to employ those persons only who have been sponsored by the Employment Exchanges."

iii) Also in K.B.N. Visweshwara Rao's case, a three-Judge Bench of this Court considered a similar question, referred to an earlier judgment in Union of India v. N. Hargopal (supra) and observed:

"It is common knowledge that many a candidate is unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/ establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates."

In our considered view, by denying appointment to the respondent despite her selection and placement in the merit list, the

appellants violated her right to equality in the matter of employment guaranteed under Article 16 of the Constitution.

VI) The respondents need also note that the Uma devi judgment was directed to eliminate back door entry. In the instant case the applicant was taken as casual labourer by the respondents. He has been engaged to perform existing work in the respondents organisation. Forget not that he has been working since 1991. In other words there was work and he was engaged. Incidentally those who worked with him and later to him have been absorbed by the respondents. Applicant was fully qualified to be absorbed as per DOPT memo dt 10.9.1993. Yet he was ignored without giving proper reasons. In this context the observation of Hon'ble Apex Court in **Sheo Narain Nagar vs The State Of Uttar Pradesh on 13 November, 2017 reported in CA no 18510 of 2017 which is relevant to the issue is extracted here under:**

> 8. When we consider the prevailing scenario, it is painful to note that the decision in Uma Devi (Supra) has not been properly understood and rather wrongly applied by various State Governments. We have called for the data in the instant case to ensure as to how many employees were working on contract basis or ad-hoc basis or daily-wage basis in different State departments. We can take judicial notice that widely aforesaid practice is being continued. Though this Court has emphasised that incumbents should be appointed on regular basis as per rules but new devise of making appointment on contract basis has been adopted, employment is offered on daily wage basis etc. in exploitative forms. This situation was not envisaged by Uma Devi (supra). The prime intendment of the decision was that the employment process should be by fair means and not by back door entry and in the available pay scale. That spirit of the Uma Devi (supra) has been ignored and conveniently over looked by various State Governments/ authorities. We regretfully make the observation that Uma Devi (supra) has not be implemented in its true spirit and has not been followed in its pith and substance. It is being used only as a tool for not regularizing the services of incumbents. They are being continued in service without payment of due salary for which they are entitled on the basis of Article 14, 16 read with Article 34 (1)(d) of the Constitution of India as if they have no constitutional protection as envisaged in D.S. Nakara v. Union of India, AIR 1983 SC 130 from cradle to grave. In heydays of life they are serving on exploitative terms with no guarantee of livelihood to be continued and in old age they are going to be destituted, there being no provision for pension, retiral benefits etc. There is clear contravention of constitutional provisions and aspiration of down trodden class. They do have equal rights and to make them equals they require

protection and cannot be dealt with arbitrarily. The kind of treatment meted out is not only bad but equally unconstitutional and is denial of rights. We have to strike a balance to really implement the ideology of Uma Devi (supra). Thus, the time has come to stop the situation where Uma Devi (supra) can be permitted to be flouted, whereas, this Court has interdicted such employment way back in the year 2006. The employment cannot be on exploitative terms, whereas Uma Devi (supra) laid down that there should not be back door entry and every post should be filled by regular employment, but a new device has been adopted for making appointment on payment of paltry system on contract/adhoc basis or otherwise. This kind of action is not permissible, when we consider the pith and substance of true spirit in Uma Devi (supra).

9. Coming to the facts of the instant case, there was a direction issued way back in the year 1999, to consider the regularization of the appellants. However, regularization was not done. The respondents chose to give minimum of the pay scale, which was available to the regular employees, way back in the year 2000 and by passing an order, the appellants were also conferred temporary status in the year 2006, with retrospective effect on 2.10.2002. As the respondents have themselves chosen to confer a temporary status to the employees, as such there was requirement at work and posts were also available at the particular point of time when order was passed. Thus, the submission raised by learned counsel for the respondent that posts were not available, is belied by their own action. Obviously, the order was passed considering the long period of services rendered by the appellants, which were taken on exploitative terms.

10. The High Court dismissed the writ application relying on the decision in Uma Devi (supra). But the appellants were employed basically in the year 1993; they had rendered service for three years, when they were offered the service on contract basis; it was not the case of back door entry; and there were no Rules in place for offering such kind of appointment. Thus, the appointment could not be said to be illegal and in contravention of Rules, as there were no such Rules available at the relevant point of time, when their temporary status was conferred w.e.f. 2.10.2002. The appellants were required to be appointed on regular basis as a one-time measure, as laid down in paragraph 53 of Uma Devi (supra). Since the appellants had completed 10 years of service and temporary status had been given by the respondents with retrospective effect in the 2.10.2002, we direct that the services of the appellants be regularized from the said date i.e. 2.10.2002, consequential benefits and the arrears of pay also to be paid to the appellants within a period of three months from today.

In the light of the Hon'ble Apex court judgment cited above , applicant has to be considered for grant of temporary status for the years of service rendered by him and it was not a back door entry. The spirit of the Uma Devi judgment has to be respected.

VII) Further, another observation of the Hon'ble Apex Court, which covers the case of the applicant is, in **Amarkant Rai vs State Of Bihar & Ors** on 13 March, 2015 in CIVIL APPEAL NO. 2835 OF 2015, as under:

> 14. In our view, the exception carved out in para 53 of Umadevi is applicable to the facts of the present case. There is no material placed on record by the respondents that the appellant has been lacking any qualification or bear any blemish record during his employment for over two decades. It is pertinent to note that services of similarly situated persons on daily wages for regularization viz. one Yatindra Kumar Mishra who was appointed on daily wages on the post of Clerk was regularized w.e.f. 1987. The appellant although initially working against unsanctioned post, the appellant was working continuously since 03.1.2002 against sanctioned post. Since there is no material placed on record regarding the details whether any other night guard was appointed against the sanctioned post, in the facts and circumstances of the case, we are inclined to award monetary benefits be paid from 01.01.2010.
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> 15. Considering the facts and circumstances of the case that the appellant has served the University for more than 29 years on the post of Night Guard and that he has served the College on daily wages, in the interest of justice, the authorities are directed to regularize the services of the appellant retrospectively w.e.f. 03.01.2002 (the date on which he rejoined the post as per direction of Registrar).

On telescoping the above judgment on to the facts of the instant case, it needs no reiteration that the juniors to the applicant were granted temporary status, there was no blemish in the service of the applicant and that he has been engaged to attend to work existing over the years justifying possible creation of posts. Therefore, the above judgment comprehensively comes to the rescue of the applicant.

VIII) Respondents raised the objection that it is a 15 year old case. Yes it is. However, the applicant has been continuously representing to the respondents from the time the DOPT memo was issued. He continued to do so, as and when his colleagues and juniors were considered for grant of temporary status. The last one disposed by the respondents was on 23.1.2015. Anguished over the same the OA has been filed on 16.9.2016. Therefore the issue has been live since the applicant genuine grievance was not being resolved nor responded in a manner

as is expected of a model employer. Respondents organisation being an instrumentality of the State has to enact the role of model employer in a responsible manner. The observations made by the Hon'ble Apex Court given hereunder in regard to the State being a model employer are relevant to the issue in the context of the respondents rejecting the plea of the applicant for temporary status. It was also observed that the respondents were not forthcoming in submitting the information to challenge the submissions of the applicant . Many adjournments had to be granted to accommodate the request of the applicants on this count. This has also contributed in procrastinating the issue.

i) In Bhupendra Nath Hazarika & Anr vs State Of Assam & Ors on 30 November, 2012 in CA Nos 8514-8515 of 2012, Hon'ble Apex court has declared as to how a model employer ought to be as under:

> " 48. Before parting with the case, we are compelled to reiterate the oft-stated principle that the State is a **model employer** and it is required to act fairly giving due regard and respect to the rules framed by it. But in the present case, the State has atrophied the rules. Hence, the need for hammering the concept.
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> 49. Almost a quarter century back, this Court in Balram Gupta vs Union of India & Anr. [1987 (Supp) SCC 228] had observed thus:
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> > "As a **model employer** the Government must conduct itself with high probity and candour with its employees."
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> 51. In Secretary, State Of Karnataka And vs. Umadevi And Others [(2006)4SCC1], the Constitution Bench, while discussing the role of state in recruitment procedure, stated that if rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the rules, for the State is meant to be a **model employer**.
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> 53. We have stated the role of the State as a **model employer** with the fond hope that in future a deliberate disregard is not taken recourse to and deviancy of such magnitude is not adopted to frustrate the claims of the employees. It should always be borne in mind that legitimate aspirations of the employees are not guillotined and a situation is not created where hopes end in despair. Hope for everyone is gloriously precious and a **model employer** should not convert it to be deceitful and treacherous by

playing a game of chess with their seniority. A sense of calm sensibility and concerned sincerity should be reflected in every step. An atmosphere of trust has to prevail and when the employees are absolutely sure that their trust shall not be betrayed and they shall be treated with dignified fairness then only the concept of good governance can be concretized. We say no more."

II) Further comments of the Hon'ble Supreme Court in regard to State as a model employer can be seen in the **State Of Jharkhand & Anr vs Harihar Yadav & Ors** on 22 November, 2013 in CA No.10515 of 2013 as extracted below:

"45. Having regard to the position that has emerged, we are compelled to dwell upon the role of the State as a **model employer**. In Som Prakash Rekhi v. Union of India[15], Krishna Iyer, J., has stated thus: -

> "Social justice is the conscience of our Constitution, the State is the promoter of economic justice, the founding faith which sustains the Constitution and the country is Indian humanity. The public sector is a **model employer** with a social conscience not an artificial person without soul to be damned or body to be burnt."

46. In Gurmail Singh and others v. State of Punjab and others[16] it has been held that the State as a **model employer** is expected to show fairness in action.

47. In Balram Gupta v. Union of India and Another[17], the Court observed that as a **model employer**the Government must conduct itself with high probity and candour with its employees.

48. In State of Haryana v. Piara Singh[18] the Court has ruled that the main concern of the court in such matters is to ensure the rule of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16.

49. In Bhupendra Nath Hazarika and another v. State of Assam and others[19], while laying emphasis on the role of the State as a **model employer**, though in a different context, the Court observed:

> "It should always be borne in mind that legitimate aspirations of the employees are not guillotined and a situation is not created where hopes end in despair. Hope for everyone is gloriously precious and a **model employer** should not convert it to be deceitful and treacherous by playing a game of chess with their seniority. A sense of calm sensibility and concerned sincerity should be reflected in every step. An atmosphere of trust has to prevail and when the employees are absolutely sure that their trust shall not be betrayed

> and they shall be treated with dignified fairness then only the concept of good governance can be concretized."

> 50. If the present factual matrix is tested on the anvil of the aforesaid principles, there can be no trace of doubt that both the States and the Corporations have conveniently ostracized the concept of "**modelemployer**". It would not be wrong to say that they have done so with Pacific calmness, sans vision, shorn of responsibility and oblivious of their role in such a situation. Their action reflects the attitude of emotionlessness, proclivity of impassivity and deviancy with cruel impassibility. Neither of the States nor the Corporations have even thought for a moment about the livelihood of the employees. They have remained totally alien to the situation to which the employees have been driven to. In a State of good governance the Government cannot act like an alien. It has an active role to play. It has to have a constructive and progressive vision. What would have ordinarily happened had there not been bifurcation of the State and what fate of the employees of BHALCO would have faced is a different matter altogether. The tragedy has fallen solely because of the bifurcation. True it is, under the law there has been bifurcation and the Central Government has been assigned the role to settle the controversies that had to arise between the two States. But the experimentation that has been done with the employees as if they are guinea pigs is legally not permissible and indubitably absolutely unconscionable. It hurts the soul of the Constitution and no one has the right to do so.

The process adopted in arriving at the decision of rejecting the request of the applicant for temporary status is not as is expected of a model employer. The might of the respondents was at display. An impression that the awesome power of our Naval Wing, about which every Indian feels proud and we too, has translated into administrative action against a defenceless casual labourer knocking the doors of the respondents for years together, seeking simple and pure justice. Alas, it being not so, the Tribunal has to step in. More so, when similarly situated employees were given temporary status but not to the applicant. An open act of discrimination. This tribunal has issued many orders on the subject which fairly covers the case of the applicant but for reasons well known to the respondents the orders therein were not applied to the applicant though law dictates so. Unexplained delay in submitting records to this tribunal thereby delaying the proceedings which has had an excruciating impact on the psyche of the hapless applicant.

IX) Lastly, when the respondent were asked to furnish information they desired to submit in order to challenge the records submitted by the applicant, it was answered later after a long period of time that the information could not be secured. When a casual labourer could provide the respondents records pertaining to his employment in 1991 and 1992, it is strange that the respondents could not produce their own records. Failing to produce any record to support their assertions and yet taking a stand that the applicant was engaged in 2001 and not from 1991 is difficult to appreciate. Non production of records is the mistake of the respondents. For the mistake of the respondents applicant cannot be penalised. Hon'ble Supreme Court observations in the following cases substantiates the fact that the mistake of the employer should not recoil on to the employee.

(i) The Apex Court in a recent case decided on 14.12.2007 (***Union of India vs. Sadhana Khanna,*** C.A. No. 8208/01) held that the mistake of the department cannot recoiled on employees. In yet another recent case of ***M.V. Thimmaiah vs. UPSC***, C.A. No. 5883-5991 of 2007 decided on 13.12.2007, it has been observed that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer.

(ii) It has been held in the case of ***Nirmal Chandra Bhattacharjee v. Union of India, 1991 Supp (2) SCC 363***wherein the Apex Court has held "The mistake or delay on the part of the department should not be permitted to recoil on the appellants."

Therefore the mistake of the respondents in not substantiating their stand should not come in the way of granting temporary status to the applicant.

X) To sum up the applicant is eligible to be granted temporary status as per DOPT memo dt 10.9.1993 since he fulfils the conditions laid down in the said memo. Authentic record has been produced by the applicant that he worked for the respondents in 1991 and 1992. Respondents did not rebut the same with any documentary evidence. Instead they were only taking time leading to procrastination of the case. The Hon'ble supreme court judgments on the subject cited supra are in favour of the applicant. Besides, for similarly situated casual labourers numbering 98 who are either colleagues or juniors to the applicant were granted temporary status to the applicant, repeatedly ignoring the plea of the applicant despite being recommended by the 4th respondent time and again. Hence there was hostile discrimination of the applicant. The benefit extended to any employee has to be extended to similarly placed employees and not doing so is clear violation of the Honourable Supreme Court judgments in the matter cited above. This Tribunal has already upheld similar cases in OAs 1660/2003,34/2007,264/2000 and 256/1999. Therefore the verdict in the said OAs holds good as a binding precedent as held in Rooplal case by the Hon'ble Supreme Court. Respondents need to conduct themselves as a model employer in attending to the grievances of the employees particular within the ambit of the rules. Rules are laid for bringing in uniformity and eliminate arbitrariness. They should not be interpreted in the obverse manner as is seen in the present case.

Thus based on the aforementioned facts and legal principles expounded the action of the respondents is against rules, arbitrary and illegal. The applicant has made out a case which fully succeeds. Therefore the impugned order dt

23.12.2015 is quashed. Consequently, respondents are directed to consider as under;

i) To consider grant of temporary status to the applicant on par with his juniors and from the date his immediate junior has been granted temporary status.

ii) To consider regularising the services of the applicant after granting temporary status as at (i) above as per extant rules with consequential benefits thereof;

iii) Time calendared to implement the order is 3 months from the date of receipt of this order.

iv) With the above directions the OA is allowed.

v) Parties to bear their own costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 25th day of March, 2019

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