

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/020/00438/2016

Date of CAV : 04-09-2018
Date of Order : 30-10-2018

Between :

1. M. Vijay Kumar S/o Nelson,
Aged about 50 years, Occ : Casual Labour,
RMS Y Division, Ongole, Vijayawada Region,
Vijayawada, Krishna District.
2. P.V.Chalapathi S/o P. Venkateshwarlulu,
Aged about 48 years, Occ : Casual Labour,
RMS Y Division, Ongole, Vijayawada Region,
Vijayawada, Krishna District.
3. S. Khasim S/o Gaffar,
Aged about 42 years, Occ : Casual Labour,
RMS Y Division, Ongole, Vijayawada Region,
Vijayawada, Krishna District.
4. G.N.S. Ganesh S/o G.V.Subba Rao,
Aged about 29 years, Occ : Casual Labour,
RMS Y Division, Ongole, Vijayawada Region,
Vijayawada, Krishna District.
5. M.V.Chandra Sekhar S/o M. Krishna Rao,
Aged about 36 years, Occ : Casual Labour,
RMS Y Division, Ongole, Vijayawada Region,
Vijayawada, Krishna District.
6. J.V.Narayana S/o J. Venkaiah,
Aged about 49 years, Occ : Casual Labour,
RMS Y Division, Ongole, Vijayawada Region,
Vijayawada, Krishna District.
7. S.K. Abdul Rahim S/o Hussain,
Aged about 41 years, Occ : Casual Labour,
RMS Y Division, Ongole, Vijayawada Region,
Vijayawada, Krishna District.
8. D. Dayaratnam S/o D. Rama Rao,
Aged about 41 years, Occ : Casual Labour,
RMS Y Division, Ongole, Vijayawada Region,
Vijayawada, Krishna District.

....Applicants

AND

1. The Union of India, rep by its Secretary,
Department of Posts, Dak Bhavan,
Ministry of Communications and Information
Technology, Parliament Street,
New Delhi 1.
2. The Chief Postmaster General, AP Circle,
Abids, Hyderabad- 01.
3. The Postmaster General, Vijayawada Region,
Vijayawada.
4. The Superintendent of Post Offices,
RMS Y Division, Vijayawada-1. ...Respondents

Counsel for the Applicant: Dr.A. Raghu Kumar

Counsel for the Respondents : Mrs. K. Rajitha, Sr. CGSC

CORAM :

THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

This application is filed under section 19 of the Administrative Tribunals Act, 1985 to call for the records pertaining to the 4th Respondent impugned Lr.No.B-2/P.T.P/2016 dated 09.03.2016 and Notice Inviting Tender (NIT vide their Tender No. C/Outsourcing/RMS Y Division/2013-14/II, dated 24.03.2016 and quash and set aside the same as illegal, arbitrary and violative of the instructions of the 1st respondent on the subject matter and the recruitment rules of GDS and the clarifications given in respect of the same by the 1st respondent and consequently declare that the applicants have to be treated as casual labourers full time / part time as per the 1st respondent instructions dated 17.05.1989 and 06.08.2013 and are eligible

for consideration for the post of GDS MM / MTS as per the provisions in the said rules in the interest of justice and be pleased to pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. The brief facts of the case are that the applicants are working as daily wagers since 1984, 2005, 2002, 2007, 2001, 2008, 2013 and 2007 respectively. They are given the nomenclature of 'Outsiders' through they are engaged as Substitutes to the regular staff in the cadre of MTS.

3. The 1st respondent ie the Department of Posts considered the nomenclature of various categories of daily wagers working in Post Offices or in RMS Offices or in Administrative Offices or PSVs, MMS under different designations ie Mazdoor, Casual Mazdoor, Contingent paid staff, daily wager, daily rated mazdoor, outsider and vide letter dated 17.5.1989 decided that all these categories of persons have to be treated as **casual labourers**. It was further laid down in the said order that those casual labourers who are engaged for a period of 8 hours a day should be described as full time casual labourers and those casual labourers who are engaged for a period of less than 8 hours a day should be described as part time casual labourers.

4. The 1st Respondents, through a DO letter dated 6.8.2013 specifically directed to implement the same on very urgent basis taking into consideration the term 'casual labourer' and to update the information before 15.8.2013. The 4th Respondent continued to disobey and violate the

orders of the higher authorities and continued to call the category of applicants as 'outsiders'.

5. The 1st Respondent vide letter dated 7.5.2015 introduced revised selection process for engagement of all approved categories of GDS posts and the method of giving preference to casual labourers. As per the said clarifications the casual labourers are to be considered for engagement to GDS vacancies before the vacancy is notified for filing through open market. The vacancies are to be filled up through open market only if no eligible and willing casual labourers are available for that vacancy. The clarificatory order dated 07.05.2015 has elaborately explained the method of giving preference to the casual labourers.

6. The 1st respondent subsequently notified the Department of Posts (Multi-Tasking Staff) Recruitment Rules 2015 vide letter dated 5.6.2015 which also provided for 25% quota for casual labourers at Column 10 of the notification. However, this notification provides for the consideration of those casual labourers engaged prior to 01.01.1993.

7. Thereafter, applicants submitted a representation dated 27.2.2016 to the respondents for consideration of their cases against the GDS Posts / MTS Posts. The 4th respondent issued the 1st impugned order in response to their representation vide letter dated 9.3.2016 simply informing the applicants holding that the recruitment for engagement of GDS MM will be processed as per the Recruitment Rules. The HRO RMS Y Division Casual

Labour Union with Regd.No.K-162/DCL/VJA through its President submitted a representation dated 28.3.2016 to the Assistant Central Labour Commissioner, Vijayawada. The said representation was forwarded to the respondents by the ALC (C), Vijayawada, vide letter dated 1.4.2016. The Respondents through their letter dated 12.4.2016 informed the ALC (C), Vijayawada that there are no full time casual labourer posts in RMS Y Division and stating that they have only part time casual labour posts.

8. When the matter is pending before the ALC Vijayawada, in violation of their own instructions dated 17.5.1989 and 6.8.2013 and the law relating to the conciliation proceedings that when the conciliation proceedings that when the conciliation proceedings are pending the respondents are not supposed to do any case which prejudices the proceedings, the respondents now issued a Notice Inviting Tender to outsource the jobs related to sorting of unregistered mail, processing of registered and speed post mail and also for activities related to Multi Tasking Staff (MTS) / Grameen Dak Sevak Mail Man (GDS MM) in mail offices of RMS Y Division at Vijayawada / Guntur / Guntur / Khammam initially for a period of 6 months which can be extended on a month to month basis up to 6 months depending upon the quantum of work and performance of the contractors vide their NIT Tender dated 24.3.2016. This action of the respondents through the 2nd impugned order is intended to somehow scuttle the claims of the applicants for their appointment to the GDS/MTS posts. Hence this application.

9. The Respondents have filed reply statement stating that, the Extra Departmental Agents (EDA) system in the Department of Posts and Telegraphs is in vogue since 1854. The system mainly intended to avail the services of persons in villages who has the faculty of reasonable standard of literacy and adequate means of livelihood and who, therefore, in their leisure time can assist the Department by way of gainful avocation and social service in ministering to the rural communities in their postal needs, through maintenance of simple accounts and adherence to minimum procedural formalities as prescribed by the Department for the purpose. Thus, the system of engaging EDAs (GDS for short) is exclusive to the Department and the Sevaks so engaged are not required to perform duty beyond a maximum period of 5 hours in a day.

10. The Respondents states that, the Extra Departmental Agents system in the Department of Posts is an unique outsider cadre governed by separate set of rules known as the EDA (Conduct & Service) Rules, 1964, as amended from time to time. The said rules were subsequently amended as GDS (Conduct & Employment) Rules, 2001 and were further amended as GDS (Conduct & Engagement Rules, 2011, which stipulate the following :

“During leave, every Gramin Dak Sewak should arrange for his work being carried on by a substitute who should be a person approved by the authority competent to sanction leave to him.”

The Respondents further state that, substitutes have no legal right as far as regularization in the Department is concerned.

11. The Respondents further state that, in the instant case, the Applicants

have worked as substitutes in leave / other vacancies in different spells in different posts as and when required depending upon the work / need of the hour. Further the applicants have not worked continuously in one single or one specific post and also no such engagement / selection / appointment order was issued to any of them. The contention of the applicants that they were working as casual labourers from 1984 onwards is also not valid and does not hold water as they were never engaged and appointed as Casual Labourers in the Department by the Respondents after observing the due process of selection / engagement. The applicants cannot claim for regularization / absorption in GDS or any other cadre in the Department as a matter of right without fulfilling the prescribed eligibility conditions and without having any provisions in relevant rules on the subject.

12. The Respondents further submits that, outsourcing has been emerged as one of the management options for delivery of services at reduced cost. Various Ministries / Departments of the Government of India, including the Department of Posts have contracted out some services by outsourcing. Accordingly , the Government of India, Ministry of Communications & IT, Department of Posts, New Delhi and 1st Respondent vide letter dated 9.9.2009 has issued guidelines for outsourcing in the Department, setting the principles of efficiency and economy as top guiding principles while outsourcing or awarding work on contractual basis. The Chief Postmaster General , CP Circle, Hyderabad vide letter dated 17.12.2013 has issued further instructions to float necessary tenders based on the local needs.

13. The Postal Directorate, New Delhi in letter dated 21.7.2010 communicated vide PMG, Vijayawada letter dated 13.10.010 ordered that *'The existing vacancies of GDS Mailmen and future resultant vacancies of GDS Mailmen falling vacant either due to discharge / absorption in Department shall not be filled up in future'* and further ordered that the *'The category of GDS Mailmen be considered as a wasting group'*. Further, there is ban on recruitment of GDS posts in Railway Mail Service for some time. Thus, the vacancies in GDS cadre in RMS 'Y' Division, Vijayawada could not be filled up immediately by the Department. This Tribunal vide interim order dated 28.4.2016 in OA No.424/2016 directed the Respondents not to finalise the tenders pursuant to the impugned notice dated 24.3.2016 till reply is filed by the Respondents. The said interim order has been continued until further orders vide order dated 7.6.2016.

14. The Respondents further state that, none of the applicants were selected and appointed in any particular post / cadre in the Department after observing the prescribed recruitment rules and procedure. All the 8 applicants / outsiders are engaged in short term vacancies as per the need of the hour / day / situation.

15. The Respondents further state that, as per the Ministry of Home Affairs OM No.F-16/10/60-Ests.(D), dated 02.12.1966, Casual Labourers recruited in an office / establishment direct, without reference to Employment Exchange should not be considered for appointment to regular

establishment. It is further stated that, the Department of Personnel & Training, New Delhi vide OM dated 12.7.1994 further clarified that since it is mandatory to engage casual employees through Employment Exchange, the appointment of casual employees without Employment Exchange is irregular and cannot be considered for grant of Temporary Status. SRO, Ongole has issued Notification in memo dated 9.5.2016 inviting applications from among willing and eligible Casual Labourers engaged on or before 1.9.1993 duly giving one month time, fixing the last date for receipt of applications as 7.6.2016. Though all the applicants are working under the control / jurisdiction of SRO, Ongole they did not submit any application against the said notification for selection to GDS MM posts / Cadre. Had the applicants really felt that they are casual labourers engaged in the Department, they should have submitted their applications for the above GDSMM posts against the said notification along with all required copies of documents for consideration against GDS posts. But the applicants has not done so thereby the applicants also accepted that they are not at all engaged / working as casual labourers in the Department. It is respectfully submitted that without submission of any application and without fulfilling the eligibility conditions prescribed by the Government / Department, the question of considering the candidature of the applicants for selection / appointments to GDS vacant posts does not arise. Since no eligible casual labourer is available in SRO, Ongole Unit and as no application is received against the notification dated 9.5.2016, there is no other option for the Respondent except to notify the said vacancies under open market category as per relevant recruitment rules.

16. Aggrieved on the impugned order dated 09.03.2016, the applicants preferred another representation dated 28.3.2016 to the Assistant Central Labour Commissioner, Govt., of India, Auto Nagar, Vijayawada requesting for implementation of Directorate's order. In the said representation, the applicants have categorically admitted that they are working as outsiders in MTS and GDS posts. The applicants claim is still pending before the Asst. Central Labour Commissioner, Vijayawada as on date. However, there are no interim orders passed by the Asst. Central Labour Commissioner, Vijayawada restraining the Department in proceeding further with the recruitment / selection process of filling up of GDS MM as well as inviting tenders for outsourcing the work relating to RMS 'Y' Division, Vijayawada.

17. The Hon'ble Apex Court in Secretary, State of Karnataka and Others Vs. Umadevi & Others [2006 (4) SCC 1], laid down as follows :

“..... the casual, daily rated, or ad hoc employees, like the Respondents in the present appeal, have no right to be continued in service, far less of being regularised and get regular pay....

In Paragraphs 46 to 48 of the judgement, the Hon'ble Apex Court also observed that temporary, contractual, casual or daily wage ad hoc employees appointed de hors the constitutional scheme to public employment have no legitimate expectation to be absorbed or, regularised for granted permanent continuation in service on the ground that they have continued for a long time in service.

With above submissions, Respondents pray for dismissal of the OA.

18. The applicants have filed rejoinder stating that the 1st respondent introduced Department of Posts GDS (Conduct & Engagement) Rules, 2011 wherein as per DG Posts letter dated 6.6.1988 casual labourers are treated

as one of the preferential categories for appointment as ED Agents. The respondents terming the applicants as outsiders instead of casual labourers only to deny the rightful claim of the applicant as for regularization and further appointment as ED agents.

19. While the matter is pending before the ALC (C), Vijayawada, the respondents issued the 2nd impugned order issuing notice inviting tender to outsource the jobs related to sorting of unregistered mail, processing of registered and speed post mail and also for activities relating to MTS / GDS MM in mail offices of RMS Y Division at Vijayawada / Guntur / Khammam initially for a period of 6 months which can be extended on a month to month basis up to 6 months depending upon the quantum of work and performance of the contractors through their NIT Tender dated 24.3.2016.

20. The respondents instead of considering them for regularization, only to deny the rightful claim of the applicant for regularization and for considering them for appointment to the post of GDS MM / MTS are treating them as 'Outsiders' which is illegal and arbitrary.

21. Respondents have also filed additional reply statement stating that all the applicants are neither full time nor part time Casual Labourers engaged / recruited / appointed by the Respondents / Department against any particular post / cadre after observing prescribed recruitment rules and procedure. All the applicants are just outsiders who are being engaged in leave / regular vacancies in GDS MM / MTS cadre in RMS 'Y' Division as and

when required to manage the work as and when required as per the need of the hours / day, mainly to provide uninterrupted service in conveying and delivering mail to the member of public. Applicants were not at all engaged after observing the due process of selection / recruitment and no appointment or any such type of applicants.

22. The applicant claim that they have completed more than 10 years of service in the department is not at all true and their claim for regularization, considering them for the appointment to the post of GDS MM/MTS are not valid and the same cannot be accepted. Mere working as 240 days in a year or 10 years does not confer any right on the applicants to claim for regularization / absorption in the Department. Accordingly, in the interest of justice, Respondents pray for dismissal of the OA.

23. We have heard Dr.A Raghu Kumar, learned counsel appearing for the applicants and Mrs.K.Rajitha, learned Sr Central Govt., Standing Counsel for Respondents.

24. It is seen that the applicants have failed to show that there has been any written appointment order in their favour. They have also failed to show against any sanctioned posts. The applicants have not claimed that they have not been given any temporary status. The Assistant Labour Commissioner (Central), Vijayawada vide Minute dated 10.08.2017 recorded as under :

“ the matter has been seized into conciliation on 10.08.2017. Since both the parties had divergent views, the matter ended in

failure. Failure of conciliation shall be submitted to the Ministry of Labour and Employment.”

Accordingly the Assistant Labour Commissioner (Central), Vijayawada vide letter dated 10/28.11.2017 referred the matter to the Secretary to Govt. Of India, Ministry of Labour & Employment, Shram Shakthi Bhawan, Rafi Marg, New Delhi under intimation to the Department / Respondents as well as the applicants. In the said letter the Assistant Labour Commissioner (Central), Vijayawada informed the above Ministry that ‘as both the parties were having divergent views and no amicable settlement could be brought out and thus the conciliation proceedings were ended in failure. As to the suggestion of ALC (C), Vijayawada with regard to Arbitration of the dispute under Section 10 A of the I.D. Act, the Union has not agreed.’ Besides that, the factual aspect regarding period of engagement of the applicants as Casual Labourers cannot be gone into by this Tribunal. The applicants, if advised, may seek appropriate relief in appropriate forum.

25. Learned counsel for the applicants also placed reliance on the decision of the Principal Bench of CAT in OA No.1405/2011, dated 21.11.2011, the facts and circumstances of the said case are different from the facts and circumstances of the present case. Besides that the decision of Hon’ble Apex Court in the case of Secretary, State of Karnataka & Ors Vs. Umadevi & Ors [2006 (4) SCC 1] has also been referred to the Hon’ble Supreme Court while laying down the law had necessarily ruled that unless the appointment is in terms of the relevant rules and after proper competent among qualifying persons, the same would not confer any right on the appointee. In the said judgment Hon’ble Supreme Court further

viewed that if it is a contractual appointee, appointment comes to an end at the end of the contract. Relevant portion of the judgment in the said case reads as under :

“43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would 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 made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

26. In view of the aforementioned judgment of Hon'ble Supreme Court, applicants have no right either to continue in service on contract basis or to seek regularization on the basis of their contractual appointment or on any other nomenclature. In view of the facts and circumstances as narrated above, the applicants have no locus standi to challenge action of the

Respondents by which they have invited tenders for outsourcing.

27. Accordingly the OA is not maintainable and the OA is accordingly dismissed as devoid of merits. No order as to costs.

(SWARUP KUMAR MISHRA)
JUDICIAL MEMBER

Dated : 30th October, 2018.

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