

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00110/16

Reserved on : 26.02.2019

Jodhpur, this the 8th March, 2019

CORAM

Hon'ble Smt Hina P. Shah, Judicial Member

Banwari Lal Soni S/o Shri Mal Chand Soni, aged about 53 years, by caste Soni, R/o Near Soni School No. 3, Sardarsahar, District-Churu. (Presently working as IVth Class Employee {Group-D post} on daily wages casual labour at Jawahar Navodaya Vidyalaya, Sardarsahar, District-Churu).

.....Applicant

By Advocate : Mr Vinay Chhipa.

Versus

1. Navodaya Vidyalaya Samiti, through the Commissioner, B-15, Institutional Area, Sector-62, Noida-201307, District-Gautam Budh Nagar (Uttar Pradesh).
2. The Deputy Commissioner, Navodaya Vidyalaya Samiti, Regional Office, 18, Sangram Colony, Mahaveer Marg, C-Scheme, Jaipur (Rajasthan).
3. Jawahar Navodaya Vidyalaya, Sardarsahar, District-Churu, through its Principal.

.....Respondents

By Advocate : Mr Avinash Acharya.

ORDER

The present original application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking following relief(s):

- (i) By an appropriate order or direction, the impugned order dated 30.01.2015 (Annex. A/1) passed by the respondent No. 2 may kindly be quashed and set aside.

- (ii) By an appropriate order or direction, the respondents may kindly be directed to regularize the service of the applicant as IVth Class Employee (Group-D Post) with retrospective date with all consequential benefits and to grant regular pay scale to the applicant.
- (iii) Any other appropriate order or direction which this Hon'ble Tribunal may deem fit just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.
- (iv) That the costs of this application may be awarded to the applicant.

2. The brief facts as stated by the applicant is that he was initially appointed on 20th December, 1986 as daily wages casual labour. His services were illegally terminated on 18.07.1989. He approached the Central Industrial Tribunal, Bikaner against his termination and the Tribunal vide its judgment/award dated 22.05.1996 directed the respondents to reinstate the applicant and declared the termination order as illegal. Being aggrieved of the order dated 22.05.1996, the respondents preferred writ petition No. D.B. Special Appeal (Writ) No. 42/98. In compliance of the judgment and award dated 22.05.1996, vide letter dated 03.08.1996, respondents informed the applicant that he will be reinstated back in service. Accordingly, he resumed his duty on 06.08.1996. The respondents illegally terminated the service of the applicant and again a compromise was arrived at between the parties before the Conciliation Officer and the respondents allowed the applicant to discharge his duties on 23.12.2011. It is ex-facie clear that the applicant was working with the respondents

since 1986 to till date. He is working since 1986 and he is still working as daily worker and being paid meagre salary. It is his case that three persons namely Shri Ashok Kumar, Shri Badri Prasad and Shri Radhey Shyam who were appointed at the same time, their service have been regularized and they are getting regular pay alongwith other benefits. But the respondents in an arbitrary and discriminatory manner have not regularized the services of the applicant. Being aggrieved by the inaction on the part of the respondents, the applicant served notice through his counsel on 07.09.2010 for regularization of his services with all consequential benefits. The said notice was replied by the respondents on 23.09.2012 stating that his services cannot be regularized from retrospective effect as per rules of Navodaya Vidyalaya Samiti (NVS) (Annex.A/9). Thereafter the applicant approached this Tribunal in OA No. 33/2013 and this Tribunal vide its order dated 28.10.2014 directed the respondents to decide the claim of the applicant in light of judgment passed by the Hon'ble Supreme Court in the case of Secretary, State of Karnataka & Ors Vs Umadevi & Ors, reported in 2006(4) SCC 1 and Nihal Singh & Ors. Vs State of Punjab & Ors, with Bhupinder Singh & Ors Vs state of Punjab and Ors (Annex. A/10) reported in 2013 (14) SCC 65 (Annex. A/10). Thereafter, applicant approached the respondents by way of representation dated 19.11.2014 requesting for consideration of his case for

regularization as Class IV (Group 'D') (Annex. A/11). Pursuant to this, the respondents passed impugned order dated 30.01.2015. The applicant states that as the order is illegal, arbitrary and discriminatory and in violation of Article 14 & 16 of the Constitution of India, therefore, he has approached this Tribunal seeking regularization of his services and quashing and setting aside of order dated 30.01.2015 (Annex. A/1).

2. The respondents after issue of notice, filed reply on 07.12.2016 stating that the services of the applicant were terminated on the ground that he remained wilfully absent from the services from 11.02.2010 to 11.03.2011 without informing the respondents, i.e. for about 13 months, therefore, his services were terminated. It is only after the compromise arrived at between the parties on 22.12.2011, he was taken back to daily wages with a condition that he will forgo his claim of back wages and arrears (Annex. R/1). The respondents state that initially the applicant was working as daily wage worker in Vidyalaya from 1986 till 1989 as per the need and requirement of the Vidyalaya but in pursuance of the order dated 22.05.1996 passed by the Central Industrial Tribunal, he was reinstated and they continued him on daily wages. However, the applicant was not in continuous service of the Vidyalaya for approx. 7 years from 08.07.1989 to 02.05.1996, therefore, it is the submission of the respondents that

since he was not in continuous service that he was paid arrears as a daily worker as per Award/negotiation but he was absent for 7 years. The applicant again wilfully remained absent from 11.02.2010 to 11.03.2011 without any prior intimation and again his services were terminated. It is the submission of the respondents that the applicant never worked continuously in the respondent Vidyalaya, i.e. Jawahar Navodaya Vidyalaya, Sardarsahar from 1986 and was appointed as daily wage worker as and when his services were required. In regard to the examples given by the applicant pertaining to Shri Ashok Kumar, Shri Badri Prasad and Shri Radhey Shyam, respondents states that names of these persons were sponsored by the employment exchange and their services were regularized after following due process of regular appointment by the competent appointment authority. Whereas, on the other hand, the name of the applicant was never sponsored by the employment exchange, therefore, he cannot claim similar benefits as regular appointment were granted to the persons referred to by him. It is the submission of the respondents that as per the directions of this Hon'ble Tribunal in the earlier round of litigation, i.e. in OA No. 33/2013 by order dated 28.10.2014, the case of the applicant was considered as per rules and guidelines stated by the Tribunal and accordingly, the impugned order dated 30.01.2015 was passed. It is further stated that his representation claiming regularization on the post of Class

IV (Group 'D') was thoroughly examined for regularization but the same could not be granted and has been rightly rejected. It is further stated that as the applicant is daily wage worker and there is no provision under the rules of the Samittee for regularization of services beyond the rules, therefore, services of the applicant could not be regularized. It is further stated by the respondents that no incumbent can claim any service benefit as his entry is dehors the rules and in violation of Articles 14 & 16 of the Constitution of India. Therefore, impugned order passed by the respondents is just and proper as the applicant was not appointed against any sanctioned or regular post, therefore, claiming of regularization is beyond the rules. It is the case of the respondents that at present there is not vacant post available in Jawahar Navodaya Vidyalaya, Sardarsahar, therefore, case of the applicant has rightly been considered as per the directions of this Tribunal passed in earlier round of litigation. There is no justification for the applicant for regularization and therefore, impugned order does not deserve to be interfered with.

4. Heard Mr Vinay Chhipa, learned counsel for the applicant and Mr Avinash Acharya, learned counsel for the respondents.
5. Besides reiterating the facts, counsel for the applicant states that as per the additional affidavit filed by him on 18.09.2018, he would like to rely on DoPT OM dated 10.09.1993 (Annex. A/13).

Relying upon the said OM, he contended that it is case of the applicant that he was appointed on 20.12.1986 and his services were terminated on 18.07.1989 but the Central Industrial Tribunal vide its judgment and award dated 22.05.1996 declared the termination order illegal and had directed the respondents to reinstate him as per the operative part of the order of Central Industrial Tribunal dated 22.05.1996 for declaring termination order illegal and also directed the respondent to reinstate the applicant back as per operative part of the judgment/award of Central Industrial Tribunal dated 22.05.1996. The Central Industrial Tribunal had reinstated him in service and had clarified that he would be paid back wages from 22.05.1996, that is the period from 18.07.1989 to 22.05.1996 would be treated as continuous in service and he would be paid consolidated amount of Rs 1,200/- as back wages. Against the said order/award, the respondents approached the Hon'ble High Court and the High Court vide its order dated 10.02.1998 had dismissed the appeal filed by the respondents stating that they do not wish to interfere with the order/award of the Labour Court. Counsel for the applicant further states that the applicant is continuously working as a daily wager for about 08 hours a day and as per Annex. A/5, it is clear that the applicant was working for approx 08 hours a day which has not been denied by the respondents. He further submitted that as per Central Industrial Tribunal award dated

22.05.1996, it is very clear that the applicant was treated as continuous in service. He relied upon OM dated 10.09.1993 (Annex. A/13) and submitted that as per Scheme it is very clear that temporary status would be conferred on all casual labourers who were in employment on the date of issue of the said OM and who had rendered a continuous service of at least one year, which meant that they must have been engaged for a period of atleast 240 days (206 days in the case of offices observing 5 days week). Such conferment of temporary status would be without reference to the creation/availability of regular Group 'D' posts. Learned counsel for the applicant thus states that as per the award of Central Industrial Tribunal, the applicant was very much in service as on the date of issuance of the OM dated 10.09.1993 and therefore, applicant is entitled for grant of temporary status.

Relying upon judgment of Nihal Singh & Ors Vs State of Punjab & Ors, reported in AIR 2013 SC 3547, he submits that it is very clear that employer cannot deny regularization of an employee, who is working for last many decades on the pretext that there are no sanctioned posts to regularize his services. Learned counsel for the applicant relied upon the judgment of CAT Principal Bench passed in OA No. 4379/2013 decided on 23.04.2015 (Giri Raj Vs. UOI & Ors) and submits that as per OM dated 10.09.1993 issued by the DoPT, the applicant is entitled for grant of temporary status as has been given by the Principal Bench of CAT in the said

judgment. The applicant also relied upon judgment of Hon'ble Apex Court in **ONGC Ltd Vs Petroleum Coal Labour Union & Ors** reported in 2015 AIR SCW 2866 and submits that merely on the basis of that an employee approached the Labour Court against his illegal termination, he cannot be denied regularization of services on the said ground. Lastly, learned counsel for the applicant relied upon judgment of this Tribunal passed in OA No. 459/2016 pronounced on 28.09.2018 (**Hardayal Singh & Ors Vs Indian Council of Forestry Research and Education & Anr**) and submits that in similar matter, this Tribunal has issued directions for grant of benefits as per DoPT OM dated 10.09.1993 and that the case of the applicants may be considered for grant of temporary status/regularization as per their entitlement under the Scheme, if otherwise found eligible. He, therefore, contended that the applicant's case be considered as per OM dated 10.09.1993. He further submits that it is the case of the applicant that there may not be vacancy in Jawahar Navodaya Vidyalaya, Sardarsahar but there are ample vacancies available in the Navodaya Vidyalaya Samiti as per letter dated 21.03.2015 (Annex. A/12). He, therefore, prayed that applicant is entitled for grant of temporary status as well as regularization as per DoPT OM dated 10.09.1993.

7. Learned counsel for the respondents besides reiterating their submissions in reply, submits that the services of the applicant had been terminated and he was reinstated since respondents had not followed the procedures of Section 25(f). It is the submission of the respondents that the applicant had challenged the termination before the Central Industrial Tribunal and had not asked for any regularization of service. Learned counsel for the respondents relied upon Annex. A/9 document dated 23.09.2012, which is reply to the Advocate's notice, wherein the justification of appointment of three persons namely Shri Ashok Kumar, Shri Badri Prasad and Shri Radhey Shyam were replied to the applicant that since names of these three persons have been sponsored by the employment exchange and they were appointed after facing the interview before the authorized selection board and their services were regularized. Since the applicant's case was neither sponsored by the employment exchange nor he was posted against regular available vacancy, the case of the applicant is completely different and therefore, the applicant cannot seek similar benefits as given to these three persons. It is the case of the respondents that the applicant was merely appointed for a period of 89 days as per the need of Jawahar Navodaya Vidyalaya, Sardarsahar. It has further been contended that no post of Group 'D' is lying vacant in the Jawahar Navodaya Vidyalaya, Sardarsahar (Vidyalaya) and as the

applicant has not followed prescribed procedure for regular employment, his services cannot be regularized from retrospective effect. The applicant had wilfully remained absent for very long time, therefore, it is unfair on the part of the applicant to state that he is in continuous service from 1986 to 1996. He further contended that since on the date of issue of OM dated 10.09.1993, the applicant was not in service and very much on leave, his services cannot be regularized as per the conditions laid down in OM dated 10.09.1993. He submitted that the applicant was absent from 08.07.1989 to 02.07.1995 for approx 7 years. The applicant was not appointed against a regular or sanctioned post and also there was no vacant post available. Hence, services of the applicant cannot be regularized. Learned counsel for the respondents relied on judgment of Hon'ble High Court of Rajasthan at Jodhpur passed in D.B. Civil Special Appeal (W) No. 789/2014 and other connected matters on 13.11.2014 wherein it is held that "The appointment made by way of direct recruitment, however, will be subject to the results of the orders, which may be passed by the State Government in the process of regularization of the services in accordance with the statutory Rules."

8. I have considered the rival contentions and perused the record.

9. Admittedly, it is the case of the applicant that he is in continuous service of the respondents since date of his engagement as casual labour, i.e. w.e.f. 20.12.1986 which is confirmed by the Central Industrial Tribunal as per its award dated 22.05.1996 though the applicant had prayed before Central Industrial Tribunal to set aside his illegal termination order dated 18.07.1989. The said Tribunal had declared the order of termination passed by the respondents as illegal and had directed the respondents to reinstate applicant back in service. It was further ordered that period from 18.07.1989, i.e. date of termination to 22.05.1996, i.e. the date of Award be treated as continuity in service and the applicant was also awarded Rs 1200/- as back wages. Against the said judgment, respondents had approached the Hon'ble High Court of Rajasthan in D.B. Civil Special Appeal No. 42/1998 but the same was dismissed on 10.02.1998. Again the services of the applicant were terminated but before Conciliation Officer, compromise was arrived at between the parties and the respondents again have taken the applicant back in service. Therefore, it is clear that the applicant was working with the respondents from 1986 to till date. The case of the applicant is that he is continuously working with the respondents as daily wager for 8 hours a day but the respondents have not considered his case for regularization. The respondents should have fairly considered his case in light of OM dated

10.09.1993. According to the applicant, as per judgment/award dated 22.05.1996 of Central Industrial Tribunal, the applicant was working continuously with the respondents, therefore, as per OM dated 10.09.1993, he is entitled for grant of temporary status and regularization. Said OM is very clear that temporary status would be conferred on all casual labourers who were in employment on the date of issue of the said OM and who had rendered a continuous service of at least one year, which meant that they must had been engaged for a period of atleast 240 days (206 days in the case of offices observing 5 days week). Such conferment of temporary status would be without reference to the creation/availability of regular Group 'D' posts. It is the case of the applicant that since he was very much in service of the respondents on the date of issue of said OM and had completed more than one year, he is entitled for grant of temporary status and thereby also for regularization of his services. As per Annex. A/15 dated 12.12.2003, it is very clear that Navodaya Vidyalaya Samittee has also decided to adopt the Scheme promulgated by the DoPT for grant of temporary status to casual labourers. It is the case of the respondents that there are no vacant posts in Vidyalaya and also the applicant has not come through employment exchange. The respondents have also stated that the case of the applicant for regularization cannot be considered

dehors rules since his appointment is not against any sanctioned post, therefore, his services cannot be regularized.

10. In the earlier round of litigation in OA No. 33/2013, the applicant had approached for regularization of his services as Class IV employee (Group 'D' Post) with retrospective date with consequential benefits and this Tribunal vide order dated 28.10.2014 has directed the respondents to decide the claim of the applicant in light of judgment passed by Hon'ble Supreme Court in the case of Secretary, State of Karnataka & Ors Vs Umadevi & Ors reported in (2006) 4 SCC 1 and Nihal Singh & Ors Vs State of Punjab & Ors with Bhupinder Singh & Ors Vs State of Punjab & Ors reported in (2013) 14 SCC 65, within 6 months from the date of receipt of copy of the order. Also liberty was granted to the applicant that if any grievance remains with the applicant, he may again approach proper forum. In view of this, respondents passed order dated 30.01.2015 (Annex. A/1) which is impugned in the present matter. In the impugned order, respondents have stated that the applicant was never in service for a period of 26 years. Applicant's appointment was on daily wage basis and not against any sanctioned post. The applicant was appointed dehors the rules and also against rules of the Samiti and his engagement is not based on proper selection as recognized under the relevant rules and procedures. Also no post of Group 'D' is lying vacant,

therefore, claim of the applicant for regularization on Group 'D' post is rejected. From OM dated 10.09.1993, it is clear that those casual labourers who were in employment on the date of issue of the OM are entitled for conferring temporary status as seen from the order of this Tribunal passed in OA No. 459/2016 (supra). The applicant was reinstated vide judgment/award of Central Industrial Tribunal dated 22.05.1996 and his services were treated to be continuous since 1986. The writ against the said order had also been dismissed by the Hon'ble High Court. Hence, applicant was very much in service on the date of issue of OM dated 10.09.1993. From the judgment relied upon by the applicant in Nihal Singh's case (supra), it is very clear an employee cannot be denied regularization of his services who is working for so many decades on the pretext that there are no sanctioned posts.

11. In the case of Giriraj Singh Pal (supra), Principal Bench of this Tribunal held that according to Scheme of 10.09.1993, the casual labourers are entitled for temporary status fulfilling the requisite conditions and for grant of such temporary status. Neither creation of additional posts nor availability of regular Group 'D' posts are required for the same. Also directions for regularization of services of such employee therein were issued.

12. In the case of ONGC Ltd. (supra), Hon'ble Supreme Court held that merely on the basis that an employee has approached to

the Labour Court against his illegal termination, he cannot be denied regularisation of service.

13. In the case of Raj Kamal & Ors Vs Union of India & Ors reported in 1990 (3) Administrative tribunals Cases 478, Principal Bench held that casual labourers should be regularized even if their names were not sponsored by the employment exchange and also held that if they were within the age-limit at the time of initial engagement, they should be regularised irrespective of their present age.

14. In case of State of Karnataka & Ors Vs M.L. Kesari & Ors (supra), the Apex Court had issued direction to consider the case of employees for regularization as one time measure those who were in continuous in service without any protection from the court. Also in the case of Hardayal Singh (supra), this Tribunal has observed that directions be issued to the respondents to consider the case of the applicant for grant of benefits as per OM dated 10.09.1993 for temporary status/regularization as per their entitlement under the said Scheme, if otherwise found suitable.

15. These judgments cited by the applicant show that the applicant is entitled for regularization as per OM dated 10.09.1993 even if Group 'D' post is not available or his name was not sponsored by the employment exchange as he has put in number of years for the respondents. Also, the applicant was

continuously working for more than one year as on the date of issue of OM dated 10.09.1993 and hence, he is entitled for grant of temporary status/regularization. On the other hand, judgment relied upon by the counsel for the respondents is on different facts and circumstances as in that case, the Screening Committee has considered the petitioner for regularization of service and representation was pending with the State Government, therefore, directions have been issued to expeditiously consider the case by the State Government in view of drive initiated by the State Govt. to fill up the available vacancies of the post.

16. In these facts and circumstances of the case, the respondents are directed to pass necessary order for grant of temporary status from the date applicant has become eligible in view of OM dated 10.09.1993 and thereafter consider his case for grant of regularization. It is held that the applicant is entitled for grant of consequential benefits of temporary status. This exercise shall be completed by the respondents within a period of 03 months from the date of receipt of a copy of this order.

17. In terms of above directions, OA is allowed with no order as to costs.

**[Hina P. Shah]
Judicial Member**

Ss/-