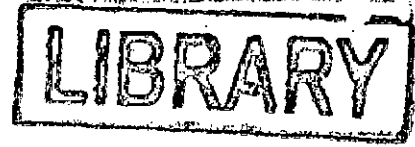


CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA



OA. 350/1484/2016

Date of order: 05.02.2019

Present

:Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

1. Naba Kumar Dey, son of late Sushil Dey, aged about 52 years, working for gain as Substitute in the office of the Station Manager, Sealdah, Eastern Rly., residing at 'Uttarayan', 104, Saptagram School Road, Saptagram, Birati, Kolkata- 700 051, P.O. Bishorepara, P.S. Nimta.
2. Narayan Chandra Ghosh, son of late Rabindra Nath Ghosh, aged about 51 yrs., working for gain as Substitute in the office of the Station Manager, Sealdah, E. Rly., residing at 5/1C, Gope Lane, Kolkata- 700 014.

.....Applicants.

-versus-

1. Union of India, service through the General Manager, E. Rly. 17, N.S. Road, Kol- 1.
2. The Divisional Railway Manager, Sealdah Division, E. Rly. , Sealdah, Kolkata- 700 014.
3. The Senior Divisional Personnel Officer, Sealdah Division, E. Rly., Sealdah, Kolkata- 700 014.
4. The Assistant Personnel Officer, Sealdah Division, E. Rly., Sealdah, Kolkata- 700 014.

.....Respondents.

For the Applicant : Mr. K. Sarkar, Counsel

For the Respondents : Mr. S. K. Das, Counsel

ORDER (Oral)Per Ms. Bidisha Banerjee, JM:

Heard both.

2. The applicants have been filed this OA to seek the following reliefs:

"8(i) to grant leave to file this joint application under Rule 4(5)(a) of the Administrative Tribunal (Procedure) Rules, 1987 to the applicants;

(ii) to direct the respondents to regularise the services of the applicants to the post of Gr. D staff under the Eastern Railways forthwith with effect from the date of their temporary status, i.e. 19.08.1991 & 20.07.1991 respectively;

(iii) to direct the respondents to extend all the service benefits to the applicants after regularisation of their services in terms of prayers (ii) above;

(iv) to direct the respondents to take into consideration of the memo dtd. 17.02.2015, as contained in Annexure "A-8" herein in order to regularisation of the service of the applicants and posting thereof for all practical purposes;

(v) to direct the respondents to deal with and/or dispose of the representation of the applicant as contained in Annexure "A-11" herein in its correct perspective;

(v) to direct the respondents to produce the entire records of the case before this Hon'ble Tribunal for effective adjudication of the issues involved herein;

(vi) and to pass such further or other order or orders as to this Hon'ble Tribunal may deem fit and proper."

3. The fact that they have served under the respondents' authority as Substitute from 1991, is not disputed.

4. Explaining the true import of (2018) 8 Supreme Court Cases 238 in **State of Karnataka v. Uma Devi (3) & State of Karnataka v. M. L. Kesari**, the Hon'ble Apex Court in **Narendra Kumar Tiwari & others v. State of Jharkhand & others** had observed as under:

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"2. The admitted position is that the appellants are irregularly appointed employees of the State Government. They sought regularisation of their status on the ground that they had put in more than 10 years of service and were therefore entitled to be regularised. The High Court took the view that the decision of the Constitution Bench of this Court in State of Karnataka v. Umadevi (3) did not permit their regularisation since they had not worked for 10 years on the cut-off date of 10.4.2006 when the Constitution Bench rendered its decision. According to the High Court, the Regularisation Rules provided a one-time measure of regularisation of the services of irregularly appointed employees based on the cut-off date of 10.04.2006 in terms of the judgment of the Constitution Bench. Therefore, since the appellants had not put in 10 years of service they could not be regularised.

4.....having considered the decision of the Constitution Bench in Umadevi (3) as well as the subsequent decision of this Court explaining Umadevi in State of Karnataka v. M. L. Kesari, we are of the view that the High Court has erred in taking an impractical view of the directions in Umadevi (3) as well as its consideration in Kesari.

5. The decision in Umadevi (3) was intended to put a full stop to the somewhat pernicious practice of irregularly or illegally appointing daily-wage workers and continuing with them indefinitely. In fact, in para 49 of the Report, it was pointed out that the rule of law requires appointments to be made in a constitutional manner and the State cannot be permitted to perpetuate an irregularity in the matter of public employment which would adversely affect those who could be employed in terms of the constitutional scheme. It is for this reason that the concept of a one-time measure and a cut-off date was introduced in the hope and expectation that the State would cease and desist from making irregular or illegal appointments and instead make appointments on a regular basis.

6. The concept of a one-time measure was further explained in Kesari in paras 9, 10 and 11 of the Report which reads as follows: (SCC pp. 250-51, paras 9-11)

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"11. The object behind the said direction in para 53 of Umadevi (3) is twofold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi (3) was rendered, are considered for regularisation in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad-hoc/casual basis for long periods and then periodically regularise them on ground that they have served

for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment.

The true effect of the direction is that all persons who have worked for more than ten years as on 10.04.2006 [the date of decision in Umadevi (3)] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation. The fact that the employer has not undertaken such exercise of regularisation within six months of the decision in Umadevi (3) or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularisation in terms of the above directions in Umadevi (3) as a one-time measure."

And held

"7. The purpose and intent of the decision in Umadevi (3) was therefore twofold, namely, to prevent irregular or illegal appointments in the future and secondly, to confer a benefit on those who had been irregularly appointed in the past. The fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in Umadevi (3) is a clear indication that it believes that it was all right to continue with irregular appointments, and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed. This is nothing but a form of exploitation of the employees by not giving them the benefits or regularisation and by placing the sword of Damocles over their head. This is precisely what Umadevi (3) and Kesari sought to avoid.

8. If a strict and literal interpretation, forgetting the spirit of the decision of the Constitution Bench in Umadevi (3) is to be taken into consideration then no irregularly appointed employee of the State of Jharkhand could ever be regularised since that State came into existence only on 15.11.2000 and the cut-off date was fixed as 10.4.2006. In other words, in this manner the pernicious practice of indefinitely continuing irregularly appointed employees would be perpetuated contrary to the intent of the Constitution Bench.

9. The High Court as well as the State of Jharkhand ought to have considered the entire issue in a contextual perspective and not only from the point of view of the interest of the State, financial or otherwise- the interest of the employees is also required to be kept in mind. What has eventually been achieved by the State of Jharkhand is to short circuit the process of regular appointments and instead make appointments on an irregular basis. This is hardly good governance.

10. Under the circumstances, we are of the view that the Regularisation Rules must be given a pragmatic interpretation and the appellants, if they have completed 10 years of service on the date of

promulgation of the Regularisation Rules, ought to be given the benefit of the service rendered by them. If they have completed 10 years of service they should be regularised unless there is some valid objection to their regularisation like misconduct, etc.

11. The impugned judgment and order passed by the High Court is set aside in view of our conclusions. The State should take a decision without four months from today on regularisation of the status of the appellants. The appeals are accordingly disposed of.

12. We may add that it would be worthwhile for the State of Jharkhand to henceforth consider making regular appointments only and dropping the idea of making irregular appointments so as to short circuit the process of regular appointments."

5. Therefore, the respondents are directed to initiate necessary steps to regularise the present applicants within a period of 3 months in accordance with the decision of Hon'ble Apex Court in **Uma Devi (3) (2006) 4 SCC 1**, and **M. L. Kesari (2010) 2 SCC (L&S) 247** and **Narendra Kumar Tiwari v. State of Jharkhand & Ors. (2018) 8 SCC 238** as enumerated supra.

6. Accordingly, OA would stand disposed of. No costs.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)