

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 181/00888/2017

Wednesday, this the 9th day of January, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member

1. Buhari B.C., aged 50 years, S/o. Hassainar, Packer (on daily wages), Willingdon Island, Kochi – 682 003, Permanent Address :
Baliyachada House, Amini Island, Union Territory of Lakshadweep, Pin – 682 552.
2. Abdulkhader P.C., aged 52 years, S/o. K. Yousef, Packer (Daily wages), General Godown (Lakshadweep Office, Willingdon Island, Kochi – 682 003), Permanent address :
Pathechetta House, Amini Island, Union Territory of Lakshadweep, Pin – 682 552. **Applicants**

(By Advocate : Mr. T.C. Govindaswamy)

V e r s u s

1. The Administrator, Union Territory of Lakshadweep, Kavaratti – 682 555.
2. The Secretary to the Administrator, Lakshadweep Office, Willingdon Island, Kochi – 682 003.
3. The Secretary (Administration), Union Territory of Lakshadweep, Kavaratti – 682 555. **Respondents**

(By Advocate : Mr. S. Manu)

This application having been heard on 01.01.2019 the Tribunal on 09.01.2019 delivered the following:

ORDER

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member –

The brief facts of the case are as follows : the applicants were recruited through employment exchange and are working as Packers on

daily wages with effect from 10.2.1994 i.e. for the last 23 years and 8 months approx. in the general godown of the Lakshadweep office. They are natives of Amini Island of the UT of Lakshadweep and had the qualification of matriculation. The applicants continued in service without any break. Aggrieved by the inaction on the part of the respondents to regularize them the applicants filed OA No. 846 of 2009 before this Tribunal. After hearing, this Tribunal disposed of the OA directing the respondents to consider the case of the applicants for regularization in Group-D posts in their turn as and when vacancies arise. The applicants submit that though several vacancies arose and were filled up thereafter, no action was taken by the respondents to comply with the direction of this Tribunal. The respondents have recently regularized a number of casual labourers identically situated and who had joined later than the applicants. One of such casual labour is one Sri Jolly who was regularized as per the direction of the Hon'ble High Court of Kerala in OP (CAT) No. 2301 of 2011 dated 26.11.2015. Further several others were absorbed in purported implementation of the orders in OA No.23 of 2013 dated 22.6.2016 rendered by this Tribunal.

2. The applicants submitted representations seeking regularization. However, there was no response to any of the representations submitted by the applicants. The applicants are 50 years and 52 years old respectively and the delay in regularizing them results in substantial prejudice, irreparable injury and recurring monthly losses. Aggrieved they have approached this Tribunal with the following reliefs:

“(i) Direct the respondents to regularize the applicants as packers or against any of the erstwhile Group D posts (now Group C) under the respondents with retrospective effect at least from 21.7.2011 with all consequential benefits arising there from;

(ii) Award costs of and incidental to this application;

(iii) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.”

3. Respondents have contested the claim of the applicants and submitted that the applicants were recruited through Employment Exchange and have been working as Packers on daily wages with effect from 10.2.1994 in the general godown of Lakshadweep office. Respondents further submit that the method of recruitment prescribed in the Recruitment Rules for the post of multi-skilled employees is direct recruitment/transfer. There is a note therein which states that two out of every three vacancies are to be filled by absorption from temporary status labourers working under various Departments of the Administration excluding LPWD and Electricity Department having prescribed qualification for direct recruitment i.e. matriculation or equivalent, failing which by direct recruitment based on the reservation policy of the Government of India. Thus, the casual labourers conferred with temporary status alone are eligible to be considered for absorption to the post of multi-skilled employees. The applicants were not conferred with temporary status. They are not entitled to be conferred with temporary status either as they were not in employment as on 10.9.1993. The respondents have filled up the vacancies adhering to the provisions contained in the Recruitment Rules. Applicants cannot claim any benefits of Annexures A4 and A5 final orders as these stand on a different footing.

4. Heard Shri T.C. Govindaswamy, learned counsel appearing for the applicants and Shri S. Manu, learned Standing Counsel appearing for the respondents. Perused the records.

5. During the course of arguments, learned counsel for the applicants relied on the following judgments of the apex court:

a) *Narendra Kumar Tiwari & Ors. Etc. v. The State of Jharkhand & Ors. Etc.* - Civil Appeal Nos. 7423-7429 of 2018 dated 1st August, 2018.

b) *State of Karnataka & Ors. v. M.L. Kesarai & Ors.* - (2010) 9 SCC 247.

While relying on the above judgments learned counsel for the applicants argued that the object behind the direction in paragraph 53 of *State of Karnataka v. Umadevi (3)* – (2006) 4 SCC 1 is two fold: 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 the decision in *Umadevi (3)* (supra) 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 the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The effect of the direction is that all persons who have worked for more than ten years as on 10-4-2006 [the date of decision in *Umadevi (3)* (supra)] 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)* (supra) or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees of the right to be considered for regularisation in terms of the above directions in *Umadevi (3)* (supra) as a one-time measure. Further the purpose and intent of the decision in *Umadevi (3)* (supra) was to prevent irregular or illegal appointments in future and secondly, to confer a benefit on those who had been irregularly appointed in the past.

6. Learned counsel for the respondents also relied on the following judgments of the apex court:

- a) *Satya Prakash & Ors. v. State of Bihar & Ors.* - (2010) 4 SCC 179.
- b) *State of Rajasthan & Ors. v. Daya Lal & Ors.* - (2011) 2 SCC 429.
- c) *Pinaki Chatterjee & Ors. v. Union of India & Ors.* - (2009) 5 SCC 193.
- d) *Nand Kumar v. State of Bihar & Ors.* - (2014) 5 SCC 300
- e) *State of Tamil Nadu & Anr. v. A. Singamuthu* – (2017) 4 SCC 113.
- f) *The State of Bihar & Ors. v. Kirti Narayan Prasad* – Civil Appeal No. 8649 of 2018 dated 30.11.2018.

Respondents argued that daily wage employees are not entitled to regularisation in terms of one time relaxation granted in *Umadevi (3)* (supra). Further Casual Labour/Daily Wager/Temporary employee – employment for project work on ex-cadre posts, is not regular employment and they do not hold a sanctioned post. Part-time or casual employment is meant to serve exigencies of administration and continuance in such service for long period confers no right to regularization especially when scheme of regularization is missing from rule book and regularisation casts huge financial implications on public exchequer.

7. The sole question to be considered in this matter is whether the applicants who are working as Packers on daily wages since 10.2.1994 are entitled to be regularized ?

8. The applicants themselves admitted that they were appointed through employment exchange and are working as Packers on daily wages. The applicants were not conferred with temporary status since they were not in employment as on 10.9.1993. Therefore, as held by the Apex court in *Satya Prakash's* case (supra) the applicants are not entitled to get the benefit of regularization of their services since they were never appointed in any sanctioned posts. The applicants were only engaged as daily wage in the general godown of the Lakshadweep office. Even temporary, adhoc or daily-wage service for long period, will not entitle such employee to claim regularisation if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the

absence of a legal right. Moreover, the applicants who are daily-wagers were never appointed through a proper procedure and hence are not appointees in the strict sense of the term “appointment”. They do not hold a post. Appointment on daily wage basis is not an appointment to a post according to the rules. The status and rights of daily wagers are not equivalent to that of a government servant and his claim to permanency has to be adjudged differently. Their claim to regularisation/absorption is not a matter of course. They cannot even have a right to invoke the theory of legitimate expectation for being confirmed in the post. The status of the applicants were continuing to be as daily wagers and they cannot be treated as permanent government employees. Part-time or casual employment or daily wagers are meant to serve exigencies of administration and continuance in such service for long period confers no right to regularization especially when scheme of regularization is missing from the rule-book and regularization would cast huge financial burden on the public exchequer.

9. In view of the above, this Tribunal finds no merit in the Original Application. Accordingly, the OA is dismissed. Parties shall bear their own costs.

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 181/00888/2017

APPLICANT'S ANNEXURES

- Annexure A1** – True copy of message hearing F. No. 5/2/93-Genl.I dated 4.2.1994 addressed to the 1st applicant.
- Annexure A2** – True copy of notice bearing F. No. 5/2/93-Genl.I dated 10.2.1994 issued by the 2nd respondent.
- Annexure A3** – True copy of order dated 21st January, 2011 in OA No. 846/2009 of this Hon'ble Tribunal.
- Annexure A4** – True copy of the judgment in OP (CAT) No. 2301 of 2011 dated 26.11.2015 of the Hon'ble High Court of Kerala.
- Annexure A5** – True copy of order in OA No. 23/2013 dated 22.6.2016 of this Hon'ble Tribunal.
- Annexure A6 series** – True copies of representations submitted by the 1st applicant seeking regularization.

RESPONDENTS' ANNEXURES

- Annexure R1(a)** – True copy of notification F. No. 1/5/2009-Estt. Dated 22.7.2009.

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