

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.181/00639/2017

Friday, this the 24th day of May, 2019

C O R A M :

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

M.Habeebulla,
Driver, Jawaharlal Nehru Government Senior Secondary School,
Kadmat, Lakshadweep Administration,
S/o.Pookoya Keelasurambi,
Residing at Puthiya Malika House,
Kadmat Island, Lakshadweep – 682 556.Applicant

(By Advocate – Mr.Rinny Stephen)

v e r s u s

1. The Union Territory of Lakshadweep,
represented by its Administrator,
Secretariat, Lakshadweep Administration,
Kavaratti, Lakshadweep – 682 555.
2. The Director of Education,
Lakshadweep Administration,
Kavaratti, Lakshadweep – 682 555.
3. The Joint Director (Education),
District Panchayat, Lakshadweep Administration,
Kavaratti, Lakshadweep – 682 555.Respondents

(By Advocate Mr.S.Manu)

This Original Application having been heard on 22nd May 2019, the Tribunal on 24th May 2019 delivered the following :

O R D E R

O.A.No.181/639/2017 is filed by Shri.M.Habeebulla, Driver, employed on temporary basis by Jawaharlal Nehru Government Senior Secondary School, Kadmat, Lakshadweep Administration against the failure on the part of the respondents to regularize him in service despite the fact

that he has been employed by the College from 1.11.1995. The applicant has produced copies of documents available at Annexure A-1, Annexure A-2 and Annexure A-3 which are stated to be his qualification to act as a driver. He was employed as a NMR Driver on a casual basis by the Principal of the College and a copy of the order dated 11.1.1996 is produced as Annexure A-4. He submits that he has worked continuously as NMR Driver and has given no room for any complaint whatsoever regarding his performance.

2. On several occasions he has approached the authorities for regularizing his services as Driver and copies of representations proving the fact are submitted at Annexure A-11 to Annexure A-15. The respondents did not act on his entreaties although they continued to employ him without any break. The Joint Director (Education), 3rd respondent, had in fact ordered as per communication dated 17.5.2012 (Annexure A-10) to continue his engagement without any break. The applicant submits that while his case was not favourably considered, many others who were employed on daily wages after his initial engagement were regularized as per orders of this Tribunal in O.A.No.23/2013.

3. As grounds, the applicant states that he has a continuous and unblemished service extending beyond 22 years as a NMR Driver. He seeks the benefit of the decision of the Hon'ble Supreme Court in **State of Karnataka v. Uma Devi (2006) 4 SCC 1** dated 10.4.2006 to the extent that he had completed 10 years of service when the said judgment was

.3.

pronounced. The respondents failed to take into account paragraph 53 of the said judgment and refused to regularize his services on a one time basis. Further as per the judgment in **State of Karnataka v. M.L.Kesari (2010) 9 SCC 247** the Hon'ble Supreme Court had made it clear that a employer is required to undertake the exercise of regularization within six months of the decision in *Umadevi's* case. This was not complied with in his case.

4. The respondents are refusing to consider his prayer on the ground that he had not been employed against a sanctioned post. But the Principal of the institution had been requesting for creation and sanctioning of the said post right from the year 1998 onwards. The applicant submits that he is now 55 years of age and there is no prospect of him getting another employment. The purpose of *Umadevi's* judgment itself was to permit regularization of appointments which are irregular and the benefits was supposed to accrue to persons who had served the Government and its instrumentalities for over ten years.

5. The respondents have filed reply statement disputing the contentions raised in the O.A. It is a fact that his employment from 1.11.1995 has been continuing. His name had been sponsored by the Additional Sub Divisional Officer, Kadmat from the Jawahar Rozgar Yojana Labour List as a casual labourer for a period of 89 days after which he was re-engaged after a break of one day. It is further submitted that the Respondent No.2 has no powers to create the post of a Driver. Hence in the absence of a sanctioned post the applicant cannot take support of the *Umadevi's* judgment.

6. The respondents have also annexed copies of various circulars issued by the respondent department, copies of which are available at Annexure R-1 (a) to R-1(e) laying down the procedure for engagement of labourers.

7. We have heard Smt.Asha Elizabeth Mathew for the applicant and the learned Standing Counsel for the Lakshadweep Administration. I have examined the pleadings contained in the O.A as well as those presented at the time of hearing. The facts relating to the applicant's employment are not denied by the respondents except to the extent that they claim that the engagement was only for 89 days at a stretch with the applicant re-employed after a break of one day. However, it is seen that this is at variance with the directions issued by the Respondent No.2 to the Principal, a copy of which is available at Annexure A-10 which specifically implies that the terms of engaging the applicant is on different terms with the engagement of other labourers who are to be changed once in 89 days. So it can be inferred from the same that the applicant has been continuously employed. It appears that the only reason why the applicant came to be denied the benefits of *Umadevi's* judgment was owing to the fact that he was not employed in a sanctioned post. Learned counsel for the applicant calls to her assistance two judgments of the Hon'ble Supreme Court in this regard. In **Nihal Singh and others v. State of Punjab and others 2013 KHC 4607** the Hon'ble Apex Court has dealt with the very same issue while considering regularization of police personnel who had worked over a long time and who were denied regularization on the ground that they were not employed against the sanctioned posts. The Hon'ble Apex Court states :

“13. We are required to examine the correctness of the decision dated 23.4.2002 of the SSP as approved by the judgment under appeal. The reason assigned by the SSP for rejecting the claim of the appellants (the relevant portion of which order is already extracted above) is that the appellants are working as guards with various banks and their wages are being paid by such banks and, therefore, their claim for regularization, if any, lay only to the concerned bank but not to the police department.

14. Learned counsel for the appellants Shri R.K. Kapoor submitted that the conclusion of the SSP that appellants cannot have any claim against the State of Punjab to seek regularization of their services is clearly wrong in view of the fact that the master and servant relationship exists between the appellants and the State of Punjab. Coming to the conclusion of the High Court that in the absence of regularly constituted cadre or sanctioned posts, regularization of the services of the appellants cannot be guaranteed, Shri Kapoor argued that the authority to create posts vests exclusively with the State. The State cannot extract the work from the persons like the appellants for decades and turn back to tell the court that it cannot regularize the services of such persons in view of the fact that these appointments were not made against any sanctioned posts.”

The Hon'ble Apex Court goes on to elaborate :

“21. But we do not see any justification for the State to take a defence that after permitting the utilisation of the services of large number of people like the appellants for decades to say that there are no sanctioned posts to absorb the appellants. Sanctioned posts do not fall from heaven. State has to create them by a conscious choice on the basis of some rational assessment of the need.”

And thereafter further remarks that :

“35. Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor reference to which the executive government is required to take rational decision based on relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State.”

8. In **Narendra Kumar Tiwari and others v. State of Jharkhand and others (2018) 8 SCC 238** the Hon'ble Apex Court discusses *Umadevi's* judgment and throws further light on the intent behind the judgment.

Paragraph 7 of the judgment reads as follows :

“8. The purpose and intent of the decision in Umadevi (3) was therefore two-fold, 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 of regularisation and by placing the sword of Damocles over their head. This is precisely what Umadevi (3) and Kesari sought to avoid.”

9. The only tangible defence raised by the respondents is to the effect that there has been no sanctioned post. This specific aspect has been adequately addressed in the judgments referred to above. The circumstances in the O.A being more or less same as examined by the Hon'ble Apex Court in the cases referred to, this Tribunal has no hesitation in concluding that the applicant is eligible for regularization in the post in which he has been working since 1995. As stated in the aforequoted judgments what stood in the way was only the failure on the part of the authorities to sanction the post while they were extracting work from the individual on continuous basis.

10. The O.A succeeds. The applicant is to be regularized in service as Driver within 15 days from the date of receipt of a copy of this order. However, regularization will take effect prospectively from the date the order is issued. No costs.

(Dated ts the 24th day of May 2019)

**E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER**

List of Annexures in O.A.No.181/00639/2017

1. **Annexure A1** - A true copy of the SSLC Book of the applicant.
2. **Annexure A2** – A true copy of the driving license of the applicant.
3. **Annexure A3** – A true copy of the letter dated 31.10.1995 issued by the Additional Sub Divisional Officer, Kadmat to the Principal of Jawaharlal Nehru College, Kadmat.
4. **Annexure A4** - A true copy of the letter dated 11.1.1996 issued by the Principal of the Jawaharlal Nehru College, Kadmat to the 2nd respondent.
5. **Annexure A5** - A true copy of the certificate dated 30.12.1995 issued by the Camp Commandant.
6. **Annexure A6** - A true copy of the certificate dated 12.1.1996 issued by the Principal of the Government Jawaharlal Nehru College, Kadmat Island.
7. **Annexure A7** - A true copy of the letter dated 13.4.1998 issued by the Principal of the Government Jawaharlal Nehru College, Kadmat Island to the 2nd respondent.
8. **Annexure A8** - A true copy of the certificate dated 9.5.2000 issued by the Principal of the Government Jawaharlal Nehru College, Kadmat Island.
9. **Annexure A9** - A true copy of the certificate dated 31.12.2007 issued by the Principal of the Government Jawaharlal Nehru College, Kadmat Island.
10. **Annexure A10** - A true copy of the order dated 17.5.2012 issued by the Joint Director (Education).
11. **Annexure A11** - A true copy of the representation submitted by the applicant before the 1st respondent.
12. **Annexure A12** - A true copy of the representation dated 4.2.2008 before the 2nd respondent by the applicant.
13. **Annexure A13** - A true copy of the representation dated 2.6.2011 before the 1st respondent by the applicant.
14. **Annexure A14** - A true copy of the representation dated 10.4.2015.
15. **Annexure A15** - A true copy of the representation dated 5.6.2017 before the 2nd respondent.

16. **Annexure A16** - A true copy of the order dated 22.6.2016 in O.A.No.180/23/2013.
17. **Annexure A17** - A true copy of the Office Order dated 2.5.2017 issued by the 2nd respondent.
18. **Annexure A18** - A true extract copy of the Recruitment Rules for the post of Driver.
19. **Annexure R1(a)** - A true copy of the Circular F.No.5/14/2012 DoP Part [1] dated 8.7.2013 issued by the Director of Panchayat.
20. **Annexure R1(b)** - A true copy of the Circular F.No.5/14/2012 – DoP Part (3) dated 10.6.2013 issued by the Director of Panchayat.
21. **Annexure R1(c)** - A true copy of the Circular F.No.5/14/2012 – DoP (Part) dated 1.11.2013 issued by the Collector cum Development Commissioner and Secretary (Panchayat).
22. **Annexure R1(d)** - A true copy of the Circular F.No.5/14/2012 – DoP – Vol. - 1 dated 8.7.2014.
23. **Annexure R1(e)** - A true copy of the order F.No.5/8/2014 – DoP/138 dated 21.2.2015.
