CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00149/2019

DATED THIS THE 12TH DAY OF JUNE, 2019

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

Lohit,
S/o M.C.N. Kumar
Aged 36 years
Working as contingent casual labour,
O/o. Commissioner of Central Tax,
North West Commissionerate,
Shiva nagar
Bangalore ….. Applicant

(By Advocate Shri M.V. Krishna Mohan)

Vs.

1. The Union of India,
Through the Secretary,
Department of Revenue,

Ministry of Finance,
North Block,
New Delhi 110 001

2. The Chief Commissioner of
Central Excise (Karnataka Circle),
C.R. Building,
Queens Road,
Bangalore 560 001 ….Respondents

(By Shri Vishnu Bhat, Counsel for Respondent No. 1 & 2)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J)

Learned counsel for the applicant submits that this Bench had dismissed a similar matter in OA No. 170/00303/2017. For the purpose of elucidation, we quote from that order:

"O R D E R
HON'BLE DR.K.B.SURESH …MEMBER(J)

Heard. This matter is covered by our earlier orders which went to the Hon'ble High Court and was confirmed and was then taken up to Hon'ble Apex Court and was confirmed.

2. But then when we examined these matters in the light of the new factual situation that is now enunciated by the applicants and respondents together, ***we find from the leading case of OA. No.423/2017, that the applicant and others like him in these cases, may have been appointed with effect from 2003. The respondents point out that in that case the element of Umadevi's judgment will not be satisfied by 2006. They ought to have completed 10 years of service for being eligible for the exception.*** *We had heard both the parties and allowed both of them to file written argument notes. Note filed by the applicant indicates that he has only served for about 4 years by the time of Umadevi's*

Judgment. He now contends that by 2013 he would have completed 10 years. But then, that may not have conferred efficacy on him. ***Article 13 of the Constitution stipulates that there cannot be any legal formulations on fundamental rights of a citizen. It is fundamental that meritorious candidates to be selected for appointment rather than going by the whims and fancies of the appointing authorities. That being so, even though the applicant had been working for long years by now, he may not have perfected any right other than right to be continued in the present position as against any other fresh contract employee or contractor. That right of the applicant, we will now protect.***

3. The applicant relies on the Judgment of the Hyderabad Bench in OA. 97/2009 dated 05.04.2010, which we quote:

> *"This application has been filed by the applicants seeking for the following relief:*
>
> *To call for the records pertaining to the proceedings vide C.No. II/39/13//2005 dated 5.6.2008 pertaining to the applicants and set aside the same after declaring the action on the part of the respondents in not regularizing the services of the applicants as arbitrary, illegal and unjust and consequently direct the respondents to regularize the services of the applicants in pursuance of the D.O.P.T instructions vide F.No. 49019/1/2006/Estt (C) dt. 11.12.2006 from the date the applicants became eligible for regularization and accordingly pay them all arrears of salary and other consequential benefits.*
>
> *2. Heard Mr. M.V. Krishna Moahn, learned counsel for the applicants and Mr. G. JayaprakashBabu, Sr. CGSC for the respondents. We have gone through the facts of the case and material papers placed before us.*
>
> *3. The five applicants in this OA came before this Tribunal earlier along with six others in OA.No.203/2003 for a direction to the respondents not to disengage them from their service and continue to pay the wages/salaries directly to the applicants and for a further direction to the respondents to regularize their services as and when vacancies arise. This Tribunal disposed of the OA on 21.07.2004. Copy of the order of the Tribunal is enclosed as Annexure A-1 to the OA. The relevant para-4 of the judgment is extracted herein below:*
>
> *"4. In view of the above facts and circumstances, I find that there is no such document produced by the applicants to establish that they were appointed as Contingent employees.*

Since it is the admitted position that the applicants were engaged by the respondents and they are being paid by the respondents directly, I do not find any reason to interfere with the action of the respondents. However, in so far as the question of regularization is concerned, since regularization in terms of the scheme is not an on going process and the applicants were not on roll on the date of commencement of the said scheme the question of grant of temporary status and regularization of service of the applicants in terms of the Scheme 1993, does not arise. Since the applicants have been engaged by the respondents and they have been working for years together and are being paid by the respondents, respondents shall not disengage the applicants till such time the work is available and they shall also not be replaced by any freshers. However, if the applicants do not attend to their duties, the respondents are at liberty to terminate their services. Respondents shall not direct the applicants to get a contractor for payment of wages/salaries. In so far as regularization of the services of the applicants is concerned, the question of regularisation of their services does not arise at the moment and in future if such scheme is introduced, the applicants shall make a representation to the respondents to consider their case for grant of temporary status and regularization and the respondents shall consider such representation, if it is made by the applicants."

4. It is the contention of the applicants that in an office memorandum dated 11.12.2006 was issued (Annexure A-II to the OA) on the subject of "Regularisation of qualified workers appointed against sanctioned posts in irregular manner" which reads as under:

"The undersigned is directed to say that the instructions for engagement of casual workers enunciated in this Department's OM No.49014/2/86 Estt(C) dated 7th June 1988 as amplified from time to time, inter-alia provided that casual workers and persons on daily wages should not be recruited for work of regular nature. They could be engaged only for work of casual or seasonal or intermittent nature, or for work which is not of full time nature for which regular post cannot be created. Attention is also invited to this Department's OM No.28036/1/2001-Estt. (D) dated 23rd July, 2001 wherein it was provided that no appointment shall be made on ad hoc basis by direct recruitment from open market.

A Constitution Bench of the Supreme Court in Civil Appeal No.3595-3612/1999 etc., in the case of Secretary State of Karnataka and Ors. vs. Uma Devi and others has reiterated that any public appointment has to be in terms of the Constitutional scheme. However, the Supreme Court in para-4 of the aforesaid

judgment dated 10.4.2006 has directed that the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one time measure the services of such irregularly appointed, who are duly qualified persons in terms of the statutory recruitment rules for the post and who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or tribunals. The Apex Court has clarified that if such appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularised.

Accordingly the copy of the above judgment is forwarded to all Ministries/ Departments for implementation of the aforesaid direction of the Supreme Court."

5. In this context learned counsel for the applicant drew our attention to proceedings dated 22.01.2008 issued by the respondents on the subject (Supra) which reads as under:

"Shri A.K. Raha, Member (P&A) and the Zonal Member took a meeting with all the South Zone Chief Commissioners at Chennai on 21.1.2008. During the course of the meeting he directed that the following action should be taken immediately.

1. *In terms of judgment of Gujarat CAT which has been accepted b y the Board, two-thirds of Group D vacancies can be utilized for regularisation of the employees with temporary status. For this purpose, even the vacancies available within the State but outside a particular Zone can also be utilised.*

2. As per Supreme Court judgment dated 10.4.2006 in the case of secretary, State of Karnataka &Ors. Vs. Smt. Uma Devi &ors, the casual workers recruited against a regular post who have put in 10 years of service as casual workers and fulfil other requirements for recruitment as Group D can be given regular employment against the existing vacancies. Member (P&A)impressed that the subject Supreme Court judgment is being wrongly interpreted to mean that the original employment of the casual worker should have been against a regular vacancy and that if the casual workers were employed by the department to carry out jobs for which regular posts were sanctioned, the benefit of Supreme Court judgment can be extended. Eg., if a post of Mali or a SafaiKarmachari is sanctioned for a Commissionerate, notwithstanding whether there was a vacancy in these posts in the particular years casual workers initially employed to carry out the job of Mali or a SafaiKarmachari, as the case may be, can now be regularised against the existing vacancies in these cadres.

2. In view of the dire4ctions of the Member (P&A), as summed up above, take stock of the position immediately and submit Action Taken Report in the matter within a fortnight.

6. Applicants submitted representation on 27.02.2008 top the Chief Commissioner, Central Excise and Customs, requesting him to consider their case for regularisation. In the said representation they had made a mention that they are working in the local Central Excise and Customs Commissionerate and falls under the category of qualified worker as held by the Hon'ble Supreme Court in the case of Secretary, State of Karnataka &Ors. Vs. Uma Devi and Ors. The Commissioner vide letter dated 5.6.2008 informed the applicants that in terms of Board's instruction dated 31.01.2008 the case of those casual workers who were appointed against the sanctioned post in irregular manner can only be considered for regularisation. As per available office records, they have not been appointed against any sanctioned post in an irregular manner and hence they cannot be considered for regularisation under the conditions laid down in the DOPT's dated 11.12.2006. Copy of the above letter is enclosed as Annexure A-XI to the OA. In para-12 of the counter reply, the respondents have denied the contention of the applicants that they are still working in the Commissionerate as contingents and have completed 12 years of service. It is the Contention of the respondents that the applicants were discontinued from 3rd December, 2004. No vacancies have been existing in Group 'D' cadre since 31.3.2003. It is the contention of the learned counsel for the respondents that for the purpose of regularisation availability of vacancies is must. As there were no vacancy existed in Group D post, the question of regularisation does not arise in this case.

7. In this context learned counsel for the applicants has taken us to Annexure A-VI to the OA to show that the three persons who were appointed in the year 1991 were granted temporary status. The reason for non-regularisation of casual workers with temporary status is given as "No regular posts are available in this Commissionerate for regularisation of casual worker." Learned counsel for the applicants submitted that the applicants names are figured at Sr. Nos.1 to 5 of the list of 16 persons who had worked prior to 2004. It is the contention of the learned counsel for the applicants that there is no justification in not granting temporary status to the applicants who are similarly situated with the three persons who were granted temporary status. It is the contention of the learned counsel for the applicants that for the purpose of granting temporary status availability of vacancy is not necessary. We find force in the contention of the learned counsel for the applicants. In view of the above facts and circumstances and in view of the fact the

applicants are figured at Sr. No.1 to 5 of the list of 16 candidates available in Annexure VI of OA who were working prior to 2004 and that the three persons (Supra) who were also appointed before 2004 were granted temporary status but could not be regularised for non-availability of vacancies, we are of the view that applicants herein can be granted temporary status as has been granted to other three persons mentioned in the chart enclosed at page – 20 of the OA.

8. We, therefore, direct the respondents to grant temporary status to the applicants as has been granted to other three persons (supra) and pass appropriate order accordingly. The respondents are further directed to extend all the benefits which are available to the temporary status holders to the applicants. The respondents shall complete the entire exercise within a period of two months from the date of communication of this order.

9. The OA is allowed to the extent indicated above with no order as to costs."

4. The matter was taken in review in W.P.No.26716/2010 which was disposed off vide order dated 8.11.2010, which we quote:

"THE HON'BLE SRI JUSTICE GHULAM MOHAMMED

&

THE HON'BLE SRI JUSTICE P.SWAROOP REDDY

WP No.26716 OF 2010

ORDER: (per Hon'ble Sri Justice Ghulam Mohammed)

The writ petition is directed against the order made in OA No.97 of 2009, dated 5.04.2010 on the file of Central Administrative Tribunal, Hyderabad Bench, Hyderabad. The respondents in the said OA are the petitioners herein.

2. It is stated that the applicants-respondents herein were appointed as contingent workers/casual labourers on even dates and continued as such till December, 2004. The applicants-respondents herein filed OA No.203 of 2003 before the Tribunal questioning their disengagement from service as illegal and arbitrary and for a consequential direction to continue them and pay salaries directly to them and also for a further direction to regularise their services as and when vacancies arise. By order dated 21.7.2004, the Tribunal disposed of the OA No.203 of 2003 by observing thus:-

"Since the applicants have been engaged by the

respondents and they have been working for years together and are being paid by the respondents, respondents shall not disengage the applicants till such time the work is available and they shall also not be replaced by any freshers. However, if the applicants do not attend to their duties, the respondents are at liberty to terminate their services. Respondents shall not direct the applicants to get a contractor for payment of wages/salaries. In so far as regularization of the services of the applicants is concerned, the question of regularisation of their services does not arise at the moment and in future if such scheme is introduced, the applicants shall make a representation to the respondents to consider their case for grant of temporary status and regularization and the respondents shall consider such representation, if it is made by the applicants."

3. Pursuant the said directions, the respondents herein made representation to the Guntur Commissionerate on 28.4.2008for regularization of their services in terms of the instructions issued by the Central Board of Excise and Customs, New Delhi. But the 3rd respondent by letter dated 5.6.2008 informed them that they do not fall under instructions issued by the Central Board of Excise, dated 31.1.2008. Aggrieved by the same, the respondents herein filed the present OA to grant temporary status to them as has been granted to other similarly placed persons consequent to the judgment of the Tribunal in OA NO.1328 of 2001, dated 25.10.2002. By the impugned order, the Tribunal directed the petitioners herein to grant temporary status to the respondents herein as has been granted to the applicants in OA No.1328 of 2001.

4. Heard the learned Asst. Solicitor General of India appearing for the petitioners and the learned counsel for the respondents. Perused the impugned order passed by the Tribunal.

5. It is stated that the respondents-applicants have been working for the last several years and some of the applicants have completed more than 15 years of service as casual workers. As it is stated that similarly placed persons were granted temporary status of appointment, we do not find any illegality or irregularity in the order passed by the Tribunal requiring the petitioners herein to grant temporary status to the applicants-respondents herein. A similar writ petition being WP No.26967 of 1999 filed by the department was dismissed by this court confirming the order passed by the Tribunal to grant temporary status to the applicants therein.

6. In the circumstances, the writ petition fails and it is

accordingly dismissed. No costs."

5. This was taken up in SLP No.6357/2011 and disposed off vide order dated 02.03.2011, which we quote:

"Upon hearing counsel the Court made the following order.
We are not inclined to entertain the special leave petition in the facts, as disclosed. The same is, accordingly, dismissed."

6. ***But then in all these cases the applicants therein were working from 1991 onwards, which means that by 2004 they would have completed 10 years required term mentioned by Umadevi's Judgment.***

7. Applicant points out that we had passed similar orders. But then we had passed such orders either because the applicants had the requisite 10 years prior service before Umadevi's Judgment or believing it to be so, we had passed such an order. Therefore, those orders are hit by subsilenzio. Therefore we issue the following orders.

8. We declare that the applicants are eligible for continuing as such, so long as the post requires for them to continue. They should not be replaced by any other contract employees or contractor as the case may be. In the circumstance of the case, if at all fresh recruitment on the basis of merit is to be made, they will be given the benefit of service till now and along with the weightage of 25% in merit assessment. Since these posts are for casual labours, there is no need to bring in any minimum education qualification for these people. In other words, unless something more significant occurs, applicants will be continued in their position, as it is.

9. ***But then as they have not satisfied the stipulations of Umadevi's judgment, they cannot be regularized or even granted temporary status.***

10. OAs is therefore dismissed. No costs.

2. Therefore, this OA is also dismissed. No order as to costs.

(C.V. SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00149/2019

Annexure-A1: Copy of the dates of initial engagement of the applicant
Annexure-A2: Copy of the OM dated 11.12.2006
Annexure-A3: Copy of the Est. Order No. 14/98 dated 18.01.1999
Annexure-A4: Copy of the letter dated 02.07.2009
Annexure-A5: Copy of the letter dated 24.05.2001
Annexure-A6: Copy of the letter dated 27.06.2006
Annexure-A7: Copy of the letter dated 07.07.2009
Annexure-A8: Copy of the letter dated 01.04.2009
Annexure-A9: Copy of the letter dated 26.05.2009
Annexure-A10: Copy of the letter dated 05.06.2009
Annexure-A11: Copy of the letter dated 15.06.2009
Annexure-A12: Copy of the letter dated 30.06.2009
Annexure-A13: Copy of the letter dated 06.07.2009
Annexure-A14: Copy of the Est. Order No. 16/2008 dated 29.05.2008
Annexure-A15: Copy of the letter dated 16.04.2009
Annexure-A16: Copy of the letter dated 08.06.2010
Annexure-A17: Copy of the order dated 04.08.2008 in WP No. 26967/1999
Annexure-A18: Copy of the representation of the applicant dated 05.12.2017
Annexure-A19: Copy of the order in OA No. 97/2009 dated 05.04.2010
Annexure-A20: Copy of the order in WP No. 26716/2010 dated 08.11.2010
Annexure-A21: Copy of the order in SLP No. 6357/2011 dated 02.03.2011
Annexure-A22: Copy of the order dated 25.09.2009 in WP No. 1208/2000

Annexure-A23: Copy of the order dated 01.10.2010 in SLP No. 14997-15001/2010
Annexure-A24: Copy of the establishment order 02/2011 dated 05.03.2011
Annexure-A25: Copy of the orders in OA 128/2008 and OA 145/2008 dated 27.01.2012
Annexure-A26: Copy of the order dated 18.06.2013 in WP No. 70873/2012
Annexure-A27: Copy of the order dated 01.09.2014
Annexure-A28: Copy of the order dated 22.04.2015
Annexure-A29: Copy of the order in OA No. 312/2015 dated 24.09.2015
Annexure-A30: Copy of the order in OA No. 313-22/2015 dated 24.09.2015
Annexure-A31: Copy of the order in OA No. 907-912/2015 dated 24.03.2016
Annexure-A32: Copy of the order in WP No. 42814/2016 dated 15.11.2016
Annexure-A33: Copy of the establishment order dated 15.03.2017

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