

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**
ORIGINAL APPLICATION NO. 180/00881 of 2017

Wednesday , this the 24th day of July, 2019

CORAM

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

P.L.Vijayam
Full Time Casual Labourer
O/o.Executive Engineer, Telecom Electrical Division
BSNL, Ernakulam

... Applicant

(By Advocate Mr.M.V.Somarajan)

Versus

1. The Chairman and Managing Director
Bharath Sanchar Nigam Ltd.,
Sanchar Bhavan
New Delhi – 110 001
2. The Chief General Manager
Telecom, BSNL, Kerala Circle
Trivandrum – 695 033
3. The Executive Engineer
BSNL Electrical Division
CTO Building, Ernakulam
Cochin – 682 016
4. The Principal General Manager
Telecom District, BSNL
Ernakulam – 682 016

..... **Respondents**

(By Advocate Mr.V.Santharam)

The above application having been finally heard on 17.7.2019, the Tribunal on 24.7.2019 delivered the following:

ORDER (ORAL)

Per: **Mr.E.K.Bharat Bhushan, Administrative Member**

The Original Application No.180/00881/2017 is filed by Smt.P.L.Vijayam, Full Time Casual Labourer, Office of the Executive Engineer, Telecom Electrical Division, BSNL, Ernakulam. She seeks the following reliefs:

(a) Call for records leading to the issue of Annexure A18 order and quash it as illegal

(b) Declare that the applicant is entitled to be regularized as Group D employee retrospectively with effect from the date of Annexure A2 orders or in the alternative with effect from the date of her identically placed juniors at Annexure A8 order dated 11.7.2001, in service with all consequential benefits.

(c) Issue appropriate directions/orders to the respondents to comply with the same within a reasonable period deemed fit to this Hon'ble Tribunal

(d) Grant such other relief or reliefs that may be urged at the time of hearing or that this Hon'ble Tribunal may deem fit to be just and proper, and to

(e) Award costs to the application.

2. Applicant had been working as an occasional worker in the office of the Executive Engineer, Electrical Division, BSNL, Ernakulam from the year 1983 onwards and in 1989, she was employed as a part time Sweeper-um-Scavenger with duties of 5 hours daily, as per Sanction Order dated 8.2.1989 by the Executive Engineer, with effect from 1.12.1988. While working therein, she came to know that all Casual Mazdoors, full time as well as part time, were being regularised in Group D cadre on the eve of Corporatization of the Department of Telecommunication into BSNL(Annexure A-2). She felt she had strong credentials for regularization in view of the fact that she had been working for a substantial number of days from 1989 onwards. Several persons who were working as junior part time Casual Labourers were upgraded to full time Mazdoor/Temporary Status in the Secondary Switching Area coming under the same unit. Applicant preferred a representation seeking a full time Casual Labourer's post on the ground that she had already completed more than 11 years continuous service. This coincides with the communication from the CMD, BSNL dated 16.9.1999 directing the Telecom Circles to convert the part time Casual Labourers to the status of full time employees.

3. Seing no action taken in her case, she repeatedly represented the matter before her supervisory officers as at Annexure A-3. The third respondent finally forwarded details of the applicant's employment as is

seen at Annexure A-5 and Annexure A-5(a). However, as no positive action was being taken by the respondents, the applicant approached this Tribunal by filing O.A 753/2002 seeking temporary status/regularization. The Tribunal was pleased to direct the respondents to revisit her case (Annexure A-6). However, the 3rd respondent as per order dated 10.4.2003, disposed of her representation rejecting her claim for full time employment and ordered *status quo* to continue on the same terms (Annexure A-7). In her Writ Petition filed before the Hon'ble High Court of Kerala in WPC No.26343 of 2003, the applicant obtained a further direction from the Hon'ble High Court to reconsider her case (Annexure A-9). The third respondent thereupon converted the applicant as a full time Casual Mazdoor with effect from 11.4.2005 (Annexure A-11). Applicant is aggrieved that she has been discriminated against similarly placed persons included in Annexure A-8 despite the direction of the Hon'ble High Court of Kerala.

4. The official stand of the respondents has been as seen in Annexure A-13. It is stated that the applicant is not eligible to be appointed as Group D at present and her case for regularization can be taken up by April 2007, after getting the approval of the BSNL Corporate Office. She contends that despite the fact that she has been working against the substantive post of Group D for the last 29 years continuously, she is still not regularised on the lines of Annexure A-8 dated 11.7.2001. This has been in spite of the orders

of this Tribunal as well as the decision of the Hon'ble High Court of Kerala.

5. Respondents have filed a reply statement, in which the contentions made in the Original Application have been countered. It is stated that the applicant was not formally recruited or appointed and no post of sweeper-cum-scavenger had been created in the office in question and in any case, there is no justification for a full time person for sweeping-cum-scavenger work in the office. No valid material has been produced by the applicant to establish her claim that she has 30 years continuous service. It is true that her part time Casual Labourer status has been converted as full time status with effect from 25.4.2005 and that is the most the department is called upon to do. Her case for regularization was taken up with BNL Corporate office, but was rejected on the ground that she was not a Casual Labour as on 1.10.2000.

6. In so far as the protection offered by the judgment of the Hon'ble Supreme Court in *Secretary, State of Karnataka v. Uma Devi and Ors* reported in (2006) 4 SCC 1, she cannot claim this protection as she was a full time Casual Labourer only in 2005 and thus she cannot be covered under the Annexure A-19 judgment. In fact in *Umadevi*, it was held that there should be no further bypassing of the constitutional requirement and no regularizing for making permanent, those not duly appointed. The

applicant's case fails at this touchstone.

7. Heard Shri.M.V.Somarajan, learned counsel for the applicant and Shri.V.Santharam, learned counsel for the respondents.

8. It is not disputed that the applicant became a full time casual worker only from 2005 onwards and did not have the status during the formation of BSNL. Her contention that she was working continuously from 1988 onwards is not supported by any documentary evidence. *Umadevi* which she seeks to support her stand, does not do so as the manner of her induction in employment was not in accordance with any of the terms and conditions spelt out by the Apex Court in that order.

9. The Original Application fails and is dismissed. No costs.

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

List of Annexures

Annexure A1 - True copy of the order No.11(3) EEETCHN/89/15 dated 8.2.1989 issued by the third respondent

Annexure A2 - True copy of the order No.269-94/98-STN-II dated 29.9.2000 issued by the DG., Department of Telecom Services, New Delhi

Annexure A3 - True copy of the representation dated 1.5.2000 submitted by the applicant

Annexure A4 - True copy of the communication bearing No.BAdmn-II/PT/99-2000/11 dated 26.3.2001 issued by the Asst.General Manager, (Admn) O/o.PGMT, Ernakulam

Annexure A5 - True copy of the communication No.11(3)/EEE/EKM/2002/430 dated 11.8.2002 issued by the 3rd respondent

Annexure A5(a) - True copy of the Pro-forma-1 issued to the applicant

Annexure A6 - True copy of the order dated 17.2.2003 in O.A No.753 of 2002 passed by this Hon'ble Tribunal

Annexure A7 - True copy of the order No.CC/BSNL/EEE/EKM/2003/692 dated 10.4.2003 issued by the 3rd respondent

Annexure A8 - True copy of the order No.Admn/EK/257/4/2000-01/10 dated 11.7.2001 issued from the office of the PGMT, Ernakulam

Annexure A9 - True copy of the judgment in W.P(C) No.26343/2003 dated 6.1.2005 passed by the Hon'ble High Court of Kerala

Annexure A10 - True copy of the representation dated 22.2.2005 submitted by the applicant

Annexure A11 - True copy of the office order no.15(112)/BSNL/EEE/EKM/2005-06/805 dated 24.5.2005 issued by the 3rd respondent

Annexure A12 - True copy of the representation dated

1.6.2005 submitted by the applicant

Annexure A13 - True copy of the communication No.LCIII/122/OA 753/02 dated 14.7.2005 issued for the office of the CGMT

Annexure A14 - True copy of the order No.BSNL/4/SR/2000 dated 2.1.2001 issued by the BSNL

Annexure A15 - True copy of the order No.269-94/98-STN-II (Pers.IV) dated 4.4.2001 issued by the Assistant Director, BSNL

Annexure A16 - True copy of the judgment in W.P(C) No.23851/2010 dated 2.8.2010 passed by the Hon'ble High of Kerala

Annexure A17 - True copy of the representation submitted by the applicant dated 15.3.2017

Annexure A-18 - True copy of the order vide Dy.No.471 dated 24.3.2017 issued by the 4th respondent

Annexure R2(a) - True copy of the letter No.CC/BSNL/EEE/EKM/2003/692 dated 10.4.2003

Annexure R2(b) - True copy of the letter No.269/39/84/STN dated 14.8.1984

Annexure R2(c) - True copy of the letter No.15(112)/BSNL/EEE/EKM/2005/743 dated 13.5.2005

Annexure A19 - True copy of the judgment in No.O P(CAT)457&2411 of 2011 dated 11.10.2011 of the Hon'ble High Court of Kerala

Annexure R2(d) - True copy of the letter No.LCIII/122/OA753/2 dated 14.7.2005

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