

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00006/2017

Wednesday, this the 17th day of July, 2019

CORAM:

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

Ms.Anitha C.,
Aged 48 years,
D/o Kunhirama Kurup,
Part Time Casual Laborer,
Nut Street Post Office.
Residing at Meethale Chakkoli House,
Chorode Post Office, Vadakara – 673 106.Applicant

(By Advocate Ms.R.Jagada Bai)

v e r s u s

1. Union of India, represented by the Secretary to Department of Posts, New Delhi – 110 001.
2. The Post Master General, Nothern Region, Kerala Circle, Kozhikode 673 011.
3. The Superintendent of Post Offices, Vatakara Division, Vatakara 673 101.Respondents

(By Advocate Mr.N.Anilkumar, SCGSC)

This application having been heard on 3rd July, 2019, the Tribunal on 17th July, 2019 delivered the following :

O R D E R

The O.A is filed by Smt.Anitha.C., seeking regularization in the cadre of Group D/MTS in the Vadakara Postal Division on the basis of Annexure A-3 judgment of the Hon'ble Apex Court in **Secretary, State of Karnataka & Ors. v. Umadevi &Ors. (2006) 4 SCC 1** read with Annexure A-4 dated

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11.12.2006 which directs, as a one time measure, regularization of qualified workers appointed against sanctioned posts in irregular manner and who have worked for ten years or more in duly sanctioned posts. The reliefs sought by the applicant is as follows :

1. Call for the records relating to the regularization of casual labourers who were appointed prior to 1.9.1993 to the cadre of Group D in Vadakara Postal Division up to 31.5.2011.
2. Order that the applicant is eligible to be regularized in the cadre of Group D, notionally in Vadakara Postal Division against the 25% of the unfilled vacancies for the year 2006 to 2011 in her turn in the light of the orders contained in the order of the Constitution Bench of the Hon'ble Supreme Court of India in Annexure A-3 and Government of India Office Memorandum in Annexure A-4.
3. Any such remedy deemed fit and proper as this Hon'ble Tribunal may be pleased to order.

2. The brief facts of the case are as follows:

The applicant submits that she was appointed as Part Time Casual Labourer (Part Time Sweeper) in Nut Street Post Office under Vadakara Postal Division on 1.1.1994 as per Annexure A-1, which is a copy of the seniority list of Casual Labourers as on 31.12.2010 issued by the Superintendent of Post Offices, Vadakara Postal Division. She advanced her claim for regularization mainly on the basis of paras 44 and 45 of the **Umadevi** judgment (supra). It reads as follows :

44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years

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or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

45. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.

3. Pursuant to the aforesaid judgment of the Hon'ble Supreme Court, the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) through an Office Memorandum dated 11.12.2006 issued the following directions :

The undersigned is directed to say that the instructions for engagement of casual workers enunciated in this Department's O.M 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 can not be created. Attention is also invited to this Department's O.M No.28036/1/2001-Estt.(D) dated 23rd July, 2001 wherein it was provided that no appointment shall be made on adhoc 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. v. 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 44 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 regularize as a one 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 and 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 regularized.

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Accordingly the copy of the above judgment is forwarded to all Ministries/Department for implementation of the aforesaid directions of the Supreme Court.

4. Since no action was taken by the respondents to regularize the applicant in the cadre of Group D/MTS on the basis of Annexure A-3 and Annexure A-4, she has preferred a representation to the 3rd respondent on 25.11.2014. The applicant submits that neither was she regularized nor was any reply received from the 3rd respondent so far which has compelled her to approach this Tribunal for redressal of her grievance.

5. As grounds the applicant has vide Annexure A-8 given details of occurrence of Group D vacancies which has been approved by the Screening Committee and vacancies filled up in Vadakara Postal Division from 1.9.1993 has also been provided by the 3rd respondent in response to an application filed by Shri.P.P.Haridasan seeking information under RTI Act.

6. The respondents have filed reply statement wherein they have submitted that the applicant was engaged as an 'outsider' to perform contingent duties. As she was not appointed as Casual Labourer, she was not considered for appointment as MTS under the Casual Labourer quota. They raise doubts regarding the genuineness of Annexure A-1 document. According to the respondents Annexure A-1 is a list of persons who were engaged to perform contingent duties and the incumbents therein are not listed in the order of seniority. It cannot be termed as a seniority list as no such seniority list is prescribed to be maintained. They distinguish Annexure A-3 judgment and

Annexure A-4 Office Memorandum by stating that both are related to regularization of qualified persons who are appointed in terms of statutory recruitment rules for the post. The respondent states that as the applicant has not produced engagement/appointment orders and evidence to prove that she was duly qualified, these are not applicable to her. The respondents have relied on the judgment of the Hon'ble High Court of Kerala in W.P.C.No.25017/2009 dated 4.8.2016, a copy of which is produced as Annexure R-1, which reads as follows :

There is no case for the petitioner that he was ever given any appointment order, nor was it produced before the Tribunal or before this Court. How the petitioner came to be appointed occupying the chair of GDSMD, whether it was a case of any administrative exigency felt by the Department or was it a temporary arrangement to meet the situation, was it by way of a process of selection conducted by the Post Master or Departmental authority etc. are not known. Unless and until it is established by the petitioner that he has undergone a process of selection and he was appointed on 'provisional basis' by the Department, the petitioner cannot be heard to say that he is entitled to have the benefit of Annexure A-10.

7. The respondents have denied availability of Group D vacancy remaining to be filled in Vadakara Division. They submitted that in 2009 only 3 vacancies were available and all 3 vacancies were filled up. As per Group D Recruitment Rules, 2002 only 25% of vacancies pertaining to a year could be earmarked for Part Time Casual Labourer. As such one vacancy each is to be earmarked for Part Time Casual Labourer for the year 2002 and 2008. Thus, Smt.K.Sathi and Sri.K.Sadanandan were appointed against these vacancies. They further submit that appointments made before 2002 were governed by another set of rules wherein Part Time Casual Labourer could be appointed only when the vacancies could not be filled up by GDS. Hence the contention

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of the applicant that 7 casual labourers should have been regularized in the cadre of Group D from 1.9.1993 to 31.5.2011 is baseless. Accordingly the Part Time Casual Labourer quota arises from 2002 only and the vacancies arose in the aforesaid quota were filled by eligible casual labourers as aforementioned.

8. We have heard Smt.R.Jagada Bai, learned counsel for the applicant and Shri.N.Anilkumar, learned SCGSC for the respondents. We have also perused all the pleadings and documents available on record.

9. The applicant is seeking regularization in the cadre of Group D notionally in Vadakara Postal Division in her turn in the light of the orders contained in Annexure A-3 and Government of India Office Memorandum in Annexure A-4. At the time of hearing, learned counsel for the applicant has brought to the notice of this Tribunal a copy of the letter issued by DG, Department of Posts, New Delhi No.45-24/88 SPB-I dated 17.5.1989, which reads as follows :

"I am directed to pay that reference have been received seeking clarification as to which class of workers should be treated as full time or part time casual labourers.

2. **It is hereby clarified that all daily wagers working in post offices or in RMS offices or in administrative officers under different designations (mazdoor, casual labourer outsider) are to be treated as casual labourers.** These casual labourers who are engaged for a period of less than 8 hours a day should be described as part time casual labourers. All other designations should be discontinued.

3. Substitutes engaged against absentee should not be designated as casual labourers, for purposes of recruitment to Group D posts, substitutes should be considered only when casual labourers are not available. That is, substitutes will rank list in priority, but will be above outsiders. In other words, the following priority should be observed.

- i. NIC Group D officials
- ii. EDAs of the same division
- iii. Casual labourers (full time or part time)

For purpose of computation of eligible service, half of the service rendered as part time casual labourers should be taken into account. That is, if a part time casual labourer has served for 480 days in a period of 2 years he will be treated, for the purpose of recruitment to have completed one year as of service as full time casual labourers.

- iv. EDAs of other division in the same region.
- v. Substitutes (not working in metropolitan cities).
- vi. Direct recruits through employment exchange.

Note: Substitutes working in metropolitan cities will however, rank above No. (iv) in the list.

4. Please acknowledge receipt immediately.

(emphasis supplied)"

10. In terms of the above letter, the applicant who is working in Nut Street Post Office should be described as casual labourer and is in priority No.iii for the purpose of recruitment to Group D posts. Further, the respondents in their reply statement admit that the applicant was engaged as an outsider at Vadakara Postal Division and is continuing as such even today. The respondents have taken work from a casual labourer for many years by engaging her without an appointment letter. Having utilized the services of a casual labourer ever since 1994, it is not fair on the part of the respondents to deny the benefit of regularization to her.

11. In the result, the O.A is allowed. It is declared that the applicant is eligible and entitled to be regularized in the cadre of Group D in the Vadakara Postal Division on the basis of Annexure A-3 read with Annexure A-4 as also on the basis of aforesaid D.G., Department of Posts letter dated 17.5.1989. Consequently, the respondents are directed to consider the applicant for

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appointment to the cadre of Group D in Vadakara Postal Division in her turn giving the benefit of Annexure A-3 read with Annexure A-4 as also the D.G., Department of Posts letter dated 17.5.1989. The order shall be complied with within a period of three months from the date of receipt of a copy of this order. No costs.

(Dated this the 17th day of July 2019)

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

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List of Annexures in O.A. No.180/00006/2017

- 1. Annexure A1:** copy of the seniority list of Casual Laborers in Vadakara Postal Division as on 31.12.2010 issued by the Respondent No.3.
- 2. Annexure A2:** Copy of the Appendix regulating the service conditions and scheme of regularization of the casual laborers in Department of Posts issued under No.DG(P) No..45-95/87-SPB-I dated 12.04.1994.
- 3. Annexure A3:** Copy of the Order of the Constitution Bench of the Hon'ble Supreme Court in Secretary, State of Karnataka and Others Vs. Umadevi And others decided on 10 April, 2006.
- 4. Annexure A4:** Copy of the Government of India Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & training) through an Office Memorandum No.49019/1/2006-EsttC dated 11.12.2006.
- 5. Annexure A5:** Copy of the representation dated 25.11.2014 submitted by the Applicant to the Respondent No.3 seeking regularization as Group D/MTS.
- 6. Annexure A6:** Copy of the DG P&T No.201/40/75-DISC.II dated 23.07.1975.
- 7. Annexure A7:** Copy of the requisition under RTI Act dated 06.06.2011 submitted by Sri.P.P.Haridasan, Secretary GDS Union, NFPE Vadakara Postal Division to the Respondent No.3 seeking vacancy position of Group D for the period from 01.09.1993 to 31.05.2011.
- 8. Annexure A8:** Copy of the Superintendent of Post Offices, Vadakara Postal Division letter No.L/RTI/Dlg/8/2011 dated 22.07.2011 with its enclosure.
- 9. Annexure R1:** True copy of the Judgment dated 04.08.2016 in WP(C) No..25017/2009.
- 10. Annexure R2:** True copy of the Letter dated 12.04.1991.
- 11. Annexure R3:** True copy of the Relevant page from Swamy's Establishment and Administration.
- 12. Annexure R4:** True copy of the Letter dated 10.09.2012.
- 13. Annexure R5:** True copy of the Letter dated 13.11.2002.
- 14. Annexure R6:** True copy of the Letter dated 06.01.2004.
- 15. Annexure R7:** True copy of the Letter dated 01.02.2005.
- 16. Annexure R8:** True copy of the Letter dated 08.04.2005.
- 17. Annexure R9:** True copy of the Letter dated 22.09.2008.
